

BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC 88

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

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

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

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

Date of Decision: 20 June 2017

Date of Issue: 20 June 2017

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INTERIM DECISION OF THE ENVIRONMENT COURT

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



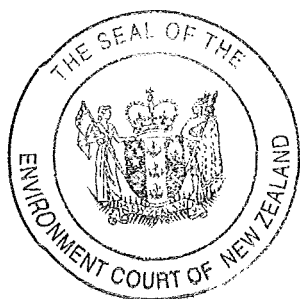
**B: Timetable directions for submissions on conditions.**

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

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## REASONS



## Introduction

[1] Wanaka Watersports Facility Trust ('Trust'/'applicant') proposes a watersports facility ('facility'/'proposal') on a ('site') adjacent to Lake Wanaka within Wanaka's Roys Bay Recreation Reserve ('the reserve'). Primarily, the facility would provide for various local clubs to undertake watersports on the lake (including rowing, kayaking, swimming and multi-sports). Members of the public would also be able to use it, for a charge, and the facility would also provide a public washdown and toilet facility accessible for usage without charge.

[2] Through independent commissioners, Queenstown Lakes District Council ('QLDC'/'the Council') granted land use consent for the proposal. Save Wanaka Lakefront Reserve Inc ('Save Wanaka'/'the appellant') has appealed that decision, seeking that we reverse it and decline consent.<sup>1</sup>

[3] The site is just east of Stoney Creek, within an existing copse of exotic trees close to the lake, and in the vicinity of the walking and cycling tracks that follow the lake shore through the reserve. Under delegation from the Minister of Conservation, the Council has resolved to grant the applicant a 33 year lease of the site (of approximately 800m<sup>2</sup>), subject to resource consent being secured.<sup>2</sup>

[4] The planning experts agree that the proposal is a non-complying activity under the existing Queenstown Lakes District Plan ('existing plan').<sup>3</sup> It sits within (or on the edge of) the existing plan's identified Lake Wanaka Outstanding Natural Landscape ('Wanaka ONL'). Roys Bay Recreation Reserve is designated for 'Recreation Reserve' under the existing plan, and QLDC is the requiring authority.<sup>4</sup>

## The proposal

[5] The proposal is towards the western end of the reserve, just east of the sealed Stoney Creek carpark. It is on the lake side of two large protected Sequoia trees that overlook the site on its Mt Aspiring Road side. Also on that southern side are the carpark access, a walkway and cycleway, a children's play area and a small sculpture

<sup>1</sup> Notice of appeal, at [12], and opening submissions for Save Wanaka.

<sup>2</sup> Agreed Bundle ('AB'), Vol 1, tabs 1 and 3, Vol 2, tabs 13 and 14.

<sup>3</sup> B Farrell, evidence-in-chief for Save Wanaka, at [52]; D L White, evidence-in-chief for the Trust, at [6]; J A Brown, evidence-in-chief for QLDC at [2.5]. Mr Todd questioned this during hearing – see Transcript, at pp 522-524 – and we return to this later at [42].

<sup>4</sup> B J Devlin, supplementary evidence for QLDC, at [2.6] and App D.



on a large grassed area. Mature exotic trees on the approaches to the site shade the walking and cycling tracks through the reserve. Particularly during summer months, large numbers of cars and campervans park in amongst the trees and on the grassed area (as well as in the carpark).

[6] The proposal includes a 420m<sup>2</sup> building. This would be primarily for the storage of water craft but also include an exercise or 'erg' room, a changing and toilets facility and a small kitchen area. There would also be public toilets and a wash down facility accessible from outside the building and available for free public usage.<sup>5</sup> Eleven mature Douglas Fir and Eucalyptus trees would be felled to allow for the building.

[7] The building is proposed to have a maximum height of 5m above the Lake Wanaka flood datum level (meaning that some parts of it would be effectively 6m in height). By comparison, the largest existing building on the Wanaka town frontage of the reserve is the 147m<sup>2</sup> 'log cabin' information and tour booking facility (towards the Wanaka CBD end of the reserve).<sup>6</sup>

[8] The building is flat roofed and oblong, with its longest face fronting the lake. Its architectural design features strong bookends of corten steel (a naturally oxidizing or rusting product) and a softer textured mid-section featuring three-dimensional curving and an undulating cedar batten rain screen (likened to a "quilted eiderdown"). The finish would use recessive colouring. The cedar would be given a protective oil coating and left to naturally weather. Roofing and joinery would be in 'ironsand' coated steel. These measures are taken in order to reflect the colours in Wanaka's wider landscape.<sup>7</sup>

[9] The proposal includes a public boardwalk that would run between the building and the lakeside. It would widen to a decked seating area in front of the building and be ramped at each end to ground level. For most (approx 95%) of its length, the boardwalk would be between 2m–2.5m wide. At a 'pinch point', near trees closest to the lake, the boardwalk would be 1.5m wide. As with the building proper, it would be designed to ensure it was suitable for access by those with mobility disability. A pedestrian and cycle access would run past the building's southern frontage.

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<sup>5</sup> A R Madill, evidence for the applicant, including attachments; MJM Sidey, evidence for the applicant.

<sup>6</sup> Dr M Read, evidence for Save Wanaka, at [61].

<sup>7</sup> A R Madill, evidence for the applicant.





[10] Some 50m to the west of the site is the Stoney Creek channel. This is an ephemeral stream, and is usually of benign character. However, it is identified on the Otago Regional Council ('ORC') register as being capable of producing an alluvial fan hazard. That is through a combination of it having a short catchment (1.6km) with steep (1320m) upper reaches formed in a landslide and a relatively flat gradient on its approach to the lake. This characteristic is evidenced through the deep incision of the channel past the site and an alluvial delta on the creek's entrance to the lake. ORC's mapped flood hazard and alluvial hazard zones run diagonally back from the Stoney Creek delta through and across and beyond the site towards Mount Aspiring Road to the south east of the site.<sup>8</sup>

[11] These natural hazards are accounted for in the form of a flood protection bund that would be mounded into the site. In accordance with the ORC's resource consent (which is not subject to this appeal), and the proposed landscape plan, the bund would broadly extend across the southern frontage of the site and around the two protected Sequoias. It would be generally 500mm high (but would be up to 700mm high in places) and 7m wide (but up to 10m wide in places).

[12] To mitigate for the removal of existing trees, provide summer shading and soften the appearance of the building, the proposal includes the planting of eleven trees in the general vicinity of the site, in accordance with the proposed landscaping plan. The plantings are proposed to be primarily exotics but including Southern Rata and Kowhai.

[13] The existing carpark area and access would be resealed. Rocks and removable timber bollards would be placed around the access and carpark to stop the current practice of informal carparking on grassed areas.

***Modifications proposed by the applicant in closing***

[14] By Minute following the hearing,<sup>9</sup> the court directed that the Trust provide further architectural and landscape plans to show:

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<sup>8</sup> H Stocker, evidence for the applicant, Att 1.  
<sup>9</sup> Minute dated 27 March 2017.



- (a) an adjustment to the building footprint to position the building's front wall approximately 1.5m further back from the lakeside, but keeping the building footprint within the proposed lease area;
- (b) consequential adjustment of the position of the boardwalk in that part where it is presently closest to that lakeside boundary (referred to in evidence as the "pinch point") such as to bring it further back from that position given in evidence, whilst maintaining its suitability for use by those with mobility disabilities;
- (c) any building height reduction as may be practicable, without unduly compromising the fitness of the building for purpose;
- (d) consequential changes to the building floor area and internal space allocations;
- (e) possible locations for two or three additional trees, suitable for providing summer shade, in the vicinity of the proposal and in similar proximity to the lake edge as those trees to be removed.

[15] The Minute also sought a statement of the applicant's position on such modifications and an updated set of proposed consent conditions.

[16] This information was sought as a first step in the sequence for closing submissions. The Minute recorded that its directions did not signal that the court has reached a view on the determination of the appeal. It also noted that, whilst the applicant was directed to supply this information to assist the court, this was on the understanding that the applicant's position would remain reserved subject to any statement it may make in its response and/or in its closing submissions.

[17] In response, the applicant filed a memorandum and a supplementary statement of evidence from Mr Madill on the modifications (as well as updated proposed conditions). The supplementary evidence proposed (and illustrated) two alternative approaches to modification that would be acceptable to the Trust.

[18] One proposal ("building move proposal") would involve:

- (a) moving the building footprint back from the lakeside by 1500mm, and to the south by 700mm (so as to remain within the proposed lease area) and reducing the width of the storage and exercise rooms of the building by 800mm;



- (b) moving the boardwalk back from the lakeside by 1500mm, such that it and the building were south of the cadastral lakeside boundary. This involved shrinking the boardwalk's width by between 300mm and 900mm such that it would be narrowed in places to 1200mm (but still comply with the minimum width for people with disabilities prescribed in D1/AS1 (Access Routes) of the New Zealand Building Code).

[19] Mr Madill's supplementary evidence explained that the building move would result in a slight reduction in building height (of 50mm). It explained that design restraints include the fact that the ground rises slightly further back from the lakeside. This gives rise to a need to raise floor levels (to avoid any need for excavation). His evidence indicated that, to ensure alignment of roof heights, the storage roof height could be lowered by up to 300mm. This would allow for the vertical storage of rowing blades (2900–3700mm), as is best practice. However, the evidence also explained that the exercise room roof should not be lowered, given the need to cater for the heat generated from the erg machines when all were operating.

[20] Mr Madill's supplementary evidence also describes and illustrates an alternative approach preferred by the applicant ('boardwalk removal proposal'). This involves abandoning the boardwalk, but maintaining the decked public seating on the lakefront side of the storage area. This would allow the building to remain as originally proposed. Mr Madill explained that the all-weather deck would give access between the seating area and the carpark and beach, so avoiding potential "privatisation". He offered the opinion that the seating would also function as a "transition" area to soften the hard edge of the building against the beach and provide for "public engagement" with the building.<sup>10</sup>

[21] The supplementary evidence also attached a landscape plan to show this boardwalk removal proposal and the proposed locations of three additional Weeping Willow trees adjacent to the lakeside beach to the east of the proposed building (the plan entitled 'Combined Water Sports Facility Building Landscape Concept Plan – Trust's Preferred Option').

[22] Neither the Council nor Save Wanaka questioned whether there is legal scope to modify the proposal to allow for either the building move or boardwalk removal



<sup>10</sup> A R Madill, supplementary evidence dated 12 April 2017, at 1.4.

proposals. In terms of the principles in *Estate Homes*,<sup>11</sup> we are satisfied that there are no issues of scope. Each of the proposals would achieve some reduction in adverse effects and neither would give rise to any material prejudice to the public or anyone who did not make a submission on the basis of the notified proposal. The modifications are, therefore, treated as part of the proposal.

[23] We return to considering these modifications at [277] and following.

### **The primary determinative issues**

[24] As directed,<sup>12</sup> the parties filed a joint memorandum prior to the hearing identifying the primary issues:<sup>13</sup>

- (a) what is the relevance of pt 2, Resource Management Act ('RMA') in determining the appeal?
- (b) should any of the effects of the proposal be disregarded as within the permitted baseline?
- (c) what is the relevance, or otherwise, of alternative locations?
- (d) what is the meaning of 'margin' in the relevant statutory and planning provisions and how does it apply in the context of the application?
- (e) what are the landscape effects of the proposal?
- (f) what are the effects of the proposal on public access, recreation and amenity values?
- (g) is the proposal contrary to the objectives and policies of the relevant planning documents?
- (h) what is the relevance of the Reserves Act 1977 and the Lake Wanaka Foreshore Reserve Management Plan, October 2014?
- (i) if the grant of consent is upheld, are additional conditions required?

[25] One of the matters identified was the relevance or otherwise of alternative locations. For the reasons we set out at [49] and following, we find that matter is not determinative. Similarly, we find the permitted baseline is not determinative (for the reasons we give at [61] and following). While we agree that the other identified issues are determinative, we find it clearer to express and address them as follows:

<sup>11</sup> *Waitakere City Council v Estate Homes Limited* [2007] 2 NZLR 149 at [29], [30] and [35].

<sup>12</sup> Minute dated 8 March 2017.

<sup>13</sup> Joint memorandum of counsel, dated 15 March 2017.



- (a) what are the relevant objectives and policies and what do they mean for consideration of the proposal and its effects?
- (b) how would the proposal affect:
  - (i) the natural character values, especially of Lake Wanaka and its margin (or relevant part(s) thereof)?
  - (ii) landscape values, particularly as to the Lake Wanaka ONL?
  - (iii) public access, recreation and/or amenity values in relation to the lake and/or the reserve?
- (c) is the proposal contrary to the objectives and policies of the existing and/or proposed plan, particularly on the matters in (b)? This includes consideration of the implications of consent conditions and any possible modification to the proposal:
  - (i) if the answer in (c) is 'yes', we must decline consent unless we determine effects of the proposal (including as modified) are minor;
  - (ii) if the answer in (c) is 'no', on the basis of our findings on the matters in (a) and (b), should consent be confirmed or cancelled and, if confirmed, on what basis?

### **Statutory framework including relevant planning instruments**

#### ***Resource Management Act 1991 provisions***

[26] As is well-known, and not disputed, we must determine this appeal in terms of the following RMA provisions:

- (a) s 290, conferring on us the same power, duty and discretion as the primary decision-maker whose decision is appealed, and s 290A, requiring us to have regard to that appealed decision;
- (b) s 104D, specifying a required threshold that must be met for there to be any ability to grant consent to a non-complying activity, namely that we must be satisfied that:
  - (1) ... either –
    - (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or



(b) the application is for an activity that will not be contrary to the objectives and policies of—

...

(iii) both the [existing plan] ... and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

(c) s 104, specifying what we must and may have regard to or disregard, in our consideration of the appeal (relevantly) as follows:<sup>14</sup>

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

(a) any actual and potential effects on the environment of allowing the activity; and

(b) any relevant provisions of<sup>15</sup>—

...

(v) a regional policy statement or proposed regional policy statement;

(vi) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

(d) s 108, as to our discretion to include conditions in the land use consent should we determine to grant it; and

(e) s 104B, within the broad scope of the appeal, conferring on us the power to grant or refuse the consent (and, to impose conditions under s 108).

<sup>14</sup> Section 104(2A)-(2C) are not applicable. Regarding s 104(3)(a), we have not had regard to trade competition or the effects of trade competition or effects on persons who have given written approval (and did not receive evidence on any such matters). Likewise, s 104(4) does not apply. We are satisfied on the evidence none of the prohibitions on consent granting in s 104(3)(c) apply (nor were any argued to apply). Nothing in s 104(5), applies. We are satisfied that the evidence before us enables us to determine the application and hence, find this is not an appropriate case for exercise of the discretion in ss 104(6) and (7), as to information that is not adequate.

<sup>15</sup> It was not a matter of dispute that there are no relevant national policy statements, national environmental standards or regulations. Hence we reference only relevant categories of statutory instruments listed in s 104(1)(b).



### **Preliminary questions on activity status, alternatives and the permitted baseline**

[27] Before addressing the statutory framework for our consideration of the issues, we now address these preliminary questions raised by submissions and/or in planning evidence for some parties.

### ***Whether we must have specific regard to Part 2 purpose and principles***

[28] The appellant, the applicant and the Council were agreed that we did not have to have specific regard to pt 2, RMA in light of the applicable objectives and policies of the existing and proposed plans. Of particular relevance to this issue are the decisions of the Supreme Court in *Environmental Defence Society Inc v New Zealand King Salmon*<sup>16</sup> and the High Court in *R J Davidson Family Trust v Marlborough District Council*.<sup>17</sup>

[29] *King Salmon* is authority for the proposition that there is no need to refer back to pt 2 when considering a plan change because the New Zealand Coastal Policy Statement 2010 ('NZCPS') was intended to give substance to the provisions of pt 2, RMA.<sup>18</sup>

[30] *Davidson* concerned a resource consent application and, hence, is more directly applicable to the present appeal. As noted by Ms Baker-Galloway for Save Wanaka,<sup>19</sup> the two most relevant findings are these.<sup>20</sup>

[76] I find that the reasoning in *King Salmon* does apply to s 104(1) because the relevant provisions of the planning documents, which include the NZCPS, have already given substance to the principles in Part 2. Where, however, as the Supreme Court held, there has been invalidity, incomplete coverage or uncertainty of meaning within the planning documents, resort to Part 2 should then occur.

[77] I also consider that the Environment Court's decision was consistent with *King Salmon* and the majority correctly applied it to the different context of s 104. I accept Council's submission that it would be inconsistent with the scheme of the RMA and *King*

<sup>16</sup> *Environmental Defence Society Inc v New Zealand King Salmon* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442.

<sup>17</sup> *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52. As at the date of writing this decision, the appellant in *Davidson* has been granted leave to appeal to the Court of Appeal. Therefore, it is appropriate that we treat the case as good law for the purposes of this decision.

<sup>18</sup> *King Salmon*, at [85].

<sup>19</sup> Opening submissions for the appellant, at [11].

<sup>20</sup> *Davidson*, at [76] and [77].





*Salmon* to allow Regional or District Plans to be rendered ineffective by general recourse to Part 2 in deciding resource consent applications. It could result in decision-makers being more restrained when making district plans, applying the *King Salmon* approach, than they would when determining resource consent applications.

[31] Therefore, *Davidson* applied the reasoning and approach of *King Salmon* to the consideration of a resource consent application. The Trust, Save Wanaka, and the Council each submitted that, applying *Davidson*, we should not have specific regard to the provisions in pt 2.<sup>21</sup>

[32] Applying *Davidson*, the determinative question for whether we must have specific regard to pt 2 is whether there is any “invalidity, incomplete coverage or uncertainty of meaning within the planning documents”.

[33] In *Davidson*, there was only an operative plan (the Marlborough Sounds Resource Management Plan). A difference here is that there is a proposed plan which is in the early stages of consideration and decisions on submissions.

[34] That distinction is relevant given that the approach taken by the Supreme Court in *King Salmon* (and also applied in *Davidson*) was that the statutory instrument in issue could be assumed to have been prepared to be consistent with, and to give proper effect to, pt 2.<sup>22</sup> In *Davidson*, Cull J cited the passage from *King Salmon* referring to the “open textured” nature of pt 2 and the statutory purpose of the RMA’s hierarchy of policy and planning instruments in fleshing out the purpose and principles of pt 2 “in a manner that is increasingly detailed”.<sup>23</sup> The quoted passage also refers to the fact that s 5 sets out the RMA’s “overall objective” and it is the various RMA policy and planning instruments that “provide the basis for decision-making, even though Part 2 remains relevant”.<sup>24</sup>

[35] Under s 104, we are required to have regard to provisions of the existing and proposed plan (and other specified matters) ‘subject to pt 2’. Our weighing of the existing and proposed plan provisions on that basis needs to account for the fact that the testing of the proposed plan against pt 2 is not yet complete. The parties were

<sup>21</sup> Opening submissions for the appellant, at [10] and [11]; legal submissions for the Council, dated 21 March, at [3.5]-[3.9], opening submissions for the applicant, at [18]-[20].

<sup>22</sup> *Davidson*, at [76].

<sup>23</sup> *Davidson*, at [74], referring to *King Salmon*, at [151].

<sup>24</sup> *King Salmon*, at [151].





agreed, as are we, that the proposed plan should be given little weight, given that it is only in its early formative stages. However, on the same basis, we should treat it as incomplete in regard to pt 2.

[36] We observe that each of the landscape experts considered both pt 2 and the existing and proposed plan provisions. For the reasons we have given, we take a similar approach in assessing the proposal under s 104, RMA.

[37] In the final analysis, little if anything turns on this legal question in that the evidence leads us to the same answer, whether considered by reference to the objectives and policies or pt 2. However, we cover both bases to ensure we correctly apply the RMA.

***Whether the proposal is a non-complying or discretionary activity***

[38] As noted, the parties identified as determinative whether the proposal is contrary to the objectives and policies of the relevant planning documents. That issue reflects the threshold test for non-complying activities, in s 104D, RMA. In their evidence, each of the planning experts (including Mr White,<sup>25</sup> for the Trust) concluded that we should assess the proposal as a non-complying activity. This was on the basis that the following rule applied:

**5.3.3.4 Non-Complying Activities**

(a) The following shall be Non-Complying Activities, provided that they are not listed as a Prohibited Activity.

...

**ii. Surface of Lakes and Rivers**

...

(b) Structures or moorings passing across or through the surface of any lake or river or attached to the bank or [sic] any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying.

[39] Mr White considered that this rule applied in the sense that the proposed building would be constructed on the bank of Lake Wanaka.<sup>26</sup> However, Mr Todd questioned whether this was the true effect of the rule. He noted that the relevant

<sup>25</sup> D L White, evidence-in-chief for the applicant, at 7.1-8.1.

<sup>26</sup> D L White, evidence-in-chief for the applicant, at 7.1-8.1.



existing plan map includes a black horizontal line running parallel to the shoreline a short distance offshore marked:

All structures and moorings non-complying except for raft and jetty at Edgewater as shown.

[40] He submitted that this would appear to capture a structure such as a jetty but not a building constructed on the landward side of the lake.

[41] For the reasons we now give, we agree with the planning witnesses that the rule does apply and that the proper classification of the proposal is as a non-complying activity.

[42] The rule itself is clear that it applies to structures that are attached to the bank of<sup>27</sup> a lake or river. Mr Todd correctly pointed out that this is further qualified by the rule's requirement that the structures be "in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying".

[43] However, on its face we find the map notation is capable of being read to apply to structures either side of the horizontal line on the map.

[44] Furthermore, a proper reading of the map and notation is to treat it as serving the purposes of the rule to which it relates. As noted, the rule explicitly refers to structures attached to the bank of a lake. The existing plan does not define 'bank'. It is a word whose ordinary meaning is somewhat flexible. We find it comparatively more flexible than 'margin' and properly to be applied to land alongside a lake.<sup>28</sup>

[45] In its closing submissions, Save Wanaka acknowledged that, if the building is removed from the bank of the lake, it would have a discretionary activity status.<sup>29</sup> However, its submissions did not address whether or not moving the building as proposed by the Trust would, in fact, see it as moving beyond the bank.

