



QUEENSTOWN
LAKES DISTRICT
COUNCIL

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DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	Sharpridge Trust
RM reference:	RM140373
Location:	Wanaka-Mount Aspiring Road
Proposal:	Consent is sought to subdivide the site (currently held in three separate Computer Freehold Registers (CFR)) to create four lots (proposed Lots 1, 3, 4, and 6), to identify building platforms on Lots 1, 3, and 6, and to undertake associated landscaping, earthworks, servicing and access construction. Proposed Lots 1 and 4 are to be amalgamated and held in the same CFR.
Type of Consent:	Subdivision consent and land use consent
Legal Description:	Section 11 Block XIII Lower Wanaka Survey District (CFR OT9C/939); Lot 2 Deposited Plan 306288 (CFR 24711); and Lot 1 Deposited Plan 306288 (CFR 24710).
Zoning:	Rural General
Activity Status:	Discretionary
Notification:	Publicly Notified
Commissioner:	Commissioner Denis Nugent
Date Issued:	2 March 2015
Decision:	Consent is refused.

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of an Application for
Resource Consent to
Subdivide and Identify
Building Platforms by
Sharpridge Trust
RM140373**DECISION OF COMMISSIONER DENIS NUGENT****Introduction**

1. The applicant presently holds a resource consent (RM100798) to create four lots, Lots 1 – 4, with Lots 1 and 4 to be amalgamated, and Lots 2 and 3 to be amalgamated. That consent also identified building platforms on Lots 1 and 3. While this application is a new application, it incorporates some of the features of consent RM100798. In particular, Lot 3 remains unaltered, as does the building platform identified on Lot 3. The essential changes proposed by this application are the relocation of the building platform on Lot 1, although the Lot dimensions and access remain largely unaltered, and the creation of a new Lot 6 in the northeast corner of the site and the identification of a building platform on that lot, including provision of access. Various changes to environmental management of the site are also proposed.

Hearing and Site Visit

2. I undertook a site visit on 11 February 2015 accompanied by Ms Afifi and Dr Read. This included viewing the property from the lake as well as walking over the property.
3. I undertook a separate inspection from Wanaka-Mount Aspiring Road on 20 February 2015.
4. The hearing was held in Wanaka on 12 February 2015.

AppearancesFor Applicant

- Mr Rex Chapman, Counsel
- Mr Brian Weedon, Registered Surveyor

- Mr Struan Minty, son of settlor of Trust and Trustee
- Ms Gillian Lucas, daughter of settlor of Trust and Trustee
- Ms Elizabeth Solakos, daughter of settlor of Trust
- Mr Brett Giddens, Planner
- Mr Ben Espie, Landscape Architect

Submitters in Support

- Mr Steve Norman
- Mr Simon Laming on behalf of the Laming Family Trust

Submitter in Opposition

- Upper Clutha Environmental Society (Inc) – tabled

Council Officers

- Ms Hanna Afifi, Senior Planner
- Dr Marion Read, Consultant Landscape Architect
- Ms Rachel Beer, Hearing Secretary

Late Submissions

5. Three submissions were received after the closing date of 27 November 2014. These were lodged by:
 - Guardians of Lake Wanaka – 1 working day late;
 - Mr F J Culverwell - 6 working days late; and
 - Ms S Ironside - 6 working days late.
6. Mr Chapman advised that the applicant had no objection to the time being waived for these submissions. After considering the matters in s.37A of the Act I am satisfied that it is appropriate to waive the time limits for these submissions.

The Application

7. Consent is sought to create four allotments, Lots 1 (21.22 ha), 3 (9.87 ha), 4 (90.17 ha) and 6 (15.3 ha)¹ and identify building platforms on Lots, 1, 3 and 6. A condition was offered by the applicant requiring that Lots 1 and 4 be held together in the Computer Freehold Register.²

¹ These sizes are taken from the Subdivision Plan prepared by Brian Weedon Land Surveying Ltd dated 4 Dec 2014 presented by Mr Giddens at the hearing. They vary from the sizes in the original application but the changes are not material.

² Suggested Condition 15 in Attachment F to Mr Giddens' evidence.