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<sup>27</sup> While the rule states 'attached to the bank or any lake or river', in the context of the sentence, we treat 'or' as a typographical error, with the word 'of' intended.

<sup>28</sup> For example, the *New Zealand Oxford Dictionary* gives the following meanings of the word:

1.a *the sloping edge of land by a river.*

b *the area of ground alongside a river (had a picnic on the bank).*

<sup>29</sup> Closing submissions for Save Wanaka, at [122].



[46] We find that the extent of movement to the building proposed by the Trust would not move it beyond the 'bank'. In essence, we find it likely that most people would still regard the building as occupying an area of ground alongside the lake. As Mr Madill observed in his supplementary evidence, the seating area on the lakeward side of the building is a transition area that is directly accessible from the beach.

[47] For those reasons, we find that the proposal is properly to be assessed as a non-complying activity. We find that Rule 5.3.3.4(a)(ii)(b) is intended as the dominant rule for the purposes of activity classification under the existing plan. In that sense, the proposal does not enter the non-complying activity classification by the back door, but as a deliberate outworking of the existing plan's design.

[48] Therefore, we closely scrutinise it against the relevant objectives and policies of the existing and proposed plans.

***Whether alternative sites and their consideration are materially relevant***

[49] The independent commissioners' decision included a discussion on the topic of alternative sites, including a finding that:<sup>30</sup>

We consider it appropriate ... given that the application at least raised the possibility of significant adverse effects, that there needed to be evidence that consideration had been given to alternative sites. Having said that, an applicant does not have to prove that they have chosen the best site, but they do need to show that the site they have chosen is suitable.

[50] Several of Save Wanaka's lay witnesses (and Mr Dickson) expressed opinions that the Trust ought to have sought consent for a different site and/or failed to give proper scrutiny to other sites, including those that were part of a scoping exercise undertaken by the Wanaka Rowing Club Inc.<sup>31</sup>

[51] Save Wanaka's planning witness (Mr Farrell) understood that there was not "any evidence to suggest why the watersports facility must be located in the proposed

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<sup>30</sup> Common Bundle ('CB'), Vol. 1, tab 3, [281]-[292], the quote at [284]. For the purposes of s 290A we confirm we have had regard to this decision.

<sup>31</sup> For example, in the evidence of Dr D A Robertson, at [15], Dr D M Jongsma, at [20]-[23], H M Scandrett, at [24]-[28], C B Landsborough, at [24]-[34], B H Pihama, at [33]-[37]. Similarly, s 274 party, G L Dickson, at [10.1]-[10.8].



location". He commented that other sites and alternative building designs "exist which will not have significant adverse impacts on the environment". He disagreed with the Council commissioners' findings to the effect that alternatives then raised by submitters were "superficial".<sup>32</sup>

[52] Save Wanaka submitted that the consideration of alternatives was a relevant consideration because of the significance of the values affected. In particular it noted that these include matters under s 6(a), (b) and (d) and s 7(c) and (f), RMA. It accepted that the Trust had not failed to consider alternatives. However, it submitted that "there are alternatives" and "that the purported benefits from this proposed activity will not be foregone if the application is declined due to the scale of adverse effects". It referred us to the High Court decision in *Meridian Energy Ltd v Central Otago District Council*.<sup>33</sup> It acknowledged that *Meridian Energy* held that a decision-maker is not obliged to consider alternatives under s 7(b) or undertake an explicit or comprehensive cost benefit analysis. However, it noted that the court also said that it is relevant and reasonably necessary to consider alternatives, if there are significant adverse effects.<sup>34</sup> It submitted that *Meridian Energy* assists in a scenario, such as here, where matters of national importance are at issue.<sup>35</sup> In closing, Save Wanaka submitted that "it is reasonable to drive some extra minutes to a site that is more appropriate" and "Glendhu Bay is not too far, for example, all other things being equal".<sup>36</sup>

[53] We heard some evidence on the alternative sites that were considered in the process of choosing the subject site. However, we did not receive any expert evidence allowing us to make any substantive findings on the suitability or otherwise of other sites.<sup>37</sup> On the other hand, the evidence of the Trust chair (Mr Michael Sidey) included the following statement:

The Trust is in the position where if this present appeal is successful, the proposed facility will have to be abandoned in its present form and the Trust will have to be dissolved, as there is no likelihood of any funding for a further application,

<sup>32</sup> B Farrell, evidence-in-chief for the appellant, at [88].

<sup>33</sup> *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482, [2010] NZRMA 477, at [67] and [123].

<sup>34</sup> Opening submissions for the appellant, at [29]-[31].

<sup>35</sup> Opening submissions for the appellant, at [31].

<sup>36</sup> Closing submissions, at [105].

<sup>37</sup> Particularly, the evidence-in-chief of A C Inkster of the Wanaka Rowing Club, at [32]-[40].



[54] Save Wanaka's extensive cross-examination<sup>38</sup> did not call into question the reliability of Mr Sidey's statement on that. Nor was his evidence on it rebutted. We accept it as a true and reliable statement of the Trust's position.

[55] Save Wanaka's submission also relied on its evidence that other sites exist "which will not have significant adverse impacts on the environment". Mr Farrell explained that he based his opinion to that effect, in part, on the views that a number of lay witnesses called by Save Wanaka expressed. However, no expert assessment was presented by any relevant expert to enable any safe finding to be made about whether or not other sites do exist that would meet relevant RMA requirements. While we respect the genuinely held views of those lay witnesses, their opinions do not provide us with any safe basis to make any finding on whether or not other suitable sites exist. We are not required to make any findings on the suitability or otherwise of alternative sites and decline to do so.

[56] Therefore, we do not accept Save Wanaka's submission that declining the consent would not forego the benefits of the proposal.

[57] We accept Save Wanaka's submission that the Trust's consideration of alternatives is a relevant consideration, for the reasons given in *Meridian Energy*. In essence, that is in the sense that there are significant effects on matters recognised in ss 6 and 7, RMA and related plan objectives and policies.

[58] While we have considered the evidence on the Trust's consideration of alternative sites, we find this matter of limited weight in our determination. In particular, that is because we have no jurisdiction to consent the proposal on a different site and, for the reasons we set out, we are satisfied that the proposal (modified as we have determined) satisfies relevant RMA requirements.

[59] In any case we find, on the evidence of Ms Inkster<sup>39</sup> and in the Common Bundle,<sup>40</sup> that the Trust duly considered alternative sites in the manner specified in RMA Schedule 4, cl 6(a).

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<sup>38</sup> Transcript at pp 31-37.  
<sup>39</sup> A Inkster, evidence-in-chief for the Trust.  
<sup>40</sup> CB, Vol 1, tab 1, p 6.



***Relevance of alternatives within the site***

[60] As Mr Farrell pointed out, however, it is also relevant for us to scrutinize alternatives *within* the site. That scrutiny is an aspect of our consideration of whether consent should be granted or declined and, if granted, whether it should be on a basis of modification to the proposal (insofar as this is offered by the applicant) and/or changes to consent conditions. In view of the non-complying activity status of the proposal and related objectives and policies on relevant ss 6 and 7, RMA matters, we find it particularly important that we test this. That includes giving careful consideration to the positioning, scale and design of the building within the site. We return to this at [277] and following.

***Whether we disregard effects of those aspects of the proposal that are permitted***

[61] Under s 104(2), RMA, when forming an opinion about actual or potential effects, we may disregard an adverse effect of the activity on the environment if the existing plan permits an activity with that effect. That discretion essentially codifies the 'permitted baseline' approach of case law, but puts it on an explicitly discretionary basis.

[62] As noted, the parties agreed that one of the determinative issues was whether any of the effects of the proposal should be disregarded on the basis of being within the permitted baseline. This issue arises in relation to the fact that certain aspects of the proposal, if taken in isolation, are classed as permitted activities under the existing plan and proposed plan.

[63] We do not agree with the parties that this matter is a determinative issue in the sense of materially impacting on our decision. In any case, for the following reasons we decline to apply the s 104 discretion to disregard effects.

[64] In his pre-exchanged evidence, Mr White (the Trust's planning witness) argued that we should apply the permitted baseline discretion to treat several aspects of the proposal as having "no environmental effect". He proposed that we exclude the effects of:



- (a) removal of trees for the building (permitted activity);
- (b) 'works' for the building, bund and services (permitted as more than 5m from the protected Sequoias);
- (c) installation of piles (excluded from 'earthworks' as 'driven posts');
- (d) importation of fill (at approximately 170m<sup>3</sup>, well below the 1000m<sup>3</sup> maximum for permitted activity);
- (e) 'recreational activities' (permitted); and
- (f) signage noting the name of the building (permitted, given its size).

[65] However, under cross-examination, Mr White conceded that the application of a permitted baseline approach in this case "is not of particular significance to the decision".<sup>41</sup> We agree.

[66] Section 104 enables, rather than requires, a decision-maker to disregard adverse effects of an activity on the environment if a plan 'permits an activity with that effect'. That allows for the exercise of sensible judgment. For the following reasons, we find it would be non-sensical to ignore the effects of removing trees and of recreational activities, given the evidence. On the evidence, the trees contribute to the amenity values of the reserve. The fact that the Trust proposes to replace the trees, with the support of its landscape expert, Ms Steven, demonstrates that. Similarly, particular permitted elements of the building cannot be sensibly set aside when the evidence shows they materially contribute to the building's visual and other amenity effects. The Trust's proposed consent conditions explicitly apply to piling work. On the same basis, it would be artificial and unsound to ignore 'works for the building, bund and services' when assessing the effects of the building, the bund, and landscape treatment of the site.

***Whether we treat the reserve's designation as a permitted baseline***

[67] In his written evidence, Mr White invited us to treat the Council's designation of the relevant part of the reserve ('Designation 105') as part of the permitted baseline.



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<sup>41</sup> Transcript, p 195.

[68] We are guided by the High Court decision in *Save Kapiti Incorporated v New Zealand Transport Agency*,<sup>42</sup> in finding it would be inappropriate to treat the designation as part of a permitted baseline. It concerned an appeal against a Board of Inquiry decision to confirm a designation by the NZTA for its then-proposed Kāpiti expressway project (now constructed).<sup>43</sup> The project was then proposed (and is now constructed) along the route of a former Council road proposal known as the Kāpiti Western Link Road ('WLR'). In that case, the High Court found no error of law in a board of inquiry's decision not to treat a designation for a roading project as part of a permitted baseline for the consideration of a proposed expressway project. That was because it would be fanciful to do so, as the expressway project would supersede any ability to implement the former roading project along the route.<sup>44</sup>

[69] Similarly here, implementation of the Trust's proposal would supersede any capacity QLDC may have to put a building on the site under its designation. Therefore, we decline to treat Designation 105 as part of a permitted baseline.

***The relevance of the designation and management plan to our findings on the future environment***

[70] To assess the environmental effects of the proposal, we must predict the nature of the future receiving environment. On that matter, a question is whether, and to what extent, we take Designation 105 and Wanaka Lakefront Reserve Management Plan October 2014 ('RMP')<sup>45</sup> into account.

[71] In *Queenstown Lakes District Council v Hawthorn Estate Ltd*<sup>46</sup> the Court of Appeal found that the "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents that have been granted at the time a particular application is considered, where it appears that those resource consents will be implemented. It found that the environment does not include the effects of resource

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<sup>42</sup> *Save Kapiti Incorporated v New Zealand Transport Agency* [2013] NZHC 2104. In *Save Kapiti Incorporated v New Zealand Transport Agency* [2013] NZSC 123, the Supreme Court dismissed Save Kapiti's application for leave to appeal.

<sup>43</sup> Judge Hassan was counsel for the NZTA in hearings on that project.

<sup>44</sup> *Save Kapiti*, at [78].

<sup>45</sup> CB, Vol 1, tab 6.

<sup>46</sup> *Queenstown Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA).





consents that might be made in the future.

[72] *Save Kapiti* assists us on the proper application of *Hawthorn*. Gendall J observed that *Hawthorn* intended to draw a distinction between activities “likely to happen and those that were not”, in terms of a “real world approach”. Applying *Hawthorn*, it was not appropriate to consider a future environment “that is artificial”. Because the WLR could not co-exist with the expressway project (as the project would be built along the same route), the Court found the Board had not erred in finding that it would be “artificial” to treat the WLR as part of the future receiving environment.<sup>47</sup>

[73] In this case, it would not be artificial to consider what is likely to change in vicinity of the proposal and in the wider reserve, through implementation of Designation 105. However, it would be artificial to treat what could be undertaken under Designation 105 in isolation from the Reserves Act 1977 (‘RA’) and the RMP. That is particularly given the designation’s notation is ‘Recreation Reserve’.

[74] In considering how Designation 105 is likely to affect the future environment, we consider both its enabling and protective purposes. That is, under the RMA, its functions are both to enable QLDC to undertake the specified Recreation Reserve purposes and to protect against other persons undertaking activities in the reserve that would prevent or hinder that designated purpose. Also, when considering what third parties may undertake in the reserve, we consider the underlying Rural zoning. That includes its bulk and location and activity rules and its ‘non complying activity’ classification of activities on the bank of the lake (and related objectives and policies).

[75] Both Designation 105 and the RMP apply to how the Council administers the reserve. That is the case both for work QLDC itself undertakes and what it would allow others to do within the reserve.

[76] *Save Wanaka* submits that the RMP should not be accorded significant weight given that it was formulated through a process that, while allowing for submissions, did not have the same robustness as an RMA plan-making process (such as in relation to the testing of evidence and rights of appeal).<sup>48</sup> However, the RA accords the RMP statutory force. In particular, the RA requires administering bodies to have a reserve

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<sup>47</sup> *Save Kapiti*, at [70].

<sup>48</sup> Closing submissions for *Save Wanaka*, at [8].



management plan that must be approved by the Minister of Conservation, and be kept under review (s 41, RA). A management plan is to provide for and ensure the reserve's use, enjoyment, maintenance, protection, and preservation (as the case may require) and its development according to its purpose and relevant RA principles (s 41(3)). Administration of the reserve is delegated to QLDC and the reserve is classified as a recreation reserve, to which s 17 RA applies. Relevantly, s 17(1) RA declares, amongst other things, that:

**17 Recreation reserves**

- (1) ... the appropriate provisions of this Act shall have effect, in relation to reserves classified as recreation reserves, for the purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.

...

[77] Also relevantly, s 17(2) on the administration of recreation reserves specifies relevant principles, including as to:

- (a) the public's rights of entry and access (subject to certain exceptions, including as to the administrative body's powers of protection and control); and
- (b) the conservation of the reserve's qualities that contribute to its pleasantness, harmony, and cohesion of the natural environment and the better use and enjoyment of the reserve.

[78] Section 53 RA specifies various powers (other than leasing) which, in this case, may be exercised by QLDC. Those powers are broad-ranging. They include the power to prescribe activities that may take place in any specified part of the reserve (s 53(1)(d)), and to erect buildings and structures for use of the reserve for outdoor recreation (s 53(1)(g)). Also, s 54 provides leasing powers for recreation reserves (pursuant to which QLDC has resolved to grant a lease to the Trust, as noted).

[79] Those provisions show that the statutory purpose of the RMP is strongly directed towards protection of the amenity values of the reserve and the management of use of the reserve including allocation of space within it (e.g. through leases).



[80] In any case, while anticipating and encouraging managed development of the reserve, the RMP establishes a framework for the protection of the reserve's amenity values.

[81] Inherently, the RA and RMP will be likely to influence how QLDC exercises its requiring authority powers under Designation 105 because the designation is for related Recreation Reserve purposes. Also, the 'implementation methods' for the existing plan's Objective 3 refers to complementing the use of the existing plan's procedures "by the use of procedures and management plans under the ... [RA]".

[82] For those reasons, we do not accept Save Wanaka's submission and find that Designation 105 and the RMP (and related RA powers and duties) will influence the future receiving environment. We set out relevant RMP provisions in Annexure 1.

[83] As to how the RMP could influence the future environment, Save Wanaka emphasised that the RMP does not give any specific support to the proposal. The RMP does not specify any particular location, within its 'Area 1', for a non-motorised watersports building. Nor does it state that a building of the scale and style, and in the location proposed is either appropriate or anticipated. Save Wanaka argued that the RMP's objectives and policies could not be said to accord specific support for the proposal. Further, it submitted that the RMP's objectives and policies set a high value or threshold concerning amenity value protection for the reserve.<sup>49</sup>

[84] Conversely, the Trust submitted that Save Wanaka understated the RMP's significance. It pointed out that the Trust specifically disclosed the proposed facility in its submissions on the formulation of the RMP, and that the RMP was not legally challenged. It noted that the Council's subsequent grant of lease to the Trust was not legally challenged. It also pointed to the fact that the Council, as administrator of the reserve, gave its written 'affected party' approval to the consent application. Finally, on this topic, it invited the court to consider the fact that the commissioners' decision was to grant the application.<sup>50</sup>

[85] We consider the Trust's submissions somewhat overstated matters. Whatever the Trust said in its RMP submission does not materially bear on how we must interpret

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<sup>49</sup> Closing submissions for Save Wanaka, at [9], [10]-[16].

<sup>50</sup> Closing submissions for the Trust, at [8].



the RMP. The RMP is clear in not giving specific endorsement to either the specifics of the proposal or its location. Rather, it goes only so far as to endorse an intention to have a proposal proceed in Area 2 for the purpose of providing for non-motorised active recreation. As can be expected of a statutory instrument for the purpose of the RA, it leaves for the RMA to determine whether any particular proposal is appropriate for the purpose of the RMA. Nor does the Council's leasing decision or its affected party approval or, with respect, the commissioners' decision, carry significant weight on this matter.<sup>51</sup> That is in the sense that we are tasked with determining the appeal *de novo* on the evidence before us.

[86] We also agree with Save Wanaka that there is an emphasis in the RMP on managing the impact on natural amenity values of the lakeside reserves (including by minimising buildings and structures) and retaining informality in the landscape and the open spatial quality in the reserve.

[87] However, we depart from Save Wanaka's position on what this means for the appropriateness of the proposal. In particular, as we have noted, the RMP anticipates managed development of the reserve as well as specifying amenity potential values. It does not insist on an approach of keeping 'informal' areas as they are. A strong theme of Save Wanaka's evidence (particularly that of Dr Read) was that the proposal would take away from the informality of the reserve by the fact that it would add a building and formalise carparking in the vicinity of Stoney Creek. However, the fact that the proposal would formalise this part of the reserve to some extent does not render it at odds with the RMP. Specifically, the RMP does not put such a premium on preserving this part of the reserve's existing appearance and use. In any case, we find that the degree of formalisation that would result from the proposal in this part of the reserve is relatively insignificant even when considering Area 2 as a whole (and this formalisation is not in conflict with the RMP).

[88] In addition, we find that the RMP anticipates properly managed development of the reserve including in the environs of the proposal.

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<sup>51</sup> We have had regard to the decision, but do not have to accept it: s 290A, RMA.



***Whether the designation includes conditions***

[89] The question of whether or not the designation includes conditions has some relevance to our consideration of how it would likely shape the future environment. In his pre-exchanged planning evidence for the Trust, Mr White assumed that the designation included conditions that would, through the outline plan process, allow for buildings up to 10m in height and 100m<sup>2</sup> in total floor area for individual buildings, (subject to a maximum site coverage of 5% of the total site area).<sup>52</sup> However, in opening the case for the Trust, Mr Todd explained that, following further discussions with QLDC's counsel, he now understood the position to be that the designation did not impose any such conditions.<sup>53</sup>

[90] The Council's planning witness, Mr Jeffrey Brown, was more cautious on whether the lack of specified conditions in the designation was a drafting slip, rather than properly reflecting the notice of requirement and the Council's decision on it. Specifically, he observed that there were three designations relating to the reserve, those either side of the designation in issue specifying conditions. He considered it would be prudent to more thoroughly check the background leading to the inclusion of the designation in the plan.<sup>54</sup>

[91] Therefore, the court directed that the Council file supplementary evidence as to the notice of requirement and decision background to the designation. The supplementary statement of evidence of Mr Blair Devlin for the Council provided the relevant background documentation, which we accept and now summarise.<sup>55</sup>

[92] The designation is included in the existing plan's App 1. (as 105) and on Map 22. App 1 specifies QLDC as the requiring authority and the designation purpose as 'Recreation Reserve'. Its column headed 'Site/Legal Description and Conditions' simply states:<sup>56</sup>

Wanaka–Mt Aspiring Road, Part Roys Bay Recreation Reserve. Sections 31, 45 Block III, Lower Wanaka SD (3.9153 ha).

<sup>52</sup> D L White, evidence-in-chief for the Trust, at [8.1].

<sup>53</sup> Transcript, p 12.

<sup>54</sup> Transcript, pp 278 and 279. The transcript records Mr Brown's explanation of this being in questioning by counsel for QLDC; however, the court's recollection is that it was in answer to the court's question.

<sup>55</sup> B J Devlin, supplementary evidence for QLDC, dated 31 March 2017.

<sup>56</sup> B J Devlin, supplementary evidence for QLDC, at App D.



[93] That is in contrast to some of the other listed QLDC designations, most notably the contiguous reserve Designations 99 and 111 which have an additional sentence:

For conditions refer to B below.

[94] Under the former district plan there was a designation for the same land (numbered 113 in its App 1). Similarly, it did not specify reference to conditions (again, in contrast to some other reserve designations).<sup>57</sup>

[95] A statement prefacing App 1 to the existing plan starts by noting that the majority of the designations in App 1 were rolled over from the previous district plan "in an unmodified form".<sup>58</sup> QLDC's decision confirming its requirement to roll the designation into the existing plan states this is to be "without modification".<sup>59</sup>

[96] QLDC has also notified its requirement that Designation 105 be rolled forward into the proposed plan, again without modification (including any conditions). We were not informed as to whether or not this designation rollover is subject to submissions or whether the Council has made any decisions on this part of the proposed plan.

[97] In closing, Save Wanaka submitted that the omission of the statement 'For conditions refer to B below' is in error, and the designation should be read to incorporate those conditions. It argued that this was supported on a purposive reading of the designation and in light of the existing plan's objectives and policies for matters in ss 6(a) and (b) RMA. In essence, it argued that, in order to ensure preservation and protection of the natural character of the lake margin and the ONL from inappropriate development, the Council must have intended the conditions to be incorporated into this designation. It also noted that the explanation and principal reasons specified for the existing plan's objective 4.4.1 include a statement as follows.<sup>60</sup>

The designations contain conditions which are intended to limit the adverse effects on neighbours of use of these reserves.



<sup>57</sup> B J Devlin, supplementary evidence for QLDC, at App B.  
<sup>58</sup> B J Devlin, supplementary evidence for QLDC, at App D.  
<sup>59</sup> B J Devlin, supplementary evidence for QLDC, at App C, p 339.  
<sup>60</sup> Closing submissions for Save Wanaka, at [17], [23]-[25].



[98] In addition, Save Wanaka pointed out that section 6.3 of the RMP refers directly to the designation as including conditions as to setbacks from the road and internal boundaries, building height and floor area and hours of operation.

[99] Save Wanaka noted that Mr Devlin did not explain why Designation 105 is not subject to conditions, given that related Roys Bay Reserve Designations 99 and 111 do incorporate conditions, and all three designations come from the same original designation.<sup>61</sup> It also observed that the earliest record of the designation was in the 1981 district scheme for Lake Wanaka, not the 1995 transitional district plan. However, it acknowledged that this original designation apparently did not include specific bulk and location conditions.<sup>62</sup>

[100] It is clear from Mr Devlin's evidence that Designation 105 was rolled over into the existing plan without modification and, in the previous district plan, the designation did not include conditions. That is sufficient for our purposes. On its face, the designation does not include conditions. That is consistent with the notice of requirement that instigated its rollover into the existing plan. It makes sense on that basis and we reject Save Wanaka's purposive interpretation.

[101] We acknowledge that the RMP refers to the designation's conditions applying. However, the RMP is not an instrument that can be validly read into a RMA designation or to modify that designation.

[102] Therefore, we find that Designation 105 does not include conditions. It allows QLDC to undertake public works for its stated 'Recreation Reserve' purposes, subject to complying with the s 176A RMA outline plan processes.

### **The relevant existing and proposed plans' objectives and policies**

[103] We received extensive evidence on these matters from the three planning witnesses called by the parties. Our consideration of the objectives and policies of both the existing and proposed plans (and the existing and proposed regional policy statements) draws from their evidence. We agree with the parties that the existing plan's objectives and policies ought to be accorded most weight given that public processes for the formulation of the proposed plan are only in their early stages.

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<sup>61</sup> Closing submissions for Save Wanaka, at [26]-[29].

<sup>62</sup> Closing submissions for Save Wanaka, at [30].



[104] Therefore, while we have considered both the existing and proposed plan provisions, Annexure 2 sets out key existing plan provisions only.

### **Findings as to existing plan's objectives and policies and assessment matters**

[105] We next set out findings on the significance of the directions in existing plan objectives and policies for key issues.

#### ***Natural character, landscape and amenity values***

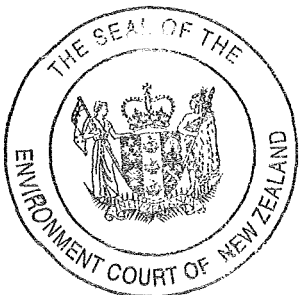
[106] The existing plan's objectives and policies provide specific directions on several matters concerning the natural character of lakes and their margins and landscapes (including outstanding natural landscapes (ONLs) and visual amenity values). The provisions identify values the existing plan ascribes to these things and give directions on the proper approach to assessing proposals. They also guide our determination on whether or not consent should be granted and, if so, on what basis.

[107] We deal with some further aspects of this in the following paragraphs.

#### ***Natural character***

[108] Save Wanaka pointed out the distinction made in 4.1.4 Policy 1.13 between 'natural character' and 'nature conservation values'. It submitted that this shows an intention that for margins both 'natural character' and 'nature conservation' values be maintained and enhanced.<sup>63</sup> We agree that is the intention of this policy. The existing plan does not give any definition to 'natural character' and 'margins' indicating an intention that these words have the meaning they are given by the RMA. We look further at the meanings of 'margin' and 'natural character' at [153]-[177].

[109] Save Wanaka submitted that the word 'remains' recognises that the natural character of the margins of many lakes and rivers of the district has already been reduced by subdivision, use and development. It argued that the policy intends that remaining natural character be preserved. Coupled with this, it submitted that the lack of s 6(b)'s qualifier 'from inappropriate subdivision, use and development' intends to reinforce that direction. It argued that human-induced modification that reduces natural



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<sup>63</sup> Closing submissions for Save Wanaka, at [62].



character conflicts with this objective.<sup>64</sup> It noted that the associated 'Environmental Results Anticipated' (at 4.1.5) assist interpretation of 4.1.1 Objective 1 and Policy 1.14. In particular, Save Wanaka referred to:

- (a) the enhancement of lake margins as amenity assets (4.1.5(iii));
- (b) maintenance of natural character and landscape values of the rural area (4.1.5(viii)); and
- (c) enhanced quality of the lake margin and the recreational experience and public access opportunities (4.1.5(x)).

[110] We do not accept the Trust's criticism that Save Wanaka's closing submissions on this matter amounted to evidence from counsel.<sup>65</sup> As we note at [174] all the landscape experts (including Ms Steven, for the Trust) treated 'natural character' as having both biophysical and perception dimensions (although they differed on the extent to which character should be assessed in perception terms). As we note at [175], we agree that is the case.

[111] We agree with Save Wanaka that the objectives and policies give strong direction that we should preserve what natural character remains in Lake Wanaka and its margin and maintain and enhance the natural character and nature conservation values.

[112] Our findings on the evidence that the building is not sited on the margin informs our finding that the proposal would have negligible effects, in a biophysical sense, on the margin. However, that leaves for consideration how the proposal impacts natural character in perception terms. As natural character perception is closely related to landscape character, we deal with both matters together (at [203] and following).

### ***Landscape and visual amenity values***

[113] The objectives and policies treat the topics of ONLs and other landscapes and visual amenities together.

[114] We accept Save Wanaka's closing submission that the key directives on landscapes and visual amenity values concern:

<sup>64</sup> Closing submissions for Save Wanaka, at [61].

<sup>65</sup> Closing submissions for the Trust, at [6].



- (a) the maintenance of openness of ONLs with 'at present' open character (4.2.5 Policy 2(a));
- (b) visual amenity, visual coherence and harmony (4.2.5 Policies 1(c), 2(d) and 9 and Chapter 5 Policy 1.7); and
- (c) the capacity to absorb change (Save Wanaka does not identify particular policies, but we set them out in Annexure 2).

[115] However, for the reasons we now explain, we do not accept Save Wanaka's submissions on how these directives should bear on the consideration of the proposal.

[116] Save Wanaka relied primarily on Dr Read's evidence. At [217] and following, we explain why we do not accept her key findings.

[117] We do not accept Save Wanaka's interpretation that the existing plan's objective and policies on landscape and visual amenity values favour maintaining the informality of the site. Rather, we find they seek a careful strategic approach to the management of land use change. This management approach considers the particular site and surroundings and the wider landscape context.

[118] We are directed to assess on the evidence whether the particular landscape is vulnerable to degradation or has capacity to absorb change and whether the ONL has an open character 'at present'. We are directed also to assess whether visual amenity values are vulnerable to degradation. That initial stage of assessment is important in the sense that it can be fatal to a proposal. Specifically, the direction is that development be avoided if the landscape is adjudged as vulnerable to degradation and/or if a proposal would not maintain the openness of ONLs that have an open character 'at present'. Depending on the circumstances, a determination that visual amenity values are vulnerable to degradation could be fatal also (unless this could be satisfactorily mitigated).

[119] We find that, to correctly apply this approach, it is particularly important to determine, on the evidence, an appropriate scale of reference for landscape assessment. Both the absorptive capacity of a landscape and its open character are relative concepts. Hence, depending on the size of the landscape unit chosen, a landscape expert would likely derive different answers both on absorptive capacity and open character. Yet, those answers are intended to be critical to the question of



whether a proposal would accord with, or be contrary to, the objectives and policies. As we later explain, we find Dr Read's choice of an overly confined scale of reference is a key reason why we prefer the evidence of Ms Steven and Mr Espie.

[120] Save Wanaka submitted that the first step in landscape assessment of a proposal in an ONL is to determine the relevant characteristics of the ONL, in this case the Lake Wanaka ONL.<sup>66</sup> We accept that submission. However, as we discuss at [224] and following, we find that it is on this particular matter that Dr Read's approach to landscape assessment is flawed. That is because she elected to assess the proposal only within her confined Roys Bay landscape unit. That unit is only a very small portion of the ONL and, on the evidence, we find it is not properly representative of the ONL in terms of values. In particular, Roys Bay is accepted by all the experts to be, and is self-evidently, the most urbanised part of the Lake Wanaka ONL. The danger in selecting an overly small part of an ONL landscape for an assessment is that related findings about 'absorptive capacity' and 'openness' could be driven by overly localised considerations, more in the nature of an amenity value assessment.

[121] Returning to the existing plan's directions, simply finding that a landscape is capable of absorbing change and that its open character would be able to be maintained is not necessarily conclusive that a proposal is appropriate in landscape terms. There is a further direction to discourage development within an ONL. The non-complying activity status of activities on the banks of lakes is an aspect of this. That implies that a decision-maker ought to closely examine whether a proposal has a strong functional justification for its choice of siting and whether in terms of the assessment matters in s 2.2.2(1), it is a truly exceptional case. However, it does not mean that every non-complying activity should be declined.

[122] Our findings on that matter are at [262] and following.

[123] If an assessment demonstrates that a proposal (including in an ONL) passes this initial threshold of being potentially appropriate in its proposed location, the objectives and policies then direct that attention be given to the specifics of the proposal. In essence, at this stage, the focus is more specifically localised.



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<sup>66</sup> Closing submissions for Save Wanaka, at [76].

[124] The overall direction, at this stage of the assessment, is on whether a proposal will be successfully absorbed into its landscape setting and whether there will be effective mitigation of any degradation of visual amenity. We are directed to pay close attention to the sensitivity or otherwise of the proposal to its setting. That includes the specifics of siting, building dimensions, design and finishing, and the proposed landscaping and mitigation planting. Harmonisation with the line and form of the landscape and complementarity with the dominant colours in the landscape are identified aspects of this.

***Landscape assessment matters – existing plan Rule 5.4.2.2(2)***

[125] As part of its strategic management approach to landscapes, the existing plan includes a detailed list of assessment matters to be applied in the determination of whether to grant consent and, if so, on what conditions. The specified matters are prefaced with directions as to a three-step process to be followed for landscape assessment in resource consent application processes: Step 1 – Analysis of the Site and Surrounding Landscape, Step 2 – Determination of Landscape Category, Step 3 – Application of Assessment Matters. Primarily, these assessment matters are intended to inform detailed scrutiny of a proposal.

[126] The relevant assessment matters are in Rule 5.4.2.2(2), headed ‘Outstanding Natural Landscapes (District Wide)’. These are grouped under headings as follows:

- (a) ‘Potential of the landscape to absorb development’, specifying various criteria as to both visual and ecological absorption to be taken into account “consistent with retaining openness and natural character”;
- (b) ‘Effects on openness of landscape’, specifying matters to be taken into account on this topic;
- (c) ‘Cumulative effects on landscape values’ listing various related matters including as to whether elements of the development would:
  - (i) be inconsistent with the natural character of the site and surrounding landscape;
  - (ii) further compromise the existing natural character of the landscape (visually or ecologically); or
  - (iii) represent a threshold of the site’s ability to absorb further change;



- (d) 'Positive effects' primarily focussing on what the development would offer by way of protection of natural values, open space, esplanades and other such mitigation or natural environment enhancement.

[127] We observe that these criteria address natural character as an aspect of landscape character, rather than simply as a matter in relation to the margins of lakes (in this case Lake Wanaka). Also, the criteria touch on visual amenity and public access matters to some extent. We agree with Save Wanaka's planning witness, Mr Farrell that the approach taken in the assessment matters does not invalidly conflate the s 6(b) RMA directive on ONLs with other RMA directives (particularly those in ss 6(a), (d) and 7(c)).<sup>67</sup> Rather, they properly recognise that landscape assessment is, in an environmental sense, related to these other matters.

[128] Our evidential findings on landscape matters have been informed by these assessment matters and are at [182] and following.

#### ***Amenity values and use of the reserves***

[129] We accept Save Wanaka's submission that relevant policies direct that we consider amenity values informed by the assessment of natural character and landscape, and the cultural and recreational attributes of the relevant site (and, we add, its setting).<sup>68</sup> We also agree with Save Wanaka that the objectives and policies intend that the building (and, we add, particularly its scale and location and associated activities) will be consistent with the level of amenity anticipated in the surrounding environment (and we add, also in terms of noise and lighting).

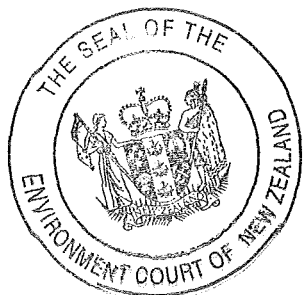
[130] A further relevant consideration is what is anticipated for the use and enjoyment of the reserve.

[131] Save Wanaka submits that the amenity values of the reserve are "predominantly in the form of passive recreation and quiet enjoyment". It submits that the RMP gives particular emphasis to those priorities. It describes the amenities in the vicinity of the site as being open and informal and contrasts this with that part of the reserve that is closer to town and where people congregate. It describes the effect of the building being one of "formalisation" that will destroy the presently unstructured and informal

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<sup>67</sup> Transcript, p 545.

<sup>68</sup> Closing submissions for Save Wanaka, at [90].



character that is enjoyed by users of this part of the reserve.<sup>69</sup>

[132] The Trust responds to the effect that, properly interpreted, both the existing plan's objectives and policies and the RMP directly support the proposal.

[133] At [70] and following, we set out our interpretation of the RMP. We interpret the RMP as anticipating sensitive use and development of the reserve (including for a non-motorised watersports facility in the identified part of the reserve that includes the site). We acknowledge that the RMP identifies the importance of passive recreation and what might be termed quiet enjoyment of the reserve (and the lake). However, that is not to the exclusion of a variety of types of active and potentially even noisy recreation. Noise is expected to be properly managed, but not unduly restricted in the manner implied by Save Wanaka. We find nothing in the RMP to direct that the vicinity of the proposal is to be left in its present 'informal' state.

[134] We find the provisions under 4.4.3 of the existing plan treat amenity values of the reserve on a similar basis. Specifically, those provisions allow for properly managed development of the reserve and contemplate both active and passive recreational amenities co-existing (including in the vicinity of the proposal). In particular:

- (a) Objective 2 does not confine itself to passive recreational activities or opportunities;
- (b) Policy 2.2 contemplates recreational buildings that have associated noise and lighting;
- (c) Policy 2.3 similarly contemplates development of buildings and structures, earthworks and plantings;
- (d) Policy 2.5 contemplates that development and use of open space and recreational facilities could be of a scale that requires management of traffic effects on adjoining roads;
- (e) Objective 3 intends efficient use and functioning of open space and recreational areas to meet the needs of the District's residents and visitors;



<sup>69</sup>

Closing submissions for Save Wanaka, at [92]-[98].

- (f) Policy 3.1 specifically recognises the need to manage conflicts between different types of recreational activities and gives explicit encouragement to multiple use of public open space and recreational areas wherever possible and practicable.

[135] 4.6.3 of the existing plan deals with activities on the surface of lakes and rivers. However, it has some relevance in that its objective and policies deal with water-related recreational activities. These reflect an intention to allow for different types of recreational activities. The provisions identify the different recreational experiences associated with different types of lakes and rivers. They reflect an intention to enable people to have access to a wide range of recreational experiences while ensuring effects are properly managed.

[136] That is not to say the relevant objectives and policies contemplate that a proposal could be imposed without proper management of conflicts, and related effects. That is made clear in the expression of several provisions. However, the provisions give strong emphasis to diversity. They contemplate development of recreational facilities, subject to proper management of effects.

[137] Section 7(c) directs us to have particular regard to the maintenance and enhancement of amenity values. Relevantly, the RMA's definition of 'amenity values' refers to those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.<sup>70</sup> That definition allows for consideration of the recreational attributes of an area, without precluding active recreation. In determining what people appreciate, we can validly consider the RMP as a document informed by public submissions. Also relevant are the views expressed in evidence, for both Save Wanaka and the Trust. Considering both the RMP and the evidence, we find that active and passive recreational amenity values are both relevant for our consideration of the proposal. We make our evidential findings on that basis.

#### ***Public access to the lake and its margin***

[138] On the related topic of public access to the lake and its margin, Save Wanaka submits that the proposed building, the flood protection bund, the greater formalisation



<sup>70</sup> Section 2(1) RMA.

of parking arrangements, and events would displace existing recreational users of the reserve. It refers to this as 'privatisation' of public space. It does not directly refer to how this would be contrary to the existing or proposed plans' objectives and policies. However, it refers to an extract from an Environment Court decision, *Save the Point Inc v Wellington City Council*,<sup>71</sup> as follows (with Save Wanaka's emphasis retained):

Even where there is the possibility of public access inside the Centre, the experience would be a different one. The café would effectively be a private space and would overlook the remaining unbuilt on area **detracting from public enjoyment of the coastline.**

[139] The above quoted passage is properly to be treated simply as a finding on the facts before the court. It does not have any wider significance in the sense of being an expression of any overarching legal principle concerning public access, as Save Wanaka would appear to suggest.

[140] Under s 6(d) RMA, we are relevantly directed to recognise and provide for, as a matter of national importance:

The maintenance and enhancement of public access to and along ... lakes and rivers.

[141] Section 6(d) is addressed particularly in the existing plan's 4.4.3 Objective 4 and related Policies 4.5 and 4.7. Insofar as Save Wanaka submitted that these existing plan provisions reflect the above-quoted passage from *Save the Point*, we disagree. The existing plan includes a policy to avoid adverse effects on the public availability and enjoyment of the margins of lakes and rivers (4.6.3 Policy 12). However, that does not assume that a building intended for non-motorised watersports inherently would detract from such public availability and enjoyment. Rather, the provisions expressly contemplate a 'wide range of recreational experiences', based on the identified characteristic and environmental limits of the various parts of lakes and rivers. The objective and policies specifically intend proper management of adverse effects, including in relation to other recreational values and amenity values. Specific focus is given the effects of intrusive activities (e.g. noisy ones). However, that focus is not necessarily intended to exclude activities that involve buildings, structured recreational activities, boats, events and so forth. Nor do the objective and policies characterise

<sup>71</sup> *Save the Point Inc v Wellington City Council* W082/2007 at [197]. Environment Commissioners Howie and Edmonds were part of the division of the court that heard this appeal. Judge Hassan was counsel for the applicant.





such activities as inherently detracting from amenity values.

***Other existing plan assessment matters***

[142] The existing plan includes rules that specify assessment matters for other considerations. These include various general assessment matters on nature conservation values, structures (including as to colour and treatment) and natural hazards. We have applied the assessment matters in making our related evidential findings.

**Consideration of effects: findings as to the future environment**

[143] Save Wanaka's landscape expert, Dr Read, drew particular significance from the fact that, at the western end of the reserve in the environs of the proposal, there was a relatively greater degree of "informality" in the environment. She referred to the lack of delineation of carparking, the fewer indicators of "boundaries" and the variety of recreational activities being undertaken. She considered that putting a large building there would diminish this informality. In essence, she treated the existing informality of this part of the reserve as characterising both its landscape values and its amenity values.<sup>72</sup>

[144] Dr Read did not consider the RMP at all, despite its policies concerning use and development of the reserve. This was on her understanding that the RMP was a "separate process" and on the basis she was not asked to.<sup>73</sup> Save Wanaka's planning witness, Mr Farrell was also dismissive of the relevance of the RMP, saying:<sup>74</sup>

Irrespective, I conclude that while [the RMP] is a relevant document, its weight is limited for the purpose of this evaluation as it has been prepared to achieve a different statutory purpose.

[145] In cross-examination by Ms Balme for QLDC, Mr Farrell confirmed that he attached little weight to the RMP because it was not prepared under the RMA.

[146] Similar to Dr Read, Mr Farrell drew from existing perceptions and experiences of the reserve as effectively being the determinants of the future reserve environment.

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<sup>72</sup> Dr M Read, evidence-in-chief for Save Wanaka, e.g. at [59].

<sup>73</sup> Transcript, p 437.

<sup>74</sup> B Farrell, evidence-in-chief for Save Wanaka, at [14(c)].



His assessment assumed that what he understood people to experience now is what they will continue to experience as the environment of the reserve and its recreational and amenity values. He relied primarily on experiences of the various lay witnesses and his own knowledge of the present state of the reserve environment.<sup>75</sup>

[147] We find that, by ignoring the influence of the RMP as a means of changing the receiving environment of the reserve, both Dr Read and Mr Farrell took an unrealistically narrow perspective as to the likely future environment. Dr Read drew far too much on the present relative informality of the western end of the reserve. Mr Farrell relied too much on a relatively small sample of individual experiences of the reserve as it is now.

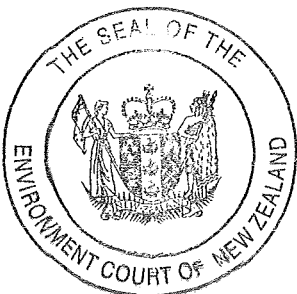
[148] The existing state of the environment is a relevant predictor of the future environment of the proposal, particularly in this case where the Trust intends to implement the proposal soon after securing resource consent. However, a more reliable assessment also accounts for how the environment can be reasonably anticipated to evolve. Therefore, it is relevant to consider what plans Designation 105 and the RMP would allow for and anticipate.

[149] It would be unrealistic to assume no change to the present carparking arrangements or to trees in the vicinity of the proposal. Similarly, it is unrealistic to assume that there will never be other new buildings in the environment. Rather, we find it more realistic that the existing environment would undergo carefully managed change over time, under and in accordance with the RMP and Designation 105 and the underlying zoning. However, whatever change occurs would be managed so as to maintain and enhance the recreational (including active recreational) and amenity values of the reserve.

[150] We also expect there will be frequent more temporary comings and goings, such as sports events, festival activities and other things that would be appropriate within a recreational reserve setting. That would of course be on a basis that respected the reserve, and its amenities.