8. The building platforms on Lots 1 and 3 would each be 1,000m², and that on Lot 6 960m². Lot 1 would have a curtilage area outside of the building platform of some 4,743m² and Lot 6 would similarly have an additional curtilage area of some 1,534m².³ The size of the curtilage area proposed for Lot 3 was not provided.
9. A single access on to Wanaka-Mount Aspiring Road is proposed in the southwest corner of the property. This access would drop down from the road onto the flat valley floor within Lot 4. The access to Lots 1 and 3 would cross the valley and skirt the southern boundary of Lot 1 before branching, with that for Lot 3 running south and east across Lot 4 before entering Lot 3 some 900 m southwest of that lot's building platform. The access to Lot 1 would run within Lot 4 along the eastern boundary of Lot 1 and thence up a gully to the building platform on Lot 1. The access to Lot 6 would depart from the common access in the valley floor some 300 m from the property entrance and run roughly north through Lot 4 just to the east of an existing watercourse. Within Lot 6, it is proposed to run north until it meets the northwest boundary of the lot, skirt along the base of a low hill and curve around the edge of the ridge onto the building platform. Each access way would have a minimum carriageway of 3.5 m with a gravel surface. The access to Lot 6 would have a length of 1,550 m. Where the access roads cross Lot 4 they would be protected by right of way easements.
10. The applicant proposed landscaping around building platforms and managed retirement of land to allow natural regeneration. The building platform on Lot 1 sits at an elevation of some 340 masl on the internal edge of a small basin with ridges to the west and northeast. West of the building platform on Lot 1 it is proposed to create a 2 m high naturalistic mound to be planted, predominantly in kanuka. To the east a further strip of screen planting of kanuka is proposed. A condition is proposed limiting the height of any building on this platform to no more than 5 m above the lowest point of existing ground level within the platform.
11. The building platform on Lot 6 is located in the head of a small gully running to the north and northwest. It is at an elevation of some 329 masl and slopes downward gently to the north. The curtilage area to the north is a continuation of this slope until the 328 m contour is reached, whence the land drops quickly to the north and west. The building platform is bounded by ridges to the east and west, with a low saddle between the ridges to the south. Screen planting of kanuka is proposed to the south, west, northwest and a smaller area to the

³

Lot 1 Landscape Plan and New Lot 6, each plan by Town Planning Group and dated 27.06.2014

northeast. A small amount of mounding is also proposed to the northwest. Part of the purpose of the screen planting in the northwest is to mask the access way as it crosses the end of the ridge to enter the building platform.

12. The plan provided for the Lot 3 building platform was that from the previous application granted consent in RM100798.
13. Conditions proposed limiting the height of buildings on the building platforms on Lots 3 and 6 to 5.5 m above the lowest existing ground level on the respective platform. Additional conditions proposed limiting the reflectivity values of roofing and exterior cladding materials.
14. A Land-Use Plan identified the areas to be set aside for light grazing/passive revegetation, passive revegetation, wetland revegetation and pastoral farming. I was told that the pastoral farming area totalled 67 ha and that the combined revegetation areas amounted to 70 ha. In actual fact the revegetation areas would be perhaps around 1 hectare less than suggested by the time building platforms and curtilage areas had been removed. In any event, the number was arrived at based on a re-allocation of areas used in the previous application and an estimate of how much of Lot 6 was to be used for grazing. I can do no more than accept the figures as an estimation.
15. The suggested conditions included requirements for the preparation and lodgement with the Council of an Ecological Planting and Management Plan that would set out the planting and management regime for the property. The applicant also volunteered a condition that there be no further subdivision of the four lots.⁴

Reasons for Application

16. The land is zoned Rural General under the Operative District Plan. Under Rule 5.3.3.3(i)(b) the identification of building platforms of between 70 m² and 1,000 m² is a discretionary activity.
17. Under Rule 5.3.5.1(viii) consent is required as a restricted discretionary activity for earthworks exceeding the following relevant limits:
 - a) A maximum area of bare earth exposed of 2,500 m² per site within any consecutive 12 month period; and
 - b) A maximum volume of moved earth of 1,000 m³ per site within any consecutive 12 month period.

⁴ Condition 17(h) in Attachment F to Mr Giddens' evidence.

18. Under rule 15.2.3.3(vi) all subdivision and location of building platforms is a discretionary activity.
19. Overall, the proposal is to be considered a discretionary activity.

Relevant Statutory Provisions

20. The relevant provisions of section 104 are:

(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—*

(i) *a national environmental standard:*

(ii) *other regulations:*

(iii) *a national policy statement:*

...

(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.*

...

(3) *A consent authority must not,—*

(a) *when considering an application, have regard to—*

...

- (ii) *any effect on a person who has given written approval to the application:*

...

- (5) *A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.*
- (6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*
- (7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.*

21. Section 106 provides that I may refuse a subdivision consent or grant a subdivision consent with conditions in certain situations relating to natural hazards and adequacy of access.
22. Under s.104B I may grant or refuse consent. If I grant consent, I may impose conditions under s.108, and in respect of the subdivision component, additionally impose conditions under s.220.

National Environmental Standard – Land Contamination

23. I understand from the information provided with the application and the Council officers' report that this is not a HAIL site and therefore this NES does not apply.

Relevant Plan Provisions

24. I was referred to the provisions of Chapters 5 and 9 in the Otago Regional Policy Statement.
25. In the District Plan I was referred to the objectives and policies in:
- Part 4 – District Wide Issues
 - Part 5 – Rural Areas
 - Part 15 – Subdivision, Development and Financial Contributions.

26. Of particular relevance were the Assessment Matters contained in Section 5.4.2.2 of the District Plan.

The Existing Environment

The Site

27. The site is held in three Computer Freehold Registers (CFR). In total it comprises 137.1698 ha. It is bounded on the west by Wanaka-Mount Aspiring Road and to the south by Lake Road (unformed). The western part of the site comprises a low broad valley in pasture, with low grassy slopes and terraces on either side. Through the middle of this area a watercourse runs from near the southwest corner roughly northward leaving the property through the northern boundary and ultimately reaching the lake in Damper Bay. In the northwest corner of the site is a wetland area adjoining the road. This drains through a small stream to join the central watercourse some 90 m before it leave the property.
28. Most of the eastern side of the site is dominated by a series of roche moutonnee landforms of varying sizes. The largest of these, Ironside Hill, is located within the reserve between the site and Lake Wanaka. This hillocky area is in pasture, but also has a scattering of kanuka and grey shrubland. A second wetland is located in the northern part of the site, in a hollow facing south between a group of rocky hillocks. To the south, there are tongues of flat land running toward the lake
29. There is a collection of farm buildings and stockyards in the southwest corner of the site, and a derelict cottage on the flat land close to the southern boundary. There are occasional rows of exotic trees, mainly in, but not limited to, the southwest quadrant. There is also a collection of exotic trees along the southern boundary to the reserve adjoining the lake.

Surrounding Environment

30. I have already mentioned Ironside Hill, which dominates the skyline between the site and the lake. This is within a lakeside reserve I understand to be controlled by the Council. Where it adjoins the site, this reserve area ranges from approximately 30 – 150 m in width. I was advised that the applicant has a grazing lease over this land. This land, similar to the eastern part of the site, largely comprises roche moutonnee and steep slopes to the lake.
31. The Millennium Track, for walking and cycling between Waterfall Creek, and ultimately Wanaka, in the south, and Glendhu Bay to the northwest, is located within this reserve. Pedestrian access is also available along the southern

boundary, on the unformed Lake Road, from Wanaka–Mount Aspiring Road to the Millennium Track. I understand that it is possible to walk up Ironside Hill from the Millennium Track.