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<sup>75</sup> For example, at [30] of B Farrell's evidence-in-chief.



### **Preliminary questions concerning assessment of natural character effects**

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

- (a) what is the 'margin' of Lake Wanaka in the vicinity of the proposal?
- (b) what does 'natural character' mean?

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

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

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

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

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

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<sup>76</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [22], [35].  
<sup>77</sup> E A Steven, evidence-in-chief for the Trust, at [6.10].  
<sup>78</sup> E A Steven, evidence-in-chief for the Trust, at [6.10].  
<sup>79</sup> Closing submissions for Save Wanaka, at [42]-[43].



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

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

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

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

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

<sup>80</sup> Closing submissions for Save Wanaka, at [44]-[48], referring to the evidence of H Stoker, dated 22 March 2017.

<sup>81</sup> Closing submissions for Save Wanaka, at [51]-[52].

<sup>82</sup> *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* C12/1998 at p 15.

<sup>83</sup> *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387.

<sup>84</sup> For completeness, I note that Environment Judge Jackson presided in both cases.

<sup>85</sup> *High Country Rosehip Orchards*, at [140].

<sup>86</sup> *Powell v Dunedin City Council* (2005) 11 ELRNZ 144; [2004] 3 NZLR 721; [2005] NZRMA 174.

<sup>87</sup> *Powell*, at [35].



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

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

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

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

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



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

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

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

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

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

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<sup>88</sup> Supplementary evidence of Harry Stocker for the Trust, at 3.1.



by the lake's waters.

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

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

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

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

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

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

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

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



biophysical and perception dimensions.<sup>89</sup>

[175] On the evidence, we find that an assessment of effects on natural character should consider both biophysical and perceptual dimensions, as the words ‘natural character’ suggest. The relative weighting of these dimensions is a matter of judgment on the evidence.<sup>90</sup>

[176] We also find on the evidence that landscape character is inherently related to natural character. As noted also, the experts agreed that “‘natural character’ is a subset of landscape character”.<sup>91</sup> Both terms are also inherently related in the wording of ss 6(a) and (b), RMA (e.g. s 6(b) refers to outstanding natural features and landscapes). More to the point, they are explicitly inter-related in the existing plan’s objectives, policies and landscape assessment matters, as we have set out in Annexure 2. Also, we find Lake Wanaka and its margin are part of the Lake Wanaka ONL.

[177] The practical question concerns how best we recognise this inter-relationship of natural character and landscape assessments in our consideration of the evidence. We find this is best done in a staged way as follows:

- (a) it is useful to start on the specific issue of how the proposal would affect the margin of Lake Wanaka in a biophysical sense. We do that in the next part of our decision. It does not, of course, complete the assessment of the effect of the proposal on the natural character of the margin, as it does not address the perceptual dimension to such an assessment.
- (b) that informs the landscape assessment, including consideration of the perceptual dimension of the natural character of both the margin of the lake and the wider landscape, including the site and its setting.

<sup>89</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [22]; E A Steven, rebuttal evidence at [4.4] and [10.23]; B Espie, evidence-in-chief for QLDC, at [5.8]; Transcript, pp 184, 185 and 426.

<sup>90</sup> *Director-General of Conservation (Nelson-Marlborough Conservancy) v Marlborough District Council* [2010] NZEnvC 403 at [551]-[554].

<sup>91</sup> Joint statement of landscape witnesses, dated 15 March 2017.





### The proposal's biophysical effects on the natural character of the lake's margin

[178] As we have explained, each of the landscape witnesses approached their assessment of natural character primarily with reference to perception effects. Nor did we hear from any expert in biophysical sciences. We do not consider this to be a material gap in the evidence, in that we are sufficiently satisfied that the building is not likely to have any significant adverse biophysical effects, given its size and purpose, and our finding that it would not be located within the margin of the lake.

[179] We are assisted in those findings by Dr Read's answers to the court that (on the basis of our finding that the building is not within the lake's margin):

- (a) the biophysical natural character values would be higher than she had assessed (i.e. higher than 'moderately high', using her seven point scale),<sup>92</sup> however
- (b) the effect of the building on those biophysical natural character values would be lower, which the transcript records as being a change from "adverse and significant in extent" to "probably moderately insignificant".<sup>93</sup> By contrast, using large rocks to form a flood management retaining wall around the mouth of Stoney Creek would have a more significant effect on its margin, in that these would be placed within the margin, even assuming the margin's boundaries were narrowed.<sup>94</sup>

[180] On the biophysical dimension of natural character assessment, therefore we find:

- (a) the margin's natural character values would be 'moderately high', using Dr Read's seven point scale. We reach that finding applying a scale that encompasses the lake and its margin, not just the portion of Roys Bay that Dr Read assessed. We find we can safely do that as an effect of applying a margin far more closely adjacent to the edge of the lake is that relative degrees of difference in naturalness around the margin of the lake are lessened. That is, differences in natural character are more acute further from the lake edge, for instance in the urban area of Roys Bay;

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<sup>92</sup> Transcript, at p 461.

<sup>93</sup> Transcript, at p 461.

<sup>94</sup> Transcript, at p 461.



- (b) the building and decking would have a relatively insignificant biophysical effect on those natural character values;
- (c) the flood protection works in the margin of Stoney Creek would have greater biophysical effect on the natural character values of that watercourse, given where those works would be located. However, the works have been consented by the Regional Council and that consent is not subject to appeal or other legal challenge. Therefore, we treat the effects addressed by that consent as acceptable for RMA purposes. Also, on the evidence before us, we are satisfied that those effects are not, of themselves, of such significance as to render the proposal contrary to the relevant objectives and policies. We reach that finding also bearing in mind the relative lack of quality of the watercourse, in a biophysical natural character sense, and also because the works would affect only a confined area of the watercourse.

[181] We next set out our findings on the broader perception dimensions of natural character.

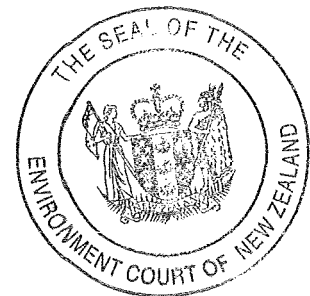
#### **Consideration of landscape (including natural character) and visual amenity effects**

[182] These topics fall under different, though related, provisions in pt 2, RMA. Relevant plan objectives and policies deal with them as related topics. The experts also dealt with them on this basis, as do we.

[183] There was some difference between Ms Steven and Dr Read on whether the proposed site is within the Lake Wanaka ONL or adjacent to it. We find that difference immaterial. That is because applicable objectives and policies (and ss 6(a) and (b) RMA) still bear on our assessment insofar as the proposal may affect the landscape values that underpin the ONL. The Lake Wanaka ONL is large. It encompasses the lake and its margin and the containing mountain slopes.<sup>95</sup> As we have also noted, the site is within the Roys Bay Recreation Reserve. This is a highly popular and valued esplanade along the Lake Wanaka foreshore, intended for the community's recreation

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B Espie, evidence-in-chief on behalf of the Council, at 4.5. The evidence of Ms Steven (for the applicant, at [10.2]) and Dr Read (for the appellant, at [44]) was materially the same. The existing plan refers to this class of ONL as being 'district-wide ONLs' (notated 'ONL-DW'). There is some imprecision in the existing plan's identification of the ONL's precise boundaries. However, for our purposes, we accept the common position of all the experts that it includes the slopes of Mount Alpha and Roy's Peak, Lake Wanaka and its relevant margins (including the site for the proposal).



and enjoyment. It is a setting to which the directives in ss 7(c) and (f), concerning maintenance and enhancement of amenity values and the quality of the environment (and related plan objectives and policies), ought to be given particular weight.

### ***Visual effects of the proposal***

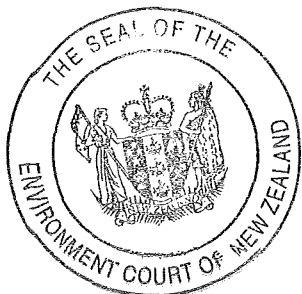
[184] It is useful to start with this topic, as our findings on visual effects help inform our findings on landscape effects (including natural character perception effects) and amenity values. However, for clarity, we record that we do so understanding that effects on landscape and natural character perception go beyond visual impacts. Also, amenity values are broader than visual amenity values and are multi-faceted.

[185] We have described the proposed building's dimensions, design features and finishing, the proposed boardwalk and decking, and other elements of the proposal. We have also noted the fact that a copse of mature trees is to be felled to allow for the building to be constructed. We have noted the originally proposed landscaping and the Trust's subsequent proposals for modification to achieve further mitigation.

[186] We heard different expert and lay opinions on how the proposal would impact visually when viewed in close proximity.

[187] To assist our evaluation of the evidence, we viewed the site from several places suggested by the parties. These included viewpoints at Eely Point reserve, near the yacht club, and closer to the site. We also took the opportunity to consider the site from various other viewpoints during the course of the hearing. Those included viewpoints near Edgewater Resort, the famously photographed willow tree, and along the walking and cycling trail to the town centre.

[188] The landscape experts' joint statement records some points of agreement in regard to visual effects from public viewing places. The experts agreed that the proposed building is large and would be visually prominent to those viewing it in close proximity. However, they also agreed that the existing trees would partially screen and contain the building and that the proposed planting would be in keeping with existing landscape character, patterns and processes. They agreed on appropriate areas and locations where the building would be visible. They also agreed that views of it from the east side of Roys Bay (Eely Point, Lakeside Road and tracks, Lismore Park and



Lismore Street) “are not significantly affected by the proposed building”.<sup>96</sup> In light of our site visit, we accept their agreed evidence on those matters.

[189] Ms Steven considered that the building would have “low to moderate visibility, except in close proximity where it would be visually prominent at least in the short term” (with the planted trees reducing this to a moderate prominence in time). She considered the building would not be visually prominent from public roads.<sup>97</sup>

[190] For the Trust, matters of building design (including size), choice of materials and colour, were addressed by its architect, Mr Alistair Madill. He explained that particular building materials and natural colours had been chosen to help diminish any dominance the building may appear to have. Corten steel was chosen as its rich brown would reflect colours in the Wanaka environment. For the same reasons, choices were made to use oiled brown and tawny grey cedar, apply a quilted texture effect in a cedar screen, and use “ironsand” coloured roofing and joinery (a recessive colour akin to trees in shadow).<sup>98</sup>

[191] QLDC expert, Mr Espie, considered the choice of building design, materials and colour would be properly in harmony with its setting. He singled out the building’s reasonably large size as potentially inconsistent with the existing and expected landscape character. However, he noted the importance of considering size at a proper viewing scale. In its immediate context (i.e. in relation to an observer who is right beside the building), the size would make the building dominant. When the building is considered from a slightly wider context, including the carpark, Stoney Creek and Sequoias, it would be “relatively prominent”. His overall view was:<sup>99</sup>

Due to the building’s low height, considerable surrounding trees, its function and the grandeur and vast scale of the lake, I consider that when it is considered at a scale beyond the carpark/Stoney Creek mouth/sequoias area it cannot be said to be a prominent element in terms of landscape character; it is simply one of many built elements associated with recreation within a recreational park setting. In the context of Roy’s Bay lake edge as a whole. [sic] It will be a minor and accordant element in relation to landscape character.

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<sup>96</sup> Joint Statement of Landscape Witnesses, dated 15 March 2017.

<sup>97</sup> E A Steven, evidence-in-chief for the Trust, at [9.4].

<sup>98</sup> A R Madill, evidence-in-chief for the Trust, at [3.4.1]-[3.4.4].

<sup>99</sup> B Espie, evidence-in-chief for QLDC, at [6.10].



[192] Dr Read considered that the proposal would adversely affect the aesthetic coherence and “visual amenity” of views across and within the reserve and also adversely affect the “visual amenity” of “neighbouring residences” on Mount Aspiring Road. This would vary, depending on proximity and location. She considered the mitigation planting would not achieve the level of mitigation that has been asserted “in a reasonable time frame”.<sup>100</sup>

[193] She had a different opinion from Mr Madill as to the appropriateness of the design and choice of materials and colours. She considered the driver of the design was a desire to create “a landmark building” and that the design was “out of character with any of the architecture in its wider vicinity which comprises quite conventional and very utilitarian toilets and picnic shelters”. In those terms, she characterised the architecture as reflective of “the more wealthy residential areas” of Wanaka and the choice of corten steel and cedar as “prestigious”. She considered that the design would not accord with expectations of a storage building and, hence confuse those of the public who were not aware of its purpose.<sup>101</sup>

[194] We did not agree with Dr Read that the small concrete block toilets towards the town centre end of the reserve, or the playground equipment, are valid design cues. Rather, the existing plan’s expectation is for design to be cued from the landscape and to be in harmony with it. For instance, we refer to Policy 9 Structures in the existing plan’s section 4.2.5 (set out at Annexure 2, p 2). Quite plainly, this policy seeks that structures harmonise with the landscape, including in the sense that colours of buildings complement the dominant colours of the landscape.

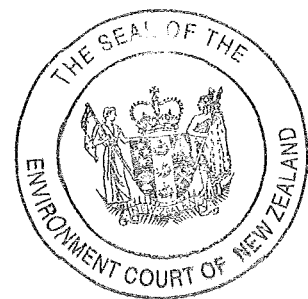
[195] Dr Read is a highly qualified and experienced landscape architect. However, we prefer Mr Madill’s opinion, as a qualified architect, on matters of the architectural design of the building.

[196] We are satisfied that Mr Madill is well qualified to consider appropriate choices of design, materials and colours, in order to mitigate for the dominance effect of a building in visual terms. We also accept his evidence as to the appropriateness of the building’s design and choice of materials and colours for those purposes. We observe that we also see nothing inherently inappropriate in a design that seeks to make a

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<sup>100</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [14] and [15].

<sup>101</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [62].



positive visual statement, given our findings on landscape matters. That is because we find the proposed design, materials and colour would properly harmonise with, and respect, the landscape.

[197] We agree with the landscape experts that the building will be visually prominent when viewed in close proximity (by which we mean from the curtilage of the grassed area, the playground, and Stoney Creek and on the approaches immediately to the east). That is the case even with the mitigation planting, although this will soften this in time (which we find is a reasonable time, as a matter of judgment). However, we do not interpret that immediate prominence in an adverse way, as we find (again as a matter of judgment, but informed by Mr Madill's evidence) that the building will likely be interpreted as a quality building in keeping with its immediate setting. We do not accept Dr Read's opinion that its purpose will be misjudged. As a new community facility, we are satisfied it will be interpreted together with the related watersports activity that it hosts. We accept that some people may not like the building. Taste in design is strongly subjective. However, while we have considered the views of various submitters on that, we accept and prefer Mr Madill's expert opinion on those matters.

[198] In any case, and in light of the existing plan's objectives and policies, we find that the more relevant viewpoints for the consideration of the visual effects of the building (including visual amenity) is further distant. Our site inspection confirmed to us the soundness of the landscape experts' agreed position that views of it from the east side of Roys Bay (Eely Point, Lakeside Road and tracks, Lismore Park and Lismore Street) "are not significantly affected by the proposed building" and that views from 2.5km distance are not relevant.<sup>102</sup> We accept Ms Steven's evidence that the building would not be visually prominent from public roads. When it is viewed from users of Mount Aspiring Road, it will be visible, but integrated with its setting, given the presence of the protected Sequoias and, over time, by the mitigation planting. We acknowledge that views of the building on its approaches to the east and west are relevant to users of the reserve. On this, we also accept Ms Steven's opinion that the building would have "low to moderate visibility". Again that is because it will appear well integrated with its setting, given the Sequoias and several other trees in proximity to it. For those views, also, that integration will increase with time as the planted trees mature.



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<sup>102</sup> Joint Statement of Landscape Witnesses, dated 15 March 2017, at 12 and 13.

[199] We do not accept Dr Read's opinion that mitigation will take an "unreasonable" time. She did not elaborate on how she adjudged "unreasonable". In any case her opinion was not based on any arborist's views on the species or reasonable size of trees when planted and how long they ought to take to be considered effective mitigation. We adjudge the time as reasonable because it is not out of keeping with what might typically be expected in terms of transition for any change that can occur within the reserve, as anticipated by the RMP.

[200] We accept that the building (and other aspects of the proposal) will be visible to some of the residents living along Mount Aspiring Road. That stands to reason, given the location of their dwellings and the outlook they enjoy over the lake. We do not accept Dr Read's opinion that this change in view will significantly detract from the private visual amenity values enjoyed by those residents. In terms of the RMA's definition of 'amenity values', Dr Read's opinion was not founded on any evidence as to what those residents appreciate in terms of the "pleasantness, aesthetic coherence, and cultural and recreational attributes" of this present viewshaft. For instance, she did not attest to having spoken to them about these things. It is fair to surmise that residents may prefer to keep their present viewshaft unobstructed. However, there is no property in a view not protected by the district plan and the views are already obstructed to some extent (including by the protected Sequoias). Nor would these views be significantly blocked, given the proposed building would be some distance from the dwellings and the dwellings are somewhat elevated. Also, we are entitled to take notice of the fact none of the residents have chosen to participate in the proceedings. For those reasons, we find that the proposal's effects on private views of the lake do not offend against relevant plan objectives and policies and do not make the proposal inappropriate or require that it be modified.

[201] On the evidence, we also find that the proposal will maintain visual amenity values, both for users of the reserve and the general public. It would also be materially in accordance with relevant objectives and policies (and not contrary to any) on the matter of visual amenity values.

[202] Those findings also inform our findings in the next part of our decision, concerning landscape effects (including on perceptions of natural character). That is in the sense that we find the building will effectively harmonise with the landscape, including in terms of its design and the choices made concerning materials and colours. We find that those colours will complement the dominant colours in the landscape. We



have noted and accept as correct Dr Read's observation that colours in the landscape change seasonally and, hence, the colour palette would not tone in with all seasons. However, we find this would not materially detract from the effectiveness of the intended harmonisation measures (including the choice of materials and colours that take cues from the landscape). Therefore, we find that the building properly accords with, and would not be contrary to, those landscape policies directed to such matters.

***Proper units for the assessment of landscape (including natural character)***

[203] We accept Dr Read's observations that landscape character is important to "sense of place" and that changes in character can affect the coherence of a landscape and, through this, the sense of place. Dr Read characterised an 'adverse effect' on landscape character as being one that creates an area or feature that is "inconsistent with the valued character of the landscape in which it is located".<sup>103</sup> We find that to be a useful general summary of the existing plan's intended approach.

[204] As Ms Steven noted, the elements that contribute to landscape character include natural elements (geomorphology, ecology, hydrology) and human interaction (e.g. roads, buildings, land uses, elements having historic or cultural significance). That is reflected in s 6(b) and in related existing and proposed plan objectives and policies (including the identification of the Lake Wanaka ONL).

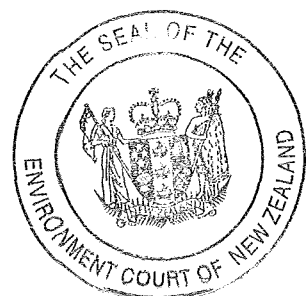
[205] The exercise of assessing landscape character (and natural character) is inherently comparative. That is because character is a question of degree. All experts essentially approached their assessments of natural and landscape character on this basis.

[206] There were no material differences between Ms Steven and Mr Espie on the appropriate size of the spatial units for the purposes of natural character and landscape assessment. However, Dr Read took a materially different approach, as we now address.

[207] In her natural character assessment, Dr Read confined her focus to the "lake margin of Roys Bay". More precisely, her defined spatial unit was only for a part of Roys Bay. It excluded the lake margin beyond Rippon (just to the west of the

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<sup>103</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [41]-[43].





Edgewater Resort). Her explanation for doing so was that there were no Council GIS 100 year flooding records beyond Edgewater (this 100 AEP level being what she determined as the landward extent of the lake's margin).<sup>104</sup> We find that is not a valid basis for the approach Dr Read has taken as it does not pertain to landscape values. Within this confined spatial unit, Dr Read identified the five study areas we have earlier noted (based on their geology).

[208] By contrast, Ms Steven and Mr Espie assessed natural character effects, with reference to the natural character of the margins of Lake Wanaka as a whole. Related to this, they agreed that Dr Read's five study areas within her 'lake margin of Roys Bay' spatial unit were overly small.

[209] Similarly, Dr Read differed from both Ms Steven and Mr Espie in how she defined the spatial limits of the landscape unit for the purpose of her landscape assessment. She explained that her first such unit was: "the Roys Bay landscape" whose terrestrial limits are "the ridgeline extending from the tip of Eely Point to the high point of Larch Hill, and from there across the lake to enclose the Bay". She explained her rationale as follows:<sup>105</sup>

While this is a subset of the wider Wanaka township landscape I consider that limiting it in this way is appropriate for two reasons. The first is that the broader the area considered the consequently coarser the analysis. Secondly, the qualities and character of Roys Bay are, in my opinion, central and key to the character and sense of place of Wanaka as a whole.

[210] Dr Read then narrowed this 'Roys Bay landscape' further to focus particularly on the lake side reserves and lake frontage approximately in the area from Bullock Creek to Edgewater. She explained that this area contributes much to the character of the broader Wanaka township and is the location of the proposed development.<sup>106</sup> She summarised this landscape unit as having characteristics including informality, a large amount of public space, small scale buildings, simple traditional architecture, a dominance of exotic vegetation and of natural landforms. She observed that some parts have "high aesthetic coherence" and some areas have "moderately high natural character". That summary drew from her descriptions of the different landscape character she observed in the various subsets she defined within this landscape,

<sup>104</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [28]-[29], and App 2.

<sup>105</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [44].

<sup>106</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [45].



namely:

- (a) Eely Point reserve;
- (b) between Eely Point and the yacht club;
- (c) between the yacht club and the marina access road;
- (d) between the access road and the 'Log Cabin';
- (e) between the Log Cabin and McDougall Street;
- (f) between McDougall Street and Stoney Creek; and
- (g) from Stoney Creek to Edgewater.

[211] Dr Read observed that, in the area between McDougall Street and Stoney Creek (i.e. the subset where the proposal would be located) "the character becomes markedly more informal". This was especially in the sense that carparking was relatively disorderly, lawns had relatively poor quality grass and were weed infested, there was a notable increase in self-seeded vegetation along the edge of the beach, poplars were arranged informally, and there was a mix of other large exotic trees. Her assessment also took account of the presence of the children's playground. She assessed this part of the landscape unit as having 'moderately high natural character'.<sup>107</sup>

[212] By contrast both Ms Steven and Mr Espie chose much larger landscape units for their landscape assessments.

[213] Ms Steven identified, as the broad landscape context, Lake Wanaka, the vast majority of which she noted as being "highly natural" in character and "highly valued for its amenity and visual values, natural values and very high quality".<sup>108</sup> Within that, Ms Steven identified the landscape "context" of Roys Bay.<sup>109</sup> She assessed this to have a comparatively lower natural character than the lake as a whole.<sup>110</sup> Within Roys Bay, she identified a landscape setting as being an identified portion of Roys Bay (broadly, the southwest corner of the bay) containing the proposed site.<sup>111</sup>

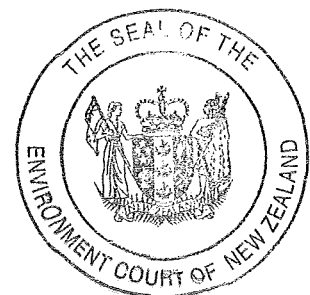
<sup>107</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [54].

<sup>108</sup> *Landscape Assessment Report for Proposed Wanaka Watersports Facility near Stoney Creek, Wanaka Lakefront*, dated May 2015 ('Application Landscape Assessment'), p 8 CB, Vol 1, Tab 2.

<sup>109</sup> E A Steven, evidence-in-chief for the Trust, at [5.3]-[6.1].

<sup>110</sup> Application Landscape Assessment, p 8. CB, Vol 1, Tab 2.

<sup>111</sup> E A Steven, evidence-in-chief for the Trust, at [6.1].



[214] Mr Espie undertook his assessment on a similar basis to Ms Steven. He considered Lake Wanaka (including its margin) as a whole. He assessed it as overwhelmingly natural, with human modifications having only relatively minor effect in specific locations. He assessed its high degree of naturalness as being easily legible. He considered that its dramatic and sublime aesthetics are highly memorable. He noted its vastness and openness and its constantly changing and dramatic transient values (largely aesthetic) associated with seasons, changing light during the day, and atmospheric and climatic conditions. He assessed the landscape of Roy's Bay and in the vicinity of Wanaka town to be considerably more modified by human actions and occupation. He described it as dominated by human elements, particularly the urban, suburban and rural living areas. At the finer scale of the recreation reserve itself, he described its landscape character as "park-like", noting its many built elements and the fact that the proposed site is within an area of the reserve intended for active recreation, as identified in the RMP.<sup>112</sup>

[215] The existing plan specifies a three step approach (5.4.2.2(2)). It describes, at Step 2, the determination of landscape category. That is whether the site is in an ONL, a visual amenity landscape or a rural landscape. The existing plan explains that Step 2 is in order to determine which of the existing plan's district wide objectives and policies, definitions and assessment matters are given weight in the resource consent decision.

[216] It is therefore important that an expert applies a methodology that properly accords with the existing plan's objective and policies and ss 6(a) and (b), RMA. Otherwise, the risk is that the assessment will address the wrong questions, and derive the wrong answers, in terms of the policy intentions of the plan and related RMA provisions. In particular, under the existing plan:

- (a) Policy 4.2.5.2(a) is "To maintain the openness of those [ONLs] and features which have an open character at present". While that does not always mean that the ONL as a whole must be considered, it is important that the chosen landscape unit is a sufficient part of the ONL in order that the assessment takes proper account of the ONL's relevant values;
- (b) Policy 4.2.5.2(b) is "To avoid subdivision and development in those parts of the outstanding natural landscapes with little or no capacity to absorb change" and Policy 4.2.5.2(c) is "To allow limited subdivision and

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<sup>112</sup> B Espie, evidence-in-chief for QLDC, at [5.4]-[5.7], [6.2].



development in those areas with higher potential to absorb change". As can be seen, these paragraphs of the policy are particularly sensitive to the choice that is made on the size of landscape unit within an ONL. That is in the sense that they require a choice of "avoid" or "enable" dependent on whether the part of the landscape is or is not able to absorb development. To properly determine whether the direction is to avoid or enable development calls for a comparative assessment of the relative potential of different ONL areas to absorb change. Again, choosing a landscape unit that is too confined risks compromising the proper comparative assessment in the sense of not following the intention of this policy. That is particularly so if the chosen landscape unit differs markedly from the remainder of the ONL on the question of absorptive capacity.

[217] We find Dr Read's described Roys Bay landscape is overly confined such that her assessment of effects on the openness of landscape and the potential for absorption of the development into the landscape does not properly accord with the existing plan's policy intentions for such assessments.

[218] On the matter of openness of the landscape, Dr Read's comparison is narrowed to the relative degrees of openness she sees between that stretch of Roys Bay in the vicinity of the site and the rest of Roys Bay.<sup>113</sup> She characterises the vicinity of the site as "a broadly visible open landscape in the sense that there is little built form in the vicinity". We accept that to be the case when compared to the strip of land between Edgewater Resort (where there are several buildings set back from the lake) and Stoney Creek. It is debatable for the stretch eastwards of the site up to Dunganon Street, given the open reserves there on both sides of the road. In any case, it is all relative and in the context of the established urbanised form of Wanaka township. An obviously different answer as to relative openness would be given if the comparison included parts of Lake Wanaka beyond Roys Bay (given those parts are markedly less developed). We find the confined extent of Dr Read's landscape assessment unit inappropriately diverts focus from considering the open character of this ONL to the relative openness of segments of the Roys Bay esplanade and its highly urbanized setting.



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<sup>113</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [85].

[219] The position is similar for Dr Read's assessment of the capacity of the landscape to absorb change.<sup>114</sup> In essence, the confined extent of her chosen landscape unit undermines any sensible basis for determining whether development should be avoided or enabled.

[220] This becomes more evident when her reasons for determining there is inadequate capacity in the landscape are scrutinised.

[221] One reason Dr Read gives is that the building would be "visible from the surface of the lake; from the lakeside reserves from Eely point to Edgewater, from elevated locations around Roys Bay and from Mount Aspiring Road". However, clearly there are many visible buildings in Roys Bay, given it is part of the Wanaka township. We also bear in mind that Dr Read agrees with the other landscape experts that views more than 2.5km away are irrelevant and views from the east side of Roys Bay are not significantly affected by the proposal. We find this factor of visibility is not properly determinative of the choice the policy directs.

[222] Another reason Dr Read gives is that she finds that natural character in the locality of the site is relatively higher than elsewhere around Roys Bay. However, that ignores what the evidence also clearly shows, namely that the relative natural character of those parts of the ONL beyond Roys Bay are much higher than within Roys Bay. While we accept the general principle that the higher the natural character the lower the capacity to absorb change, we find the overly confined setting chosen by Dr Read is again not properly directed in terms of the intentions of the policy. It leads to her conclusion that development should be avoided whereas, if the setting is broadened even slightly further than Roys Bay, the answer on absorptive capacity could be quite different. That is demonstrated by the opinions of Ms Steven and Mr Espie.

[223] Dr Read opines that the mitigation planting would not assist the development to be absorbed. However, she does not explain what she means by that. If she is referring to what she says elsewhere, namely that she considers the planting would take an unreasonably long time to be effective, that serves to demonstrate the extremely narrow focus she has brought to the question of absorptive capacity. That is, she reads it as applying at a building by building level, by reference to the length of time adjacent planting takes to soften its visual impact at a localised viewpoint. We find that

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<sup>114</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [87], [103].



approach is more of a localised visual amenity assessment, rather than a proper assessment of the absorptive capacity of a relevant part of the ONL.

[224] Dr Read's choice of an overly confined landscape unit also impacts on her assessment of cumulative effects on landscape values (being a further relevant matter of assessment identified in the existing plan). She focuses only on the site and its surroundings, drawing attention to the fact that existing structures in that vicinity are small (a children's playground, a barbeque shelter and a sculpture). It is evident that, by 'vicinity', Dr Read intended that to mean that portion of the reserve immediately to the east of Stoney Creek, and encompassing the grass area, the children's' playground, the sculpture, the Sequoias, the site itself and perhaps its western most perimeter underneath the tree canopy and towards Mount Aspiring Road. She concludes that putting a large building there would compromise the quality of the landscape in the vicinity to a significant degree. She postulates that there would be enough absorptive capacity there to accommodate a toilet block, but that the building is too big for that landscape.<sup>115</sup>

[225] While such site specific changes help inform consideration of amenity value effects, they are far too fine grained to materially affect the landscape values.

[226] In essence, Dr Read's landscape assessment is more in the nature of an assessment of localised amenity values in the vicinity of the site, as compared to those of the rest of the reserve at Roys Bay. For the reasons we have set out, we find it does not assist our purposes with reference to the relevant existing plan objectives and policies and assessment matters.

[227] This issue also affects Dr Read's assessment of natural character.

[228] For instance, her description of the different natural character of her five study areas seeks to draw distinctions with reference to picnic and barbeque equipment, mown grass versus weeds, hardstanding areas for boats, playground equipment, sealed versus unsealed and bermed versus unbermed parking spaces and the relative order of how cars are parked.<sup>116</sup>



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<sup>115</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [87].

<sup>116</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [54].



[229] As might be expected given s 6(a) RMA, the existing plan's objectives and policies primarily focus on the natural character of lakes and their margins. In addition, Policy 1.7 of Chapter 4 refers to "the natural character of the District's environment". Those objectives and policies do not invite an approach of choosing a very small portion of a landscape, in this case the most urbanised part, and confining an assessment of a proposal to how it impacts on that narrow portion of the landscape's natural character.

[230] In cross-examination by Save Wanaka, Ms Steven commented:

If you are assessing natural character you need to do it at a reasonable scale because we [are]<sup>117</sup> talking about a landscape term which implies a certain sense of scale and we agreed<sup>118</sup> that the appropriate unit for a scale of assessment was between Bullock Creek and Stoney Creek not the small area right around the building because inevitably the site's natural character is compromised, the immediate area would be compromised because that's inevitable with any development anywhere that you'll always change the natural character as soon as you do something and that's why its inappropriate to do it at such a fine scale within metres of the building. It's not a landscape assessment.

[231] For all the reasons we have traversed, we accept Ms Steven's opinion on that and, therefore, do not accept Dr Read's approach.

[232] By contrast to Dr Read's assessments of the landscape and natural character, we find those of Ms Steven and Mr Espie properly accord with both the existing plan and ss 6(a) and (b), RMA. That is primarily because their assessments reflect the scale and approach intended by both the existing plan's related objectives and policies and those RMA provisions.

[233] Ms Steven concluded that the building would not be inappropriate in terms of the core natural character values that the existing plan sought be maintained and preserved.<sup>119</sup> She reached the same conclusion for the natural character and openness of the Lake Wanaka ONL and the lake margin. Related to that, she concluded that the receiving landscape has the capacity to absorb the development without creating effects that are more than minor. She also factored into her overall

<sup>117</sup> The transcript, at p 161, refers to the word 'aren't', but the context clearly indicates the word used was 'are'.

<sup>118</sup> We understand this to refer to what Ms Steven understood was her answer on this to earlier cross-examination rather than a statement of what she agreed with Dr Read.

<sup>119</sup> E A Steven, evidence-in-chief for the Trust, at [10.22].



opinion her understanding that a building associated with recreational activity is anticipated in the reserve and the relevant part of the reserve anticipates such a facility for non-motorised water sports. She opined that logically such a building would be sited close to the water and be of a scale and form commensurate with its function.<sup>120</sup>

[234] Mr Espie's conclusions on both landscape and natural character were materially the same as Ms Steven.<sup>121</sup> Also, like Ms Steven, he took account of the purpose of the reserve (as reflected in the RMP) in forming his view as to the existing landscape character of the reserve and the compatibility of the proposal with this. In that landscape context, he considered that a community building associated with watersports would not degrade landscape character. That is particularly in the sense that a recreational building would be expected there, rather than being discordant, and the lakeside recreational park would retain its high level of associated amenity.<sup>122</sup>

[235] He was cross-examined by Save Wanaka on whether it was valid to consider what could develop over time in the reserve under the RMP. He answered to the effect that it would be artificial to look at that character as being frozen in time in terms of what exists today. He noted:<sup>123</sup>

All landscapes are dynamic and they're all constantly evolving and so we need to think about in the absence of the current proposal how this area of landscape might evolve over time and one of the factors that plays into that I think is community aspirations as expressed through things like Reserve Management Plans.

[236] As a first point, we agree with Mr Espie that it is appropriate to consider the landscape context taking account of the fact that landscapes can be expected to evolve with time. This is simply an aspect of our task in predicting the future environment (as we address at [70] and following).

[237] We accept the evidence of Ms Steven and Mr Espie on these matters. We are satisfied, on their evidence that the proposal is appropriate in terms of its effects on natural character perceptions and landscape character.

<sup>120</sup> E A Steven, evidence-in-chief for the Trust, at [14.1]-[14.3].

<sup>121</sup> B Espie, evidence-in-chief for QLDC, at [6.1] and [6.3]. Joint Witness Statement of Landscape Witnesses, dated 15 March 2017, at [20].

<sup>122</sup> B Espie, evidence-in-chief for QLDC, at [6.3].

<sup>123</sup> Transcript, at p 263.





### Evidence as to public access and recreational amenity values

[238] Much of the evidence from the various lay witnesses called by Save Wanaka focused on these issues. They were also traversed by s 274 party, Mr Graham Dickson, and in the cross-examination undertaken by Mr Haworth for the Upper Clutha Environmental Society. These matters were also addressed by the landscape and planning witnesses.

[239] The various concerns and issues raised included the following:

- (a) the area is in constant use by walkers, cyclists, residents going to town and families recreating by the lakeside. The large facility would impinge on this, including dividing the reserve and using up space (Ms McNabb);<sup>124</sup>
- (b) the openness of the area and unbuilt character provide a sense of calm and quiet and it is "much cherished publicly". The proposal would "privatise an area for a select and lucky few" (Ms Scandrett);<sup>125</sup>
- (c) the building proposal for one small interest group will deprive a much wider sector of the community of enjoyment of this Lake Wanaka shoreline locality (Dr Robertson);<sup>126</sup>
- (d) the proposed building would seriously detract from the informal, uncluttered character of that area of Roys Bay and lessen the enjoyment and experience that many thousands of people enjoy by using or passing through that area of the reserve (Ms Landsborough);<sup>127</sup>
- (e) the beach adjacent is heavily used by members of the public for recreational bathing and swimming and boat launching from the proposed facility would compromise this (Mr Dickson).<sup>128</sup>

[240] Several of these concerns also came through Mr Haworth's questions in cross-examination on behalf of the Upper Clutha Environmental Society Inc (the Society not calling evidence or making submissions).

<sup>124</sup> K McNabb, evidence-in-chief for Save Wanaka, at [10].

<sup>125</sup> H Scandrett, evidence-in-chief for Save Wanaka, at [5], [16], [20].

<sup>126</sup> Dr D A Robertson, evidence-in-chief for Save Wanaka, at [14]. Dr Robertson confirmed he was giving evidence of his personal views, not as Chair of the Guardians of Lake Wanaka.

<sup>127</sup> C B Landsborough, evidence-in-chief for Save Wanaka, at [15]-[16].

<sup>128</sup> G L Dickson, evidence-in-chief of s 274 party, at [5.2].



[241] For Save Wanaka, Dr Read gave evidence that the “location and its intended private use would inhibit the public use of the vicinity and detract from the casual character of the foreshore and wider landscape”.<sup>129</sup>

[242] Save Wanaka’s planning witness, Mr Farrell, largely drew on the various lay submitters’ evidence on these matters for his opinion on how the proposal would affect access and reserve user amenity values.<sup>130</sup> He appeared to treat the benefits that users of the facility would enjoy as not being community benefits. In particular, this is evident from his following statements (his emphasis):<sup>131</sup>

The proposal will result in benefits relating to the enhancement of access and safety to the lake for rowers, some kayakers and some swimmers, including young and disabled members of the community. ...

...

The proposal will not result in a significant benefit to the community. Rather, the beneficiaries form a small proportion of the community.

[243] Mr Farrell appeared to largely adopt the particular perspectives expressed by some lay submitters for Save Wanaka on whether the proposal represents “privatisation” and its effects on public access and amenity. For example, he commented:<sup>132</sup>

The experience of various existing users of the lake’s edge will be significantly degraded. ... The proposal will create actual and perceived privatisation of the foreshore which cuts across the free and unrestricted access arrangements locals and visitors are currently afforded and for which the land is designated.

[244] He also expressed concern that the proposal would degrade the existing sense of place by replacing unstructured recreation with “structured” recreation (by which we understand him to mean that it would provide a building catering for certain types of recreational activity in a place currently used informally, for picnics for example).

[245] Mr Farrell referred to the RMP, but did not see it as a document that informed, in any material way, how we ought to weigh competing considerations concerning public access to the lake and reserve use amenity values. He noted its provisions in support

<sup>129</sup> Dr M Read, evidence-in-chief for Save Wanaka, at [13].

<sup>130</sup> B Farrell, evidence-in-chief for Save Wanaka, at [27].

<sup>131</sup> B Farrell, evidence-in-chief for Save Wanaka, at [28]-[29].

<sup>132</sup> B Farrell, evidence-in-chief for Save Wanaka, at [30].



of unrestricted access to and within the lakefront reserve. He acknowledged that it anticipates establishment of a watersports facility "somewhere in the Roys Bay Reserve".<sup>133</sup> However, he considered that we should give the RMP "limited weight" given it was not prepared under the RMA or with the same robustness, in terms of public engagement, as a RMA plan.<sup>134</sup>

[246] He confirmed that position in cross-examination. Insofar as the RMP includes implementation methods, he understood these to not be relevant as they were to be implemented by "another agency" such as the Department of Conservation or the Council as requiring authority. It would appear he was not aware that, as the requiring authority, the Council is able to authorise the Trust to build in accordance with the reserve designation.<sup>135</sup>

[247] The concerns expressed by the various lay witnesses, and Dr Read and Mr Farrell, were reflected in Save Wanaka's closing submissions.

[248] In essence, Save Wanaka submitted that the proposal, by its nature and scale, will destroy the enjoyed and valued informal amenity values of its locality. That is as a consequence of various things. One is its imposition of a large building in a presently unbuilt environment, removing trees in the process. Another is that it would "colonise" a space presently enjoyed by many for unstructured recreation with a form of structured recreation (enjoyed by only a few, and, in this sense privatisation). Another is that preparation of watercraft (particularly large rowing skiffs) outside the building (for launching or return) would impact on informal use of this area by others.

[249] Save Wanaka's submissions also noted that the Trust's planning witness, Mr White, agreed that the proposed building and boardwalk would reduce capacity for unstructured recreation. Save Wanaka also submitted that the scale of displacement of public recreation values could not be predicted because the Trust had not called expert evidence on this or assessed the existing recreation value baseline.<sup>136</sup>

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<sup>133</sup> B Farrell, evidence-in-chief for Save Wanaka, at [84].

<sup>134</sup> B Farrell, evidence-in-chief for Save Wanaka, at [86].

<sup>135</sup> Transcript, at p 509.

<sup>136</sup> Closing submissions for Save Wanaka, at [107] and [108].



[250] The Trust's closing submissions in reply were that Save Wanaka has ignored positive amenity effects and exaggerated impacts on present and future users of the reserve. In particular, it said that Save Wanaka failed to acknowledge the wide choices available for unstructured recreational uses elsewhere in the reserve. Related to these matters, it submitted that Save Wanaka's dismissal of the RMP fails to give proper recognition to the public process that underpins it.

[251] We have already addressed why we find the RMP an important document on matters concerning the amenity values of the reserve. We find it likewise important on questions of public access and recreation.

[252] Also relevant and important for our purposes is the evidence given on amenity values by the various lay witnesses. We respect the views of the various witnesses before us as valid and have weighed those views accordingly. However, we record that we do not do so on the basis put by Mr Farrell. He observed that the submitters who opposed the proposal were "more than likely" to represent "a larger proportion" of the wider community "compared to those who support or will benefit from the proposal".<sup>137</sup> His opinion on that would appear to assume our role is simply as an arbiter of opposing local views. Rather, our role is to decide on whether or not the proposal accords with the RMA's requirements. Our findings on amenity values should more properly be on the basis of the expert and lay evidence before us.

[253] We do not accept Save Wanaka's submission that the Trust erred in not calling baseline evidence on recreational use or an expert with particular specialty in recreation. That is, we feel able to reach our necessary findings on the evidence before us, including the views of lay witnesses, the RMP, the existing plan's objectives and policies, and the evidence of the various expert witnesses.

[254] As noted, for RMA purposes (s 2(1)):

**amenity values** means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.



<sup>137</sup>

B Farrell, evidence-in-chief for Save Wanaka, at [30].

[255] Inherently, different people may appreciate an area's recreational attributes in different ways. Many of the lay witnesses have a strong preference for informal recreation, including walking (with or without a dog) or cycling or picnicking, or enjoying the solace and shade of trees or the views. Others preferred active watersports, but did not see the need for facilities such as changing rooms (one noting he was happy to change in the open behind a towel). It is safe to conclude that many of those (including the young and old) that the hosted clubs would cater for also prefer excitement and challenge of competitive watersports on the lake. However, their needs, including for facilities, are different. Also inherently, what people value will change with time. For instance, the cycleway around the lake is a relatively recent phenomenon. Triathlon events are now strongly a feature of Lake Wanaka, but that has not always been the case. For a reserve earmarked for recreation to continue to be successful in enabling people and communities to meet their needs, it needs to be 'broad church' and allow for evolution in what it encourages and anticipates for present and future generations.

[256] For the reasons we give at [262] and following, we do not accept the evidence of various lay submitters that the proposal would not cater for legitimate needs of people within the community (or that it would "privatise" an area "for the lucky few" to the detriment of the community).