32. West of Wanaka-Mount Aspiring Road is the northern end of the Roys Peak – Mt Alpha ridge. The commencement of the Roys Peak Track, and its associated car park are some 200 m north of the property entrance. Opposite the southern part of the site, flat land extends to the west of Wanaka-Mount Aspiring Road and there is a house set well back from the road immediately opposite the property entrance.
33. Immediately north of the site is another collection of roche moutonnee defining the east side and backdrop of Damper Bay. As Wanaka-Mount Aspiring Road runs around the northern end of the Roys Peak ridge, a flat area runs off to the northeast to Damper Bay, and then more roche moutonnee separate that bay from Glendhu Bay.
34. As one heads south from the site toward Wanaka, there is an increasing frequency, albeit well separated, of dwellings and access ways, until, when one reaches Ruby Island Road, built form and vineyards become more dominant in the landscape.

Existing Consent

35. Unimplemented resource consent RM100798 provides for the subdivision of the site into four allotments, with amalgamations creating two sites. It also provides for a building platform on each site, being the same as proposed in this application on Lot 3 and a platform in a different location on Lot 1. Ms Afifi set out the relevant conditions imposed in that consent. I agree with her conclusion that as it is likely to be implemented if this application is refused consent, it forms part of the existing environment.

Summary of Evidence

Mr Weedon

36. Mr Weedon is a Registered Surveyor. He described how he derived the measurements and view shaft angles shown on the drawing titled “Lot 6 view corridor” attached as Attachment H to Mr Giddens’ evidence. In essence, he used a boat to travel across the surface of the lake with an assistant standing on the building platform on proposed Lot 6 advising him by radio when he was visible and when he was not. He took GPS readings at appropriate points and

then translated those into the appropriate projection for producing the map provided.

Mr Minty

37. Mr Minty briefly outlined the history of the site and the family's relationship with it. He detailed a series of problems he said had resulted from the building of the Millennium Track. He considered the house sites to be well positioned and that the character of the area and district would be preserved if consent were granted.

Ms Lucas

38. Ms Lucas considered the process the family had been through to date was unfair and that what was sought was a minor change to the property.

Ms Solakos

39. Ms Solakos outlined her view as to why the three house sites should be granted consent.

Mr Giddens

40. Mr Giddens provided planning evidence in support of the application. He stated that no changes were proposed to Lot 3 consented under RM100798, and that all conditions confirmed for that consent in the Environment Court Consent Order are to apply under this consent. He advised that this application is presented on the basis that if consent was granted, RM100798 would be surrendered.
41. Mr Giddens presented a bundle of supporting documentation. This comprised:
- a) Site plans showing the Lot 1, 3 and 6 building platforms, curtilage, landscaping, access and earthworks areas (including cross-sections of the building platforms on Lots 1 and 6);
 - b) The Subdivision Plan prepared by Brian Weedon Land Surveying Ltd;
 - c) The Land Use Plan showing the locations within the property that are subject to land and ecological management requirements;
 - d) Earthworks plans prepared by Brian Weedon Land Surveying Ltd showing the access to Lot 6;
 - e) The plans approved under RM100798;

- f) Proposed conditions of consent;
 - g) Photographs 1 and 2 from Mr Espie's Landscape Assessment;
 - h) The visibility plan prepared by Mr Weedon as described above.
42. Mr Giddens outlined the history of consent RM100798 and noted that the Environment Court Consent Notice did not modify the conditions imposed in the Council decision. He clarified how this proposal increases the area of land available for light grazing/passive revegetation leading, in his view, to a gain of some 18.9 ha removed from pastoral farming.
 43. In Mr Giddens' view, the key planning issue related to the degree of visibility that built form on the Lot 6 building platform would have from Lake Wanaka, and the corresponding impact this visibility has in terms of cumulative effects from the lake. He confirmed the conclusion of the assessment of effects included in the application that the effects of the proposal would not be significant. He also confirmed that he relied on Mr Espie's evidence in relation to landscape and visual amenity matters.
 44. Mr Giddens considered that setting aside approximately half the property for passive native revegetation, light grazing and wetland restoration to be very significant in land management terms and *"a considerable positive effect that will further enhance the naturalness of this landscape over and above that existing, and that consented under RM100798."*⁵
 45. Mr Giddens discussed the earthworks plans provided relating to the access to Lot 6 and noted that the landscape architects had raised no concerns regarding that access route.
 46. In discussing the landscape effects of the building platform on Lot 6, Mr Giddens suggested that in assessing the impact of the visibility of development from the lake, the important factors are: the extent of visibility; the practicalities of accessing the location to view the development; and the general frequency of a person being in a location to view the development. He noted that the District Plan assessment criteria did not require that development on Lot 6 be invisible or reasonably difficult to see from public places. After discussing the views of the landscape architects, Mr Giddens concluded that the proposal would ensure that the most broadly visible, open parts of the Sharpridge site would remain in their current state or will incrementally become more natural in