[257] We accept that a consequence of enabling the proposal is that some current informal usage of the relevant locality will be displaced. For those uses that take place in the footprint of the proposed building, that is inevitably the case. It is also inevitable that, during the frequent times that the facility is being used for its intended watersports activities, other incompatible activities will be temporarily displaced. There will be occasions when, as rowing hulls are being worked on in preparation or for return to the building, those walking or cycling in the area may have to slightly divert from their intended routes. On the other hand, some may choose to pause to watch.

[258] We find nothing adverse in such change to how things are now experienced. Rather, change of this kind is part of the normal dynamics of a reserve intended for recreation which may be structured/active and/or informal/passive. Accepting the evidence of Ms Steven, Mr Espie, Mr White and Mr Brown on these matters, we agree with the Trust's closing submission that Save Wanaka's case significantly overstates perceived negatives and understates true positives of the proposal for amenity values.



[259] Subject to accepting some modifications proposed by the Trust and tightening and clarifying conditions, we are satisfied that the proposal will maintain and enhance the recreational amenity values of the reserve and public access to the lake and its margin.

[260] For the reasons we have given (and the further reasons at [262] and following) we are overwhelmingly satisfied that the proposal will assist people and communities of Wanaka to meet their recreational needs.

### **Natural hazard measures**

[261] Although Save Wanaka raised natural hazard risks in its appeal, it did not call related expert evidence on this. We accept the evidence of the Trust's expert, Mr Stocker in finding these measures appropriate for natural hazard management (although appreciating that ORC consent has been secured and is not subject to appeal). We accept Ms Steven's evidence in finding that the bund is effectively integrated in landscaping terms. While we have considered the natural character effects on the margin of Stoney Creek, for the reasons we have stated at [180], we find these effects do not warrant any response even by way of conditions.

### **Is there a sufficient functional justification for the proposed site?**

[262] The Trust's primary objective is to enable clubs to enhance and expand their memberships and to enable general public participation in watersports, especially by the youth of the community.<sup>138</sup>

[263] One of its intended beneficiaries is the Wanaka Rowing Club. The club's unsuccessful search for new more suitable premises (over several years) was the initial impetus for the proposal.<sup>139</sup> The club uses facilities in a shed on the A&P showgrounds, requiring the hulls to be carried (with trolleys) some 300m to the lake. This includes having to cross Mount Aspiring Road, giving rise to safety concerns.<sup>140</sup> The A&P Society has re-development plans that would result in removal of the shed. In cross-examination by Save Wanaka, Ms Inkster explained that the present requirement to walk from the shed is both arduous and time-consuming. The proposed site would

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<sup>138</sup> M Sidey, evidence-in-chief for the Trust, at [3].

<sup>139</sup> M Sidey, evidence-in-chief for the Trust, at [6] and [14].

<sup>140</sup> A Inkster, evidence-in-chief for the Trust, at [17].



particularly benefit children and those with disabilities and the club hoped it would lead to an increase in membership.<sup>141</sup>

[264] Ms Inkster was cross-examined on whether there was a functional need to house the ergs in the facility. She explained the club had 10 ergs at present and may not need to have as many as 18 (as the erg room in the proposed building is designed to house). However, housing them in the facility was important as it allowed for the quickly changing weather conditions in that members could continue rowing indoors. The location of the facility also suited school children, given the time constraints of getting them to school after early morning training.<sup>142</sup> By contrast she noted Glendhu Bay was an unsuitable location for rowing, being too far from school to be convenient for early morning training.<sup>143</sup> We accept her evidence on these matters.

[265] The Wanaka Lake Swimmers Club caters for all swimmers, including those with disabilities and the young and old (the youngest being fourteen and the oldest 76 years of age).<sup>144</sup> It hosts lake swims at Stoney Creek and Roys Bay. However, the club does not presently have convenient facilities to change, toilet, shower (to reduce duck itch reactions), or to store and easily access their equipment (including safety equipment).<sup>145</sup>

[266] We heard evidence that recreational kayakers, particularly young people who cannot drive, would benefit significantly from having a designated facility for boat storage close to the lakefront.<sup>146</sup> We heard that this is also the case for recreational swimmers and those seeking to train for triathlons, a very popular sport in Wanaka.<sup>147</sup>

[267] It is fair to observe that each of the watersport clubs that would be hosted at the proposed facility is active now but faces impediments that limit its capacity to be successful in attracting new members (to varying degrees).

[268] We are satisfied that each of the watersport clubs would significantly benefit from having the proposed facility close to the lakeshore providing them ready access to

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<sup>141</sup> Transcript, at p 71.

<sup>142</sup> Transcript, at p 73.

<sup>143</sup> Transcript, at p 77.

<sup>144</sup> Transcript, at p 90.

<sup>145</sup> J Boyd, evidence-in-chief for the Trust, at [1]-[6].

<sup>146</sup> K I Murray, evidence-in-chief for the Trust, at [4.8].

<sup>147</sup> T M Pryde, evidence-in-chief for the Trust, at [14].



gear storage, showers and toilets. It is also the case that the RMP expressly intends that a non-motorised watersports facility be located in that section of the reserve that the proposal would be located within.

[269] We are also satisfied on the evidence that non-motorised watersports are a highly valued recreational pursuit in the Wanaka community. Further, Wanaka has a national reputation for such pursuits.

[270] The evidence does not go so far as to support a finding that declining the proposal would bring an end to any of the watersports. With the possible (and important) exception of the Wanaka Rowing Club, the various clubs could be expected to carry on as they are now.

[271] However, on the evidence, the clubs are experiencing significant limitations (including in their compromised ability to cater for school children, those with disabilities, and the elderly). We find these are significant, and likely increasing, impediment to community wellbeing. The existing level of disenablement would likely worsen over time without the proposal. That is in the sense that the clubs would be less and less able to cater for the recreational needs of a growing community.

[272] Mr Madill, for the Trust, explained how the proposed 420m<sup>2</sup> building footprint allowed for 272m<sup>2</sup> for storage of hulls (kayaks, rowing skiffs), 139m<sup>2</sup> for the erg room, and 9m<sup>2</sup> for public changing and toilet facilities. In his opinion, the floor area was “tight” for what it had to contain, and “average to modest” by comparison to the size of other buildings used for similar purposes that he described. He explained that a peer review of the building design that he arranged concluded that there is “a low risk of redundancy of purpose for the life of the building”.<sup>148</sup>

[273] When cross-examined by Save Wanaka, he explained that his brief for the storage area was to design for 30 hulls. He also explained that the need for practical access means that hulls are stored four high (24 hulls being able to be stored to this height). However, he explained that infrequently used hulls (such as expensive racing hulls) could be stored higher. Hence, the proposed building allowed for storage of 30 hulls. In addition, the storage area allows room for two tenders (coach boats).<sup>149</sup>

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<sup>148</sup> A R Madill, evidence-in-chief for the Trust, at [3.3.2].

<sup>149</sup> Transcript, at p 99.





[274] For the Council, Mr Espie considered the building's size to properly relate to community needs and desires. That was on his understanding of the evidence that it could not be practically smaller given the storage requirements of several large watercraft. He noted the fact that competitive recreational water sports are extremely popular within the Wanaka community.<sup>150</sup>

[275] For the reasons we have given, we prefer Mr Madill's and Mr Espie's opinions on these matters to those of Dr Read. We accept Mr Madill's evidence in finding that the building size is not excessive in the sense that, in particular:

- (a) it is properly driven by its purpose of providing for the various watersports activities, as well as providing toilet and washdown facilities for other reserve users;
- (b) there is no functional redundancy in the floor area of the proposed building; and
- (c) there is a sufficient functional justification for the proposed sizes of the hull and tender storage area, toilets and showers, kitchen, and the erg room. As for the number of ergs, we find it would be shortsighted to limit this to what is sufficient to cater for the current number of ergs used by the Wanaka Rowing Club (i.e. ten) given that it can be reasonably anticipated that there will be an increasing demand for club membership from the growing community of Wanaka (including from the young and those with disabilities). On the evidence, we see no reason to cull back from the 18 ergs planned for.

[276] Being satisfied, on the evidence, that there is a strong functional justification for the choice of siting and the size of building, we also find that the proposal satisfies the policy intention that it is a truly exceptional case.

### **Whether the Trust's proposed modifications are appropriate**

#### ***Building size and location and the boardwalk***

[277] From Mr Madill's evidence, we understand that the 'boardwalk' is also intended to function in the manner of a deck, enabling "the public to engage and participate with

<sup>150</sup> B Espie, evidence-in-chief for QLDC, at [6.11].



the building”, including by sitting to watch lake users, read a book, eat lunch or soaking up the sun.<sup>151</sup> It is also designed as a boardwalk, with its ends dropping to and tying in with the approaches to encourage those wishing to amble past the lake side of the building (including those with disabilities) to do so. With the exception of two 1.5m pinch points, it would be at least 2.0m wide (and generally 2.5m wide). Mr Madill considered that it would make a significant contribution to the comfort and usability of this part of the lake front and enhance the beach experience (from a presently untidy undulating area).<sup>152</sup>

[278] In its closing, Save Wanaka focussed primarily on its concern that the proposal would displace informal recreation, a matter we have already addressed.

[279] The impression we gained from our site visit is that the pinch point near the lakeside trees to the east of the proposed building would be somewhat cramped and may intrude into the lake’s margin. If there is to be a boardwalk, we consider its positioning should be slightly adjusted in this locality to address these issues. We consider moving the boardwalk back by 1.5m in this pinchpoint area would suffice. We understand from the supplementary evidence of Mr Madill that this would necessitate also moving, and adjusting the dimensions of, the building as we have described.

[280] However, we also acknowledge that the boardwalk is not an essential aspect of a watersports’ facility. Nor do we see the boardwalk as necessary in order to “make the case” for the watersports facility. We are overwhelmingly satisfied on the evidence that the facility merits consent even without a boardwalk. Therefore, we find that a boardwalk is a “nice to have”, in the sense of enhancing lake user experience, but not an essential prerequisite for consent.

[281] Mr Madill’s supplementary evidence explains that an alternative arrangement could be for a simple deck and seating area to be provided on the lake side of the building to soften the building’s edge and provide for “public engagement” with the building.

[282] We find that the most appropriate approach is to modify the proposed conditions to the effect that the Trust will have capacity to choose as follows:

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<sup>151</sup> A R Madill, evidence-in-chief for the Trust, at 3.5.1.

<sup>152</sup> A R Madill, evidence-in-chief for the Trust, at 3.5.4.



- (a) to not build the boardwalk, but instead build what Mr Madill's supplementary evidence describes as the deck and seating area in front of the building (and to leave the building in its originally proposed location and to its originally proposed dimensions); or
- (b) to continue to build the boardwalk, but subject to also making the adjustments to its location and to the building's location and dimensions, that Mr Madill's supplementary evidence describes.

***Proposed additional planting***

[283] Informed by our findings on natural character, landscape and visual amenity matters, we find that the originally proposed extent of landscape planting will, in time, effectively integrate the building into its immediate setting.

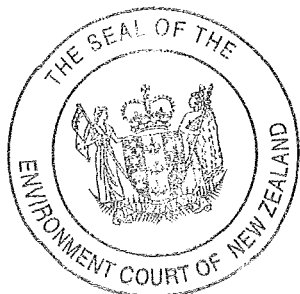
[284] We find the additional extent of planting proposed by the Trust in its supplementary evidence will enhance this integration. Therefore, as a volunteered enhancement, we specify it in the conditions.

**Whether the Trust's proposed conditions are appropriate**

[285] We treat the conditions that the Trust proposed for the purposes of closing submissions ('proposed conditions') as superseding what it earlier proposed. All versions proposed originate from the conditions included in the consent by the Council commissioners' decision. We understand the Trust seeks the changes primarily to respond to matters that arose during the hearing. In its closing submissions, Save Wanaka raised concerns about various proposed conditions.<sup>153</sup> We deal with these first.

***Save Wanaka's concerns regarding proposed condition 9 (now 11) (nature and scale)***

[286] This proposed condition specifies hours of operation of 5.00 am to 11.00 pm, with the exception that the external public facilities would be operated according to the Council's operations of other public toilets and change facilities.




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<sup>153</sup> Closing submissions for Save Wanaka, [129] and [130].

[287] Save Wanaka submits that allowing a building to open so late is not justified given it has “no facilities for social functions”. However, it does not expand on why this would be problematic in terms of associated effects. We envisage circumstances where the facility may be used until 11.00 pm, for example for erg training and/or watercraft maintenance. The question of whether there is sufficient provision against disturbance comes back to the suitability or otherwise of conditions for management of noise, lighting or other sources of disturbance. We note that proposed noise condition 12 would require noise reduction for notional boundaries of houses from 8.00 pm. Also, the proposed lighting condition 8 specifies downlighting. As to Save Wanaka’s concern that the condition does not provide clarity as to the opening hours for the public toilets, we find this aspect of the condition appropriate. That is because it allows for this aspect to be regulated on a basis that is in line with Council practice elsewhere in the reserve.

[288] We do not see any present case to reword condition 9 at this stage. However, we will consider the matter further in light of any supplementary submissions on this matter made in accordance with our timetabling directions.

***Save Wanaka’s concerns regarding proposed condition 11 (now 13) (amplified music)***

[289] Save Wanaka raises a concern that this proposed condition on amplified music is unclear as to whether it applies also to amplified music being played inside the building (e.g. in the erg room). It submits that it should be clarified so that such music would not disrupt the public in the vicinity.

[290] We agree that the condition needs to be clarified so that it is more effective in protecting against noise disturbance to neighbours or other users of the reserve. Our preliminary view, subject to submissions, is this could be effectively achieved by a two-fold approach to the effect that the condition prohibits amplified music being played:

- (a) inside the building if the playing of the music gives rise to excessive noise (within the meaning of the RMA); and
- (b) outside the building.



***Save Wanaka's concerns regarding proposed condition 35 (now 30) (geotechnical assessment)***

[291] Save Wanaka raises concern that this condition continues to give no certainty as to the standard or objective to be achieved in mitigation against geotechnical constraints. It acknowledges the condition is now clear that a report must be provided prior to commencement of works. However, it seeks additions to the effect that certified mitigation against geotechnical constraints is complied with.

[292] Of its nature, this condition pertains to matters of building design safety, to which the Building Act 2004 ('BA') and Building Code pertain. Save Wanaka did not call expert evidence on these matters. Nor would we normally consider it appropriate or necessary to impose resource consent conditions to regulate for these BA matters. As it is a condition volunteered by the Trust, we have not deleted it. However, as we consider it duplicative of BA control matters, we find no resource management reason for it (or to change it).

***Save Wanaka's concerns regarding proposed condition 36 (now 26) (traffic management and site management plans)***

[293] Save Wanaka comments that this proposed condition "only addresses user conflict during construction" and submits that it should specify an objective standard against which site management can be measured.

[294] The site management aspect was in proposed condition 36(b) (now 26(b)). We consider it does express a standard for performance measurement, namely as to minimising disruption and ensuring safe movement of pedestrians and cyclists. Similarly, albeit less clearly, proposed condition 36(a) (now 26(a)) refers to a standard pertaining to disruption, inconvenience or delay. However, in several respects, we find the drafting unclear and in need of improvement. In particular, the drafting confuses the important matter of the implementation obligation by prefacing this with the qualifying words "prior to commencing works on site". Also, there should be a clearer distinction between what is to be implemented (i.e the management plans) and the purposes of those plans. Our preliminary view, subject to submissions, is that this would be best achieved along the following lines (although, we observe that our suggested redrafting appears to reveal a large overlap between the purposes of these management plans):



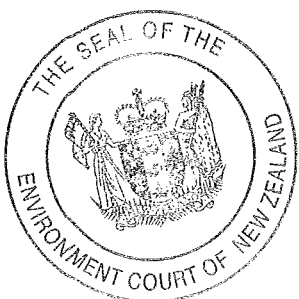
26. Prior to commencing works on site, the consent holder must:
- (a) prepare and obtain approval by the [specify relevant Council manager or delegate] of a traffic management plan to minimize disruption, inconvenience or delay to the parking of vehicles and the safe movement of vehicles, pedestrians and cyclists and to manage the installation of any temporary safety barriers within or adjacent to Roys Bay Recreation Reserve and/or the road reserve during the construction period ('traffic management plan');
  - (b) prepare and obtain approval by the Council's Parks and Reserves Manager of a site management plan to minimize disruption to and ensure the safe movement of pedestrians and cyclists within the reserve during the construction period.
27. The consent holder must comply with the approved traffic management plan and site management plan.

***Save Wanaka's concerns regarding proposed condition 37 (now 31) (specifications, calculations and design plans)***

[295] Save Wanaka questions why proposed condition 37(d) (now 31(d)) has been amended to limit the provision of connection of stormwater to the Council reticulation system to just roof stormwater. It also questions why the former condition 37(e) (requiring sealing of the carpark and stormwater provision) has been deleted.

[296] As to resource management purpose, our preliminary view is that neither of these conditions is necessary. As for stormwater, we have very limited evidence and it does not demonstrate there is any need to impose specific controls on what aspects of the building will be connected to the Council's reticulation system. As for the matters of sealing of the carpark and other stormwater management provision, the position is similar. In essence, these are matters of detail we consider more appropriately assigned to the Council as administrator of the reserve, rather than having any discernible RMA purpose.

[297] However, we consider that the Trust ought to at least explain why these deletions are made. We direct that it does so in accordance with the timetable we set for submissions on conditions.



***Issues Save Wanaka is concerned are not addressed***

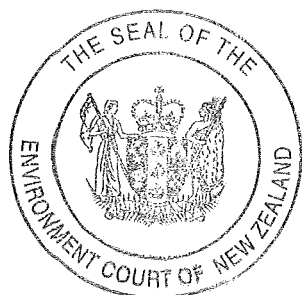
[298] Save Wanaka also raises concerns that there are no proposed conditions:

- (a) prohibiting outdoor storage of equipment or trailers;
- (b) requiring maintenance of the public toilets; or
- (c) ensuring that members of the public willing to pay a fee would be able to access the facility.

[299] On the matter of outdoor storage of equipment or trailers, we agree that a further condition is required. There will be an inevitable need for vehicles and trailers to be parked during loading and unloading. That should not be precluded by a condition. Also, we find we can rely to a large extent on the capacity of the Council, as administrator of the reserve, to set bylaws or other restrictions on parking of vehicles and trailers in the formal carpark area. However, we consider it would be prudent to allow the Council to require that a management plan be prepared for regattas, given the potential for them to significantly increase demands on parking and access. Therefore, our preliminary view (subject to submissions) is that there should be conditions on those matters as per conditions 33-36 in Annexure 3.

[300] We find it unnecessary to require any condition on the maintenance of the public toilets as this is readily, and more appropriately, managed by the Council in its capacity as administrator of the reserve.

[301] The third matter, as to access by those of the public willing to pay a fee, requires some careful consideration. It is important that the promised benefits to the community of the facility are delivered as our evidential findings on that are part of what leads us to be satisfied that consent will be granted. However, a clumsy condition on this matter risks interfering with matters more properly left to the lease or to the Trust's financial administration. As long as the Trust remains consent holder, we find we can rely to a large extent on the fact that its primary object is to establish and operate the facility for watersports conducted by community groups or incorporated bodies of the Wanaka region, and ad hoc and seasonal visitors.<sup>154</sup> Similarly, we can rely to some extent on the fact that the various clubs to be hosted by the facility effectively function to serve the community and are welcoming of new members from the community.



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<sup>154</sup> M J Sidey, evidence-in-chief for the Trust, at [3].

[302] Considering all those matters, we find there would be a valid resource management purpose to go so far as to require disclosure of information as to how the facility is being used for its intended community purposes and what fees and accessing arrangements apply. Our preliminary view, subject to submissions, is that a suitable condition could be as per conditions 37 and 38 in Annexure 3.

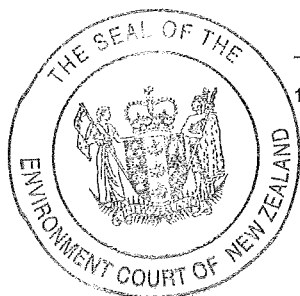
***Other matters the court considers should be refined***

[303] For the reasons we now set out, we consider changes need to be made to several other proposed conditions (and, subject to submissions, Annexure 3 sets out drafting reflecting our preliminary thinking on these matters, and the other condition changes we have discussed).<sup>155</sup>

- (a) it would assist clarity if the conditions were prefaced by a statement as to what the land use consent authorises;
- (b) condition 1 should recognise the intended ability of the Trust to elect to build the boardwalk, and should not refer to documents that simply reference colour/external materials (as this is covered by another condition) or the landscape concept plan (as this is also covered by the landscape condition);
- (c) a companion condition (condition 2 in Annexure 3) should address the boardwalk specifications (unless the Trust is able to supply updated plans before we issue our final decision, in which case these can be added into the table in our proposed revision of condition 1);
- (d) the Trust's proposed landscaping condition (condition 5) is unclear and fails to cover all relevant aspects of the landscaping obligation as reflected in the landscape plan. A clearer approach would be to split the obligations into separate conditions, one dealing with timing of landscaping works and the other with landscape maintenance (see conditions 6 and 7, Annexure 3);
- (e) the Trust's condition 6 on external lighting should be clarified further (see condition 8, Annexure 3);

<sup>155</sup>

Note that the numbering of conditions in Annexure 3 is different from that of the Trust's proposed conditions.





- (f) the Trust's 'design' condition 7 is incomplete in that it does not refer to joinery, seating and any boardwalk (see condition 9, Annexure 3);
- (g) the Trust's 'signage' condition 8 needs to be updated to be a self-contained condition not relying on cross-referencing the elevation plan. It should include the display of pricing and access arrangements to assist the public (see condition 10, Annexure 3);
- (h) the Trust's conditions 9, 10 and 11 on hours of operation, usage and amplified music need to be updated to reflect our findings on Save Wanaka's closing submissions on these conditions and further clarified (see conditions 11, 12 and 13, Annexure 3);
- (i) the drafting of the Trust's condition 13 on the construction management plan ('CMP') is unsatisfactory in various respects. It does not clearly state the consent holder must comply with the CMP. It is unhelpfully vague on the scope of a CMP ("shall include but not be limited to"), and hence on the proper scope for Council approval (and it is unclear whether the reference to 'Monitoring Planner' is accurate, in terms of relevant office holders at the Council) (see condition 15, Annexure 3);
- (j) we invite parties to consider our proposed clarifications to the accidental discovery protocol condition 16, intended to ensure it is expressed as an enforceable obligation (see condition 16, Annexure 3);
- (k) the Trust's proposed 'trees' conditions (15-32) appear to have originated from the commissioners' decision. There are several drafting problems in them. For example, a number express far too much detail to be suitable in a consent condition (e.g. 21, 24, 27, 29, 30, 32). Several do not express clearly enforceable obligations (e.g. in 21, "sacrosanct", in 23 "carefully", in 26 "careful", in 30 "it may be necessary to", and in 32 "If during the works it becomes necessary"). Several express repetitive or overlapping obligations, leading to further potential confusion. In light of the arborist's evidence, we find that the nature of this resource management issue calls for conditions that allow for flexible adaptive management, including on a basis that empowers an arborist to exercise discretion in supervision. Apart from the need to substantially redraft these conditions to ensure they are capable of being enforced, our preliminary view (subject to submissions) is that a management planning approach would better suit this topic. Therefore, subject to submissions, our preliminary findings on the revision of these conditions is in conditions 17-25, Annexure 3;



- (l) it is not good drafting practice to preface conditions with headings that qualify the meaning of the conditions. Rather, any qualifications should be expressed in the conditions themselves. Therefore, we have revised proposed conditions 34-38 and their headings (conditions 27-31, Annexure 3). We have also made changes to other headings;
- (m) we consider a minor refinement is preferable to the proposed 'review' condition 39 to merge its proposed (d) into (b) (condition 39, Annexure 3).

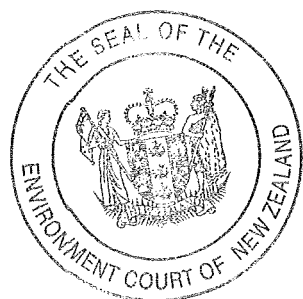
[304] Annexure 3 also adds in conditions to reflect our findings concerning Save Wanaka's submissions. Timetabling directions for sequential submissions on conditions are made.

#### **Planning evidence as to related objectives and policies and assessment matters**

[305] We heard from three planning witnesses on the evaluation of the proposal against relevant existing and proposed plan objectives and policies concerning natural and landscape character, visual amenity, open space and recreation.

[306] As is typically the case, each planning expert primarily relied on the landscape expert called by their client as the key foundation for their evaluation of natural character, landscape and visual amenity evidence. Each also drew from their own experience and planning expertise. As is also typical, the relevant natural character, landscape and visual amenity objectives and policies are framed such that the question of whether or not the proposal accords with them largely turns on our evidential findings. In particular, our findings on the landscape experts' evidence provides a foundation for our findings on planning evidence and our evaluation of the relevant assessment matters, particularly those listed in the existing plan.

[307] As we have noted, Mr Farrell presented a careful evaluation of the proposal as against applicable objectives and policies of the existing and proposed plans. This included a point by point evaluation included in appendices to his evidence. His evaluation of the objectives and policies was fairly based upon the foundation evidence he relied on, i.e. primarily the evidence of Dr Read and also his own experience and the lay witness evidence that Save Wanaka called.



**Existing plan provisions**

[308] On the topic of natural character, we agree with Mr Farrell that the emphasis in 4.1.4 Objective 1 and associated Policy 1.13 on preserving the *remaining* natural character of the lake's margin is significant for the reasons we have set out earlier in this decision. We also consider he was fair in pointing out that the planning experts for the Trust (Mr White) and QLDC (Mr Brown) may have not appreciated this.

[309] However, on the basis of our findings concerning natural character matters, we find that the proposal is not contrary to any of the objectives or policies of the existing plan.

[310] Similarly, on the basis of our evidential findings on landscape and visual amenity matters, and the size, location, design and colour treatment of the proposal, we find that the proposal would not be contrary to related objectives and policies. In particular, we refer to the objective in 4.2.5 and its related Policies 1(a)-(c) and Policies 2(a)-(d), 4.2 Policy 9, and 4.4.3 Policy 2.3.

[311] On the basis of our evidential findings on matters concerning open space, recreational amenity values, trees and landscape planting, and the community wellbeing benefits of the proposal, we are satisfied that the proposal is not contrary to the various objectives and policies on these matters. In particular, we refer to 4.2.5 Policies 2(a)-(d), 4.2 Policy 17, 4.4.3 Objective 2, Policies 2.1, 2.2 and 2.4 – 2.7, 4.4.3 Policies 2.2, 2.3, 2.6 and 3.1 (Open Space and Recreation), 4.6.3 Objectives, 4.6.3 Policies 1, 12 and 13 (Surface of Lakes and Rivers) and 5.2 Policy 1.7 (Rural).

[312] Consistent with the relevant objectives and policies, we find that the proposal would support recreational activities to be undertaken in a way that avoids or sufficiently mitigates significant adverse effects on the environment and on the recreation opportunities available within the District (Objective 2). It would also improve people's access to water sports in a convenient location close to Wanaka township in an area where multiple uses and experience of the lakefront reserves is anticipated (4.6.3, Policy 1). Consistent with 4.6.3 Policies 2 and 3, the proposal would provide an opportunity for improved recreational experiences for a variety of non-motorised water sports in an area of the lake with natural characteristics suited to such activities. We disagree with Mr Farrell and find on the evidence that the proposal would not have adverse effects on those attributes and characteristics that contribute to public



availability and enjoyment of the margins of the lake (4.6.3 Policy 12). The proposal does not involve large-scale or intrusive activities and high levels of noise, speed and wash (4.6.3 Policy 4). Furthermore the location, design and use of any part of the facility attached to the bank of the lake mitigates effects on visual qualities, safety and conflicts with recreational and other activities on the lake (4.6.3 Policy 13).

[313] Mr Farrell acknowledged that the proposal:<sup>156</sup>

... gets broad support from the provisions which seek to enable development and use of the region's resources and/or recognise the benefits of enhancing and maintaining access to the lake and its margins ... [and] is consistent with , or at least not inconsistent with, the provisions relating to recognising benefits of enhancing public access to lakes and their margins, indigenous vegetation, ngai tahu [sic] rights and interests, transport, natural hazards, and ensuring assessment of particular matters is undertaken.

[314] On the basis of our evaluation of the various existing plan objectives and policies, we agree with his opinions on those matters.

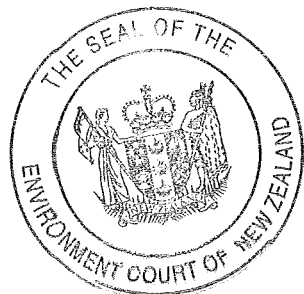
[315] For the reasons we set out, we find that the proposal would not be contrary to the objectives and policies of the existing plan and would assist to achieve several of the existing plan's intentions as expressed in particular objectives and policies.

### ***Proposed plan provisions***

[316] We also agree with Mr Farrell that the overarching directions of the proposed plan are not substantially different from those of the proposed plan. However, on the basis of our evidential findings, we do not accept his opinion on the implications of the proposed plan's relevant objectives and policies.

[317] On the basis of our findings concerning natural character matters, we find that the proposal is not contrary to Objective 3.2.4.5 or Policy 3.2.4.5.1 or Objective 21.2.8 or Policy 21.2.8.1.

[318] On the basis of our findings concerning landscape matters, we find that the proposal is not contrary to Objective 3.2.5.1 or Policy 3.2.5.1.1 or Objective 6.3.3 or Policy 6.3.3.1 or Objective 6.3.4 or Policy 6.3.4.1 or Policy 6.3.4.3.



<sup>156</sup> B Farrell, evidence-in-chief for Save Wanaka, at [57], [58].

[319] On the basis of our findings concerning landscape and visual amenity matters, the proposal is not contrary to Objective 6.3.6 or Policy 6.3.6.1.

[320] On the basis of our findings concerning the recreational benefits of the proposal, open space and recreational amenity matters, we find that the proposal is not contrary to Objective 3.2.6.3 or Policy 3.2.6.3.1 or Policy 3.2.6.3.2 or Objective 3.2.6.4 or Policy 3.2.6.4.1 or Policy 3.2.6.4.2.

[321] For those reasons, we find that the proposal is not contrary to the objectives and policies of the proposed plan.

### **The proposal passes the s 104D threshold**

[322] Our findings at [305]-[321] lead us to be overwhelmingly satisfied that the proposal passes the s 104D, RMA threshold. Specifically, we find that the proposal is not contrary to the objectives and policies of either the existing plan or the proposed plan.

### **Other statutory instruments**

[323] For completeness, we record that we have considered the RPS and proposed RPS and are satisfied that there are no further directions or other matters in those instruments that relevantly bear on our decision.

### **Concerns raised about precedent issues and other matters**

[324] For Save Wanaka, Mr Farrell and some lay witnesses expressed concern that the proposal would give rise to an adverse precedent for further building in the reserve. Mr Farrell explained that his concern was that the proposal would set a precedent for building development on or near the lake margin. In terms of cumulative effects, he noted that the existence of the building would change the future environment, making it more exposed to further development. He summarised his opinion as follows:<sup>157</sup>

Overall a message will be sent that developments with minor benefits, significant adverse effects, and which are discouraged as non-complying activities, can still be contemplated in outstanding natural landscapes – even though there is clear direction to avoid this type of development.

<sup>157</sup>

B Farrell, evidence-in-chief for Save Wanaka, at [98].



[325] As will be apparent, we have reached materially different findings on the evidence on each of the matters Mr Farrell identified. Specifically, we find that the proposal will offer important community benefits, and that its effects (including on the ONL) are appropriate, subject to the modifications we have required and the various conditions. Our findings on related objectives and policies are also material. Specifically, as we have explained, we are satisfied that our decision does not allow for a development contrary to any relevant objective or policy (or any other direction in any relevant statutory instrument). Rather, in the several respects we have noted, we find the proposal to be materially consistent with what the existing and proposed plans and the RMP contemplate for this part of the reserve. Therefore, we find that there is no adverse precedent risk associated with granting consent on the basis that we have decided.

#### **Part 2 and other matters**

[326] Our findings on the various existing plan objectives and policies also address related pt 2 matters. For completeness, also on the basis of our evidential findings, we find that granting consent to the proposal would not offend any pt 2 provision and will promote the RMA's purpose.

#### **Conclusion**

[327] Therefore:

- (a) the appeal is disallowed to the extent that the relief is rejected and this decision is that resource consent will be granted subject to the finalisation of conditions by a further decision;
- (b) it is directed that submissions on the final wording of conditions in Annexure 3 may be made as follows:
  - (i) submissions by the Trust within ten (10) working days of the date of this decision (attaching a copy of the conditions showing any requested changes tracked and also drafting on the matter of operational hours, as noted, and providing a complete set of plans for inclusion in the final decision);

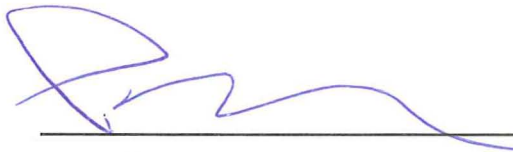




- (ii) submissions by other parties within a further five (5) working days (showing requested changes tracked in a different colour on the Trust's version);
  - (iii) Trust submissions in reply within a further five (5) working days (with a further tracked version and a clean version in Word emailed to [Christine.McKee@justice.govt.nz](mailto:Christine.McKee@justice.govt.nz)).
- (c) leave is reserved to seek further or replacement timetabling directions on these matters.

[328] Costs are reserved on the basis that, if requested, we will set a timetable for submissions when we issue our final decision. However, it will be apparent that all parties (and their witnesses) have contributed to this decision in a positive way on an important public interest matter. That input has positively informed an outcome that will result in some material changes to the proposal (and related conditions). For those reasons we indicate to the parties that we are inclined to let costs lie where they fall.

For the court:



**J J M Hassan**  
**Environment Judge**



**Annexure 1** – Extracts from RMP

**Annexure 2** – Objectives and policies and our related evidential findings

**Annexure 3** – Preliminary drafting of conditions subject to submissions

## Annexure 1

### Provisions of the RMP

[1] The RMP's overarching objectives include (in section 5, p 35):

- 5.2.3 Manage the impact on the natural amenity values of the lakeside reserves by minimising buildings and positioning them appropriately.
- 5.2.4 Retain a high level of unrestricted access to and within the lakefront reserves and facilitate formal lake access.

[2] The RMP includes the following in its description of Roys Bay Reserve (at 3.8.2):

Roys Bay Reserve is the busiest reserve included in this management plan. It facilitates a wide range of recreational activities from passive recreation activities such as relaxing and picnicking to active recreation pursuits such as swimming, water sports, walking and running.

[3] The RMP identifies seven distinct activity zones, and gives the following description for the area that includes the site of the proposal:

Active recreation (including supporting infrastructure to support non-motorised watersports including a leased area for a watersports building).

[4] Under 'Management Considerations and Opportunities', 4.2 Recreation, the RMP says:

The lakefront reserves of Lake Wanaka provide opportunities to participate in a number of active and passive recreational activities, both land and water based, via access to and from the reserves.

These include open spaces to picnic and relax on, gently sloping beaches to swim, wind- and kite-surf from, tracks for walking, running and cycling and areas of special interest.

The activities are supported by facilities such as boat launching, children's play equipment, formed pathways and tracks, barbeque equipment, toilets, car parking and buildings. Council endeavours to provide a balance of facilities and open space to support a variety of recreation, reflecting the mix of community and visitor demands for the use of the reserves.

This management plan seeks to protect and enhance these recreational opportunities in a manner consistent with good guardianship of the amenity, ecological and cultural values of the lakefront reserves.





The landscape and amenity accorded by native and exotic plantings add to the special recreational value the lakefront reserves provide.

[5] The RMP's objectives and policies also include (at pp34-36):

(a) at 5.2.1.1, the objectives:

Ensure the reserves remain predominantly accessible for unstructured recreation.

Establish activity zones in Roys Bay to enable appropriate activities to occur that reinforce the character and purpose of the zone, ensuring compatible activities are clustered together.

(b) at 5.2.2.1, the objective:

Support commercial recreational activity where appropriate and where the impact and effect does not unreasonable [*sic*] limit the ability of the public to use and enjoy the reserves.

(c) at 5.2.2.2, the policy:

Permit the use of reserves for sporting, cultural and recreational events (both ticketed and non-ticketed) including temporary associated infrastructure on the following [specified] conditions.

(d) at 5.2.3.1, the objectives:

Manage all use and development of the reserves in accordance with the outstanding natural landscape recognition in the District Plan.

Minimise structures in the reserves and their impacts on the landscape.

Protect important view shafts.

Retain an informal landscape character and open spatial quality to the reserves.

Built developments will only be permitted where these are sympathetic to the key elements, features and patterns of the landscape.

Provide for continuation and renewal of existing leases and licences where such uses support the objectives of this plan.

Consider a limited number of new leases and licences where such uses would support the objectives of this plan.

Ensure the use and development of the reserves positively integrate when adjacent



to the town centre and surrounding urban area.

(e) at 5.2.3.2, various policies on usage of reserves, including:

Allocate adequate space to vehicles to support participation in active recreation and passive viewing of the landscape.

Consider all applications for new facilities including, but not limited to, sports clubhouse/community buildings, toilets, car parking, boat launching and retrieval facilities under this and all other applicable Council policies and plans, with a view to ensuring wider public access to existing recreational opportunities is not unreasonably limited.

Ensure that the character of the reserves is not compromised by structures associated with leases and licences and that the reserve values are maintained or enhanced.

Continue to allow use of the reserves for commercial purposes via a concession or other formal agreement. All applications for use of the reserves for commercial purposes will be considered under applicable Council policy.

(f) at 5.2.3.3, various specific implementation actions, including as pertaining to the proposal:

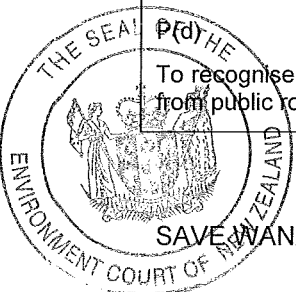
Grant a new lease for a community building supporting non-motorised water sports (activity area 2).



Existing plan objectives and policies

<b>4.1 Natural Environment</b>
<p>O1 relevantly specifies:</p> <p>The preservation of the remaining natural character of the District's lakes, rivers, wetlands and their margins.</p> <p>The protection of outstanding natural features and natural landscapes.</p>
<p>P1.13</p> <p>To maintain or enhance the natural character and nature conservation values of the beds and margins of the lakes, rivers and wetlands.</p>
<p>P1.16</p> <p>To encourage and promote the regeneration and reinstatement of indigenous ecosystems on the margins of lakes, rivers and wetlands.</p>
<p>P1.17</p> <p>To encourage the retention and planting of trees, and their appropriate maintenance.</p>

<b>4.2 Landscape and Visual Amenity</b>
<p>O2 Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values.</p>
<p>Under '1. Future Development':</p> <p>P(a)</p> <p>To avoid, remedy or mitigate the adverse effects of development and/or subdivision in those areas of the District where the landscape and visual amenity values are vulnerable to degradation.</p> <p>P(b)</p> <p>To encourage development and/or subdivision to occur in those areas of the District with greater potential to absorb change without detracting from landscape and visual amenity values.</p> <p>P(c)</p> <p>To ensure subdivision and/or development harmonises with local topography and ecological systems and other nature conservation values as far as possible.</p>
<p>Under '2. Outstanding Natural Landscapes' (District Wide/Greater Wakatipu):</p> <p>P(a)</p> <p>To maintain the openness of those outstanding natural landscapes and features which have an open character at present.</p> <p>P(b)</p> <p>To avoid subdivision and development in those parts of the outstanding natural landscapes with little or no capacity to absorb change.</p> <p>P(c)</p> <p>To allow limited subdivision and development in those areas with higher potential to absorb change.</p> <p>P(d)</p> <p>To recognise and provide for the importance of protecting the naturalness and enhancing amenity values of views from public roads.</p>



## 4.2 Landscape and Visual Amenity *(continued)*

Under '5. Outstanding Natural Features'; The following part of P(a) is of relevance:

To avoid subdivision and/or development on and in the vicinity of distinctive landforms and landscape features, including: ...

– unless the subdivision and/or development will not result in adverse effects which will be more than minor on:

- (i) Landscape values and natural character; and
- (ii) Visual amenity values

– recognising and providing for:

- (iii) The desirability of ensuring that buildings and structures and associated roading plans and boundary developments have a visual impact which will be no more than minor in the context of the outstanding natural feature, that is, the building etc is reasonably difficult to see;
- (iv) The need to avoid further cumulative deterioration of the outstanding natural features;
- (v) The importance of protecting the naturalness and enhancing the amenity values of views from public places and public roads;
- (vi) The essential importance in this area of protecting and enhancing the naturalness of the landscape.

Under '6. Urban Development':

P(b)

To discourage urban subdivision and development in the other (i.e. not Wakatipu basin) outstanding natural landscapes (and features) and in the visual amenity landscapes of the district.

P(c)

To avoid, remedy and mitigate the adverse effects of urban subdivision and development where it does occur in the other outstanding natural landscapes and the district by:

- maintaining the open character of those outstanding natural landscapes which are open at the date this plan becomes operative;
- ensuring that the subdivision and development does not sprawl along roads.

P(d)

To avoid remedy and mitigate the adverse effects of urban subdivision and development in visual amenity landscapes by avoiding sprawling subdivision and development along roads.

Under '8. Avoiding Cumulative Degradation'; The following P:

In applying the policies above the Council's policy is:

- (a) to ensure that the density of subdivision and development does not increase to a point where the benefits of further planting and building are outweighed by the adverse effect on landscape values of over domestication of the landscape
- (b) to encourage comprehensive and sympathetic development of rural areas.

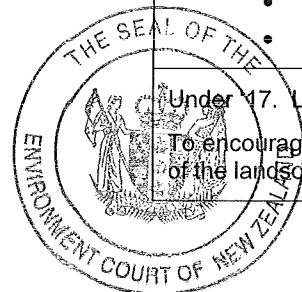
Under '9. Structures'; The following P:

To preserve the visual coherence of:

- (a) outstanding natural landscapes and features and visual amenity landscapes by:
  - encouraging structures which are in harmony with the line and form of the landscape;
  - avoiding, remedying or mitigating any adverse effects of structures on the skyline, ridges and prominent slopes and hilltops;
  - encouraging the colour of buildings and structures to complement the dominant colours in the landscape;
  - encouraging placement of structures in locations where they are in harmony with the landscape;
  - promoting the use of local, natural materials in construction.

Under '17. Land Use'; The following P:

To encourage land use in a manner which minimises adverse effects on the open character and visual coherence of the landscape.



<b>4.4 Open Space and Recreation</b>
<b>4.4.3 Objectives and policies</b>
O2 – Environmental Effects: Recreational activities and facilities undertaken in a way which avoids, remedies or mitigates significant adverse effects on the environment or on the recreation opportunities available within the District.
P2.1 To avoid, remedy or mitigate the adverse effects of commercial recreational activities on the natural character, peace and tranquility of the District.
P2.2 To ensure the scale and location of the buildings, noise and lighting associated with recreational activities are consistent with the level of amenity anticipated in the surrounding environment.
P2.3 To ensure the adverse effects of the development of buildings and other structures, earthworks and plantings in areas of open space or recreation on the District's outstanding natural features and landscapes or significant natural conservation values are avoided, remedied or mitigated.
P2.4 To avoid, remedy or mitigate any adverse effects commercial recreation may have on the range of recreational activities available in the District and the quality of the experience of people partaking of these opportunities.
P2.5 To ensure the development and use of open space and recreational facilities does not detract from a safe and efficient system for the movement of people and goods or the amenity of adjoining roads.
P2.6 To maintain and enhance open space and recreational areas so as to avoid, remedy or mitigate any adverse effects on the visual amenity of the surrounding environment, including its natural scenic and heritage values.
P2.7 To avoid, remedy or mitigate the adverse effects of commercial recreation activities on the District's indigenous vegetation.
O3 – Effective Use Effective use and functioning of open space and recreational areas in meeting the needs of the District's resident and visitors.
P3.1 To recognise and avoid, remedy or mitigate conflicts between different types of recreational activities, whilst at the same time encouraging multiple use of public open space and recreational area wherever possible and practicable.
P3.2 To ascertain and incorporate the needs of communities by encouraging effective public participation in the design, development and management of public open space and recreational areas.
O4 – Esplanade Access A level of public access to and along the District's rivers, lakes and wetlands, adequate to provide for the current and foreseeable recreational and leisure needs of residents and visitors to the District.