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Mr B J Giddens, Statement of Evidence, paragraph 6.4, p.6

appearance. He agreed with Mr Espie that the degree to which an observer values the open space that the site provides will not significantly change.

47. Turning to consider cumulative effects, Mr Giddens was of the view that such effects relate only to the inclusion of Lot 6 in the proposal. He took issue with Ms Afifi's opinion in this regard. In his view the area of the lake where development on Lot 6 would be visible has very low access by the public, and its orientation would only enable discrete views when heading toward Wanaka. He considered that while the proposal would add some domestication to the vicinity, the built development would be spread over a large area, be well absorbed in a visual sense, and be relative inconspicuous.
48. Mr Giddens considered the suggestion by Heritage New Zealand that an archaeological assessment be undertaken prior to the application being determined could be covered by the inclusion of a condition requiring such an assessment prior to the road alignment for Lot 6 being confirmed. A draft condition was provided after the hearing.
49. Mr Giddens listed as positive effects of the proposal:
 - a) The maintenance and enhancement of important ecosystems and features;
 - b) The retention and enhancement of native vegetation and the management of the vegetation over a significant land area; and
 - c) A restriction on further subdivision and development.
50. Mr Giddens outlined how he considered the proposal accorded with the objectives and policies of the Plan. He also considered the consented baseline provided a high level of acceptance of the proposed development. In his view, the addition of one extra building platform, when off-set against the increased revegetation was appropriate.
51. After commenting on the provisions of Part 2 of the Act, he concluded the proposal supported the purpose of the Act.

Mr Espie

52. Mr Espie was responsible for the landscape report that accompanied the application. He set out a brief summary of his findings in the report and then identified those matters which had changed since producing his report, namely:

- a) Shifting the building platform on Lot 1 some 11 m east resulting in it being some 1 m lower in elevation;
 - b) The proposed earth mounding around the Lot 1 platform had been extended;
 - c) The proposed mitigation planting within Lot 6 had been expanded; and
 - d) The proposed Land Use Plan had been amended to include an additional area of approximately 10 ha in the "Light Grazing/Passive Revegetation" category of land use.
53. He considered these had slightly reduced the landscape and visual effects of the proposal.
54. Mr Espie explained how he expected the Ecological Planting and Management Plan required by Mr Giddens' suggested conditions would be prepared and what form it would take.
55. Mr Espie considered that the visual effects of a building on Lot 6 would be of a slight to moderate degree at worst. Mr Espie considered that the visibility of development on Lot 6 would be reduced because other built structures are visible from the lake surface. He did not consider the proposed Lot 6 platform would have a significant effect on the openness of the landscape.
56. Mr Espie considered the proposed building platform on Lot 1 would bring about a slight increase in visible built form when experienced from parts of Wanaka on the opposite shore of Roys Bay. He considered that the combination of the proposed vegetation and design controls along with the distance of the viewers would reduce the visibility of a future dwelling to a particularly low degree. He had noted in his original assessment that light would be visible at night from the new building location. When asked at the hearing regarding the further amended location he agreed there would remain an extra source of light at night but that he had not had the opportunity to consider the amended location in any detail.
57. While Mr Espie agreed that a future building on Lot 6 would create a cumulative effect of increased built-form presence on the western side of Roys Bay, he considered the degree of visibility would be low and in the context of built form at Peninsula Bay/Beacon Point and other visible buildings on the western side of Roys Bay.

58. Mr Espie considered the accessway to Lot 6 would be visible in part from Wanaka-Mount Aspiring Road but that the effect would be minor. He also accepted that in part this access road would be visible from the Millennium Track in Damper Bay. He considered that revegetation of exposed earthworked areas would quickly mitigate such visibility.