<b>4.4 Open Space and Recreation</b> <i>(continued)</i>
<b>4.4.3 Objectives and policies</b>
P4.5 To have regard to any adverse effects along the margins of the District's lakes, rivers and wetlands when considering resource consents.
P4.7 To consider the need for vehicle parking at public access points along esplanade reserves, esplanade strips, marginal strips and access strips when the purpose of those reserves and strips is for public access or recreation and are adjacent to arterial roads.
O: Recreational activities undertaken in a manner which avoids, remedies or mitigates, their potential adverse effects on: <ul style="list-style-type: none"> <li>• natural conservation values and wildlife habitats;</li> <li>• other recreational values;</li> <li>• public health and safety;</li> <li>• takata whenua values; and</li> <li>• general amenity values.</li> </ul>
P1 To identify the different types of lakes and rivers in the District and the different recreational experiences offered by these lakes and rivers, in terms of: <ol style="list-style-type: none"> <li>(a) outstanding natural characteristics, wild and scenic beauty, aesthetic coherence, biological diversity, ecosystem form, function and integrity, sense of isolation and recreational amenity;</li> <li>(b) multiple use and proximity to population centres.</li> </ol>
P2 To enable people to have access to a wide range of recreation experiences on the lakes and rivers, based on the identified characteristic and environmental limits of the various parts of each lake and river.
P3 On each lake and river, to provide for the range of recreational experiences and activities which are most suited to and benefit from the particular natural characteristics.
P4 To avoid or mitigate the adverse effect of frequent, large-scale or intrusive activities such as those with high levels of noise, vibration, speed and wash.
P6 To ensure that any controls that are imposed on recreational activities through the District Plan are certain, understandable and enforceable, given the transient nature of many of the people undertaking activities on the District's lakes and rivers and the brief, peak period of private recreational activity.
P12 To avoid adverse effects on the public availability and enjoyment of the margins of the lakes and rivers.
P13 To ensure that the location, design and use of structures and facilities which pass across or through the surface of any lake and river or are attached to the bank of any lake and river, are such that any adverse effects on visual qualities, safety and conflicts with recreational and other activities on the lakes and rivers are avoided or mitigated.



**5.2 Rural General and Ski Area – Character and Landscape Value**

O1 To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.

P1.1

Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.

P1.6

Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.

P1.7

Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.



## Annexure 3

### Preliminary drafting of conditions subject to submissions

#### LAND USE CONSENT

This land use consent is for non-motorised watersports and other related specified activities on and in relation to Lake Wanaka including:

- (a) the construction and operation of a building ('the facility') providing for secure storage, exercise room, kitchen, changing toilet and shower facilities, and externally accessible public toilets and changing rooms and public washdown facilities, decking and seating area
- (b) bike racks;
- (c) carparking; and
- (d) at the consent holder's option, a boardwalk

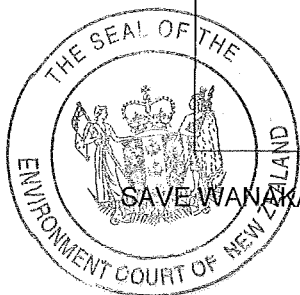
(together, 'the development') in accordance with and subject to the conditions below.

#### CONDITIONS

##### General Conditions

1. The development must be carried out in accordance with the applicable plans specified below:

Plans (1) and (2) in the right hand column apply only if the development includes a boardwalk under Condition 2	<ul style="list-style-type: none"> <li>(1) Sheet RC – 01 – B1, dated March 2017, Site Plan including Bund</li> <li>(2) Sheet RC – 03 – B1, dated March 2017, Floor Plan</li> <li>(3) Combined Water Sports Facility Building Landscape Concept Plan – Direction [3](a), dated 30 March 2017</li> <li>(4) Cross-section, elevation and immediate curtilage treatment plans approved under Condition 3.</li> </ul>
Plans (4) to (7) inclusive in the right hand column apply only if the development does not include a boardwalk under Condition 3	<ul style="list-style-type: none"> <li>(4) Sheet RC – 01 – B2, dated March 2017, Site Plan including Bund</li> <li>(5) Sheet RC – 03 – B2, dated March 2017, Floor Plan</li> <li>(6) Combined Water Sports Facility Building Landscape Concept Plan – Trust's Preferred Option, dated 30 March 2017</li> <li>(7) The following plans all dated February 2016 and stamped 'Queenstown Lakes District Council Approved Plan: RM150679 Monday, 25 July 2016:               <ul style="list-style-type: none"> <li>(a) Sheet RC – 04 – A, sections AA/BB;</li> <li>(b) Sheet RC – 05 – A, section DD;</li> <li>(c) Sheet RC – 06 – A, Elevation North &amp; East;</li> <li>(d) Sheet RC – 07 – A, Elevation South &amp; West;</li> <li>(e) Sheet RC – 08, Immediate Curtilage Treatment.</li> </ul> </li> </ul>





2. The consent holder may, but is not required to, construct as part of the proposal a boardwalk ('boardwalk') that meets the following specifications:
  - (a) it must comply with the minimum width for people with disabilities prescribed in D1/AS1 (Access Routes) of the New Zealand Building Code and in any case be not less than 1200mm in width at its narrowest point(s);
  - (b) it must be positioned in general accordance with the plans specified in Condition 3 below;
  - (c) it must be tapered to ground at each end in the location show in on the plans specified in Condition 3 in order to integrate with the level of pathways at each end of the building and be integrated with decking at the front of the building; and
  - (d) it must be available for public usage.
  
3. If the consent holder elects to construct the boardwalk under Condition 2, the consent holder must, prior to commencing construction of the development, submit to the Council and have approved by General Manager, Planning and Development or delegate (GMPD) updated cross-section, elevation and immediate curtilage treatment plans ('updated plans'). To be so approved the updated plans must in the reasonable opinion of the GMPD be materially in accordance with the following plans all dated February 2016 and stamped 'Queenstown Lakes District Council Approved Plan: RM150679 Monday, 25 July 2016' (but updated to reflect modifications to the development by the Environment Court's Interim Decision [2017] NZEnvC 88):
  - (a) Sheet RC – 04 – A, sections AA/BB;
  - (b) Sheet RC – 05 – A, section DD;
  - (c) Sheet RC – 06 – A, Elevation North & East;
  - (d) Sheet RC – 07 – A, Elevation South & West;
  - (e) Sheet RC – 08, Immediate Curtilage Treatment.
  
4. This consent must not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
  
5. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to the Council an initial fee of \$290. This initial fee has been set under section 36(1) of the



### Landscaping and maintenance

6. The consent holder must implement the applicable landscape plan (3) or (6) of Condition 1 ('landscape plan') as follows:
- (a) all earth mounding and bunding must be completed, all proposed trees planted and all areas shown as 'grass' sown or re-sown or otherwise restored to the reasonable satisfaction of the Parks & Reserves Planning Manager or delegate ('PRP Manager') within 3 months of the completion of construction of the building (not including interior fitout); and
  - (b) the carpark and accesses must be sealed, timber bollards and rocks put in place and all other landscaping completed to the reasonable satisfaction of the PRP Manager within five months of the completion of construction of the building (not including interior fitout).
7. The consent holder must:
- (a) for a period of not less than three years from the date of completion of planting of all trees shown as proposed on the landscape plan ('maintenance period'), maintain those trees in a healthy growing state to the reasonable satisfaction of the PRP Manager; and
  - (b) within the next autumn/winter planting season replace in accordance with the landscape plan all trees that die or that, in the reasonable opinion of the PRP Manager, are so damaged or unhealthy as to be no longer suitable for achieving the purpose of the landscape plan; and
  - (c) if within 12 months following the maintenance period any tree dies or, in the reasonable opinion of the PRP Manager, are so damaged or unhealthy as to be no longer suitable for achieving the purpose of the landscape plan, reimburse the Council so much of the actual and reasonable cost of replacing the tree as the PRP Manager may so demand in writing.
8. External lighting may be installed and used provided that it is:
- (a) down lighting; and
  - (b) not used to accentuate or highlight built form; and
  - (c) in accordance with the Council's *Southern Light, A lighting strategy for the Queenstown Lakes District*.



### Design materials and colours

9. The following materials and colours must be used on the specified elements of the building:

Element	Material	Colour
Walls	Cedar Weatherboard (including cedar battarn rain screen)  Corten steel	Oiled and natural weathered
Roof	Longrun Colorsteel	Ironsand
Joinery		Ironsand
Roller Doors	Coloursteel	Ironsand
Decking and seating (and any boardwalk)	Timber	Natural weathered

### Signage

10. A single sign limited to the name of the building (and information as to user pricing and access) may be attached to the building but only on its west wall and as far as practicable from the lake side. The sign must not exceed 1m<sup>2</sup>.

### Nature and scale of activities

11. The building must not be operated outside the hours of 05:00 am-23:00 pm, except that the externally accessible public toilets and changing rooms may be operated outside those operating hours provided this is in accordance with Council's other public toilets and change facilities. [subject to change in final decision]
12. The only activities that may be undertaken at the facility are:
- non-motorised watersports activities (including races, regattas, and training sessions);
  - prize-giving events and social gatherings for or in relation to those activities.
13. Music may not be played at any time at or in the vicinity of the facility except where the following conditions (and Condition 14) are met:
- music played through any speaker(s) directed outside the building must not be amplified; and
  - music played inside the building that is amplified must not give rise to excessive noise (within the meaning of the RMA) being experienced by any person outside the building.



14. Any sound from activity undertaken at the building, measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008, must not exceed the following noise limits at any point within the notional boundary of any residential unit:

(a)	daytime	(0800 to 2000 hrs)	50 dB LAeq(15 min)
(b)	night-time	(2000 to 0800 hrs)	40 dB LAeq(15 min)
(c)	night-time	(2000 to 0800 hrs)	70 dB LAFmax.

### Construction Management Plan

15. No construction work may be undertaken except in accordance with a Construction Management Plan ('CMP') that has been approved by the General Manager, Planning and Development or delegate ('GMPD Manager') as being suitable for ensuring:
- all machinery is clean and well maintained before entering the work site; and
  - all practical measures are taken to minimise the risk of contamination to any waterway (for example, but not limited to, discharge of wet concrete or fuel from machinery); and
  - suitable methods and materials are available and used for the containment and remediation of any spill; and
  - construction is managed to comply with Conditions 17-25 (as to protection of the trees); and
  - construction is managed with proper regard to the sensitivities of the receiving environment.

### Accidental Discovery Protocol

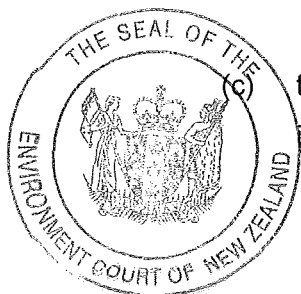
16. The consent holder must comply with the following Accidental Discovery Protocol:
- if the consent holder discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder shall without delay:
    - notify Council, Tangata whenua and Heritage New Zealand Pouhere Taonga and in the case of skeletal remains, the New Zealand Police.
    - stop work within the immediate vicinity of the discovery to allow a site inspection by the Heritage New Zealand Pouhere Taonga and the appropriate runanga and their advisors, who shall determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.



- (b) any koiwi tangata discovered shall be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation. Site work shall recommence following consultation with Council, the Heritage New Zealand Pouhere Taonga, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.
- (c) if the consent holder discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder shall without delay:
  - (i) stop work within the immediate vicinity of the discovery or disturbance and;
  - (ii) advise Council, the Heritage New Zealand Pouhere Taonga and in the case of Maori features or materials, the Tangata whenua and if required, shall make an application for an Archaeological Authority pursuant to the New Zealand Pouhere Taonga Act 2014 and;
  - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.
- (d) Site work may only recommence following consultation with Council.

### Protection of trees

17. No construction works may be undertaken until, to the reasonable satisfaction of the PRP Manager:
- (a) the consent holder has appointed an arborist to supervise all work in the vicinity of the trees and whom the PRP Manager is reasonably satisfied has the requisite qualifications and experience in tree protection systems and construction methodologies and ability to coordinate site works to ensure that the tree protection methodology is correctly implemented ('Works Arborist');
  - (b) the consent holder has arranged, and given an invitation (with at least 5 working days' notice) to the PRP Manager's representative to attend, a pre-start meeting to involve the site foreman and contractor for the work and the Works Arborist for the purpose of ensuring those undertaking the works are aware of the following matters in order to ensure compliance with Conditions 18-25:
    - (i) the locations and relevant characteristics of the trees to be retained; and
    - (ii) the role of the Works Arborist in giving direction on matters as to the methodology and timing of the works to ensure protection of the trees to be retained.
- that meeting has taken place; and its agreed outcomes documented (and a copy is provided to the PRP Manager on request).



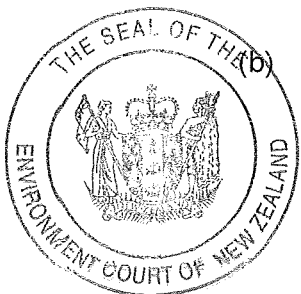
18. Prior to the commencement of construction works, a Tree Protection Management Plan ('TPMP') to the satisfaction of the Works Arborist must be prepared and submitted to the PRP Manager for approval as providing suitable methodology for the protection from harm during construction of all trees that are to be retained including as to:
- (a) enclosure of trees with protective fences including arrangements for management of the moving of fences from time to time to protect the trees;
  - (b) management of the storage, emptying and disposal of materials to ensure protection of the trees;
  - (c) management on site of the movement, parking and storage of vehicles and machinery under or in the vicinity of the driplines or in the vicinity of the root zones of trees;
  - (d) avoidance as far as practicable of damage to roots including use of hand saws or loppers, use of temporary protective material while roots are exposed, and excavation and backfilling methodologies (including as to the use of machine excavation and hand digging);
  - (e) installation of piles to minimise risk to tree roots, including arrangements for prior probing and use of hand digging and, for significant roots (>35mm diameter) arrangements for any necessary adjustment to the exact location of the pile;
  - (f) pouring of any concrete or asphalt over any exposed roots or into any excavation containing exposed roots, including prior coverage of exposed roots with suitable materials to prevent contact with the concrete or asphalt.
  - (g) protocols for obtaining prior written approval from the Works Arborist for the purposes of any of Conditions 21-24.
19. The consent holder may, at any time, prepare and submit for approval in accordance with Condition 18 an amended TPMP. Upon the date of its approval, the amended TPMP will supersede the prior TPMP. For the purposes of this consent, 'TPMP' is deemed to include reference to any approved amended TPMP.
20. The TPMP must be complied with in all construction works.
21. No construction works may take place and no vehicle or machinery may be stored or operated within the root zone and/or drip line of any trees except in accordance with any prior written approval by the Works Arborist. Such approval must not be given unless the Works Arborist is satisfied that suitable arrangements are in place to avoid any detrimental effect to the tree(s) through compaction, physical damage, spillage of lubricants or fuels or discharge of contaminants including emissions.



22. Prior to any works commencing in the vicinity of any tree to be retained the tree must be surrounded by a protective fence of such materials and in such location as is approved by the Works Arborist ('Protective Fence').
23. Within the area inside a Protective Fence, none of the following may take place except in accordance with any prior written approval by the Works Arborist:
- (a) storage, emptying or disposal of any material or rubbish;
  - (b) manoeuvring or parking or storage of any vehicle or machinery.
24. No root > 35mm of any tree to be retained may be severed unless the Works Arborist gives prior written approval upon being satisfied of each of the following:
- (a) The root is impeding construction works; and
  - (b) There is no practicable alternative works that would avoid severance of the root; and
  - (c) Severance of the root will not be detrimental to the health and stability of the tree.
25. At the completion of construction works, the consent holder must arrange to be provided to the PRP Manager a written report by the Works Arborist including the following:
- (a) copies of all written approvals of the Works Arborist for the purposes of any of Conditions 19, 21, and 23;
  - (b) a statement by the Works Arborist concerning whether or not s/he is satisfied that the works have been satisfactorily completed and making recommendations as to the remediation of anything s/he considers unsatisfactory.

### **Traffic and site management plans**

26. Prior to commencing works on site, the consent holder must:
- (a) prepare and obtain approval by the [specify relevant Council manager or delegate] of a traffic management plan to minimise disruption, inconvenience or delay to the parking of vehicles and the safe movement of vehicles, pedestrians and cyclists and to manage the installation of any temporary safety barriers within or adjacent to Roys Bay Recreation Reserve and/or the road reserve during the construction period ('TMP');
  - (b) prepare and obtain approval by the Council's Parks and Reserves Manager of a site management plan to minimise disruption to and ensure the safe movement of pedestrians and cyclists within the reserve during the construction period ('SMP').





27. The consent holder must comply with the approved TMP and SMP.

## **Engineering**

### **General**

28. All engineering works must be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being QLDC's Land Development and Subdivision Code of Practice adopted on 3rd June 2015 and subsequent amendments to that document up to the date of issue of any resource consent.

**Note:** The current standards are available on Council's website via the following link:  
<http://www.qldc.govt.nz/planning/resource-consents/qldc-land-development-and-subdivision-code-of-practice/>

### **Other pre-commencement engineering requirements**

29. The consent holder shall provide a letter to the Principal Resource Management Engineer at Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.7 and 1.8 of QLDC's Land Development and Subdivision Code of Practice, in relation to this development.
30. Detailed geotechnical assessment shall be carried out by a suitably qualified and experienced engineer to confirm the nature of materials at depth and any geotechnical constraints which may impact on building foundation design, in accordance with the recommendations of the GeoSolve Ltd report (dated June 2015, GeoSolve Ref: 140769). A geotechnical report containing the results of this assessment shall be submitted to the Principal Resource Management Engineer at Council, along with a detailed design for the building foundations and corresponding Producer Statement, to mitigate any geotechnical constraints.

### **Engineering specifications, calculations and plans**

31. Prior to the commencement of any works on the site the consent holder shall provide to the Principal Resource Management Engineer at Council for review and certification, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition 32, to detail the following engineering works required:





- (a) the provision of a water supply to the development. This shall include an Acuflo GM900 as the toby valve. The costs of the connection shall be borne by the consent holder.
- (b) the provision of a foul sewer connection to the development. The costs of the connection shall be borne by the consent holder.
- (c) the stormwater outlet located on the east side of the proposed building is to be relocated to avoid compromising the foundations of the building.
- (d) the provision of a connection from all building roof areas within the development to the Council reticulated stormwater disposal system. The individual lateral connections shall be designed to provide adequate drainage.
- (f) the provision of Design Certificates for all engineering works associated with this subdivision/development submitted by a suitably qualified design professional (for clarification this shall include all Roads, Water, Wastewater and Stormwater reticulation). The certificates shall be in the format of the QLDC's Land Development and Subdivision Code of Practice Schedule 1A Certificate.

32. Prior to the occupation of the building, the consent holder shall complete the following:

- (a) the submission of 'as-built' plans and information required to detail all engineering works completed in relation to or in association with this subdivision/development at the consent holder's cost. This information shall be formatted in accordance with Council's 'as-built' standards and shall include all Roads (including right of way and access lots), Water, Wastewater and Stormwater reticulation (including private laterals and toby positions).
- (b) the completion and implementation of all certified works detailed in Condition (31) above.
- (c) the consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.
- (d) any power supply and/or telecommunications connections to the building shall be underground from existing reticulation and in accordance with any requirements/standards of the network provider's requirements.
- (e) the flood diversion bund shall be constructed in accordance with the recommendations made in the GeoSolve Ltd report (dated March 2015, GeoSolve Ref: 140038).
- (f) the submission of Completion Certificates from both the Contractor and Approved Engineer for all infrastructure engineering works completed in relation to or in association with this subdivision/development (for clarification this shall include all Roads, Water, Wastewater and Stormwater reticulation). The certificates shall be in the format of the QLDC's Land Development and Subdivision Code of Practice Schedule 1B and 1C Certificate.



### **Storage of boats and parking and storage of vehicles and Regatta Plans**

33. Boats that are stored in the building may be temporarily placed outside the building in preparation for launching or return to the building but must be stored inside the building at all other times.:
34. If the Council's Parks and Reserves Manager so requests at any time prior to any regatta that is hosted at the facility, the consent holder must prepare and submit for approval a management plan for the parking of vehicles and storage and management of the movement of boats to minimise disruption or inconvenience to other users of the reserve ('Regatta Plan').
35. The consent holder must comply with any Regatta Plan approved under Condition 34.
36. Trailers and other vehicles must not be parked except in the adjacent Council carpark and in accordance with any applicable Council bylaw or rule for carparking.

### **Annual report on community usage, fees and access**

37. By the first anniversary of the commissioning of the facility and, thereafter on [an annual basis], the consent holder must prepare and, on request, make available to the Council a written report on:
  - (a) how the facility is supporting non-motorised watersports on Lake Wanaka conducted by community groups or incorporated bodies of the Wanaka region and ad hoc or seasonal visitors to the Wanaka region; and
  - (b) how the facility is enabling general public participation in non-motorised watersports including youth participation; and
  - (c) what fee charging and access arrangements are being applied for usage of the facility.

### **Display and publication of fees and access rules**

38. The consent holder must ensure that up-to-date information as to the fees that it charges and access rules is available to users of the facility and the public:
  - (a) by pamphlets that can be picked up from the facility; and
  - (b) through the Council's website or such other website as the General Manager, Planning & Development or delegate may specify.



**Review**

39. Within ten working days of each anniversary of the date of the Environment Court's Final Decision (decision number to be inserted when Final Decision issues) the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:
- (a) to deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.
  - (b) to deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered, including (without limitation) anything in relation to Conditions 11-14.
  - (c) to avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

**Advice Note:**

1. *This consent triggers a requirement for Development Contributions, please see the attached information sheet for more details on when a development contribution is triggered and when it is payable. For further information please contact the DCN Officer at QLDC.*