Mr Norman

59. Mr Norman told me he had spent considerable time on the lake and in his view the proposal would be of minor effect. He considered the values of the land between the road and the lake were not as significant as those of the land from the road up the face of Roys Peak ridge. He suggested that when one is on the lake, the focus is on the Millennium Track, not higher. As a former farmer he questioned the value of the land for farming and considered it not worth keeping for productive use.

Mr Laming

60. Mr Laming supported the application but was concerned to ensure that development of Lot 3 occurred in such a way as to be screened from the Trust's property. He supported the inclusion of a condition to achieve this as specified in the Laming Family Trust's submission.

Upper Clutha Environmental Society (tabled)

61. This essentially comprised a written submission containing quotes from evidence given at former hearings in relation to this property. While I have taken account of the contents of the submission, without hearing directly from the witnesses quoted and understanding their opinions in the context of this application, I am unable to give these submissions and quotes much weight.

Section 42A Report

62. I received a comprehensive s.42A Report from Ms Afifi which included an engineering report by Ms Overton and a peer review of the landscape assessment by Dr Read. Dr Read also attached her landscape assessment undertaken as part of the consideration of consent RM100798. I took this material as read.
63. Ms Afifi recommended consent be refused, and she did not change her opinion after having heard the applicant's case. She did agree that the archaeological issue raised by Heritage NZ could be dealt with by conditions.

She also considered that if consent were to be granted, the conditions should limit development to a single dwelling on each building platform.

64. After hearing the applicant's case, Dr Read did not resile from her opinion that a dwelling on Lot 6 would have an adverse effect of moderate extent on the openness and natural character of the landscape. She did accept that if I were to grant consent, the Laming condition would be appropriate.

Major Issues in Contention

65. The major issue is the effect the proposed subdivision and potential built development would have on the landscape values of the site and surrounding land, including the surface of Lake Wanaka. This will be the focus of my consideration of the effects on the environment of the proposal.

Effects of the Activities on the Environment

Introduction

66. While the identification of a building platform on a lot does not provide consent for built form, the Rural General Zone rules provide for the erection of buildings on a consented building platform as a controlled activity. Control is limited to:⁶
- (i) *external appearance;*
 - (ii) *associated earthworks, access and landscaping;*
 - (iii) *provision of water supply, sewage treatment and disposal, electricity and telecommunication services.*
67. Thus the conditions attached to a building platform consent creating a building envelope allow a bulk and location of built form that cannot be diminished by other resource consents required.

Permitted Baseline

68. Permitted activities in the Rural General Zone are limited to farming activities, not including the erection of buildings, but including fences, planting (excluding wilding species), limited earthworks and limited clearance of indigenous vegetation. I do not consider it relevant in the circumstances of this case to take account of the permitted baseline.

⁶ Rule 5.3.3.2 I (b)

Existing Unimplemented Resource Consent

69. Resource consent RM100798 has been described above. I consider the effects allowed by that consent, within the framework of the conditions that apply to it, are a relevant consideration in assessing the effects of this application. I note in particular that the effects under this application deriving from the creation of Lot 3 and the provision of a building platform on it would be identical to the effects allowed by RM100798, provided the same conditions are applied.
70. I see no point in re-assessing the effects of activities that have already been granted consent under RM100798 and will confine my consideration of this proposal to those activities which differ from, or are additional to, those allowed in RM100798.

Effects on Landscape Values

71. There was agreement between the landscape architects that the entire property is within an outstanding natural landscape – district-wide (“ONL-DW” or “ONL”). That is consistent with the Environment Court's determination of ONL boundaries in this area⁷ and the Court's subsequent assessment of an appeal against granting of a subdivision consent by the Council in 2001⁸.
72. The District Plan contains a set of assessment criteria to be applied in assessing applications within the Rural General Zone which provide an appropriate framework for assessing the effects of the proposal.⁹ I will consider the proposal under the criteria as listed.

(a) *Potential of the landscape to absorb development*

(i) *whether, and to what extent, the proposed development is visible from public places;*

73. The upper parts of a building on the proposed Lot 1 building platform would be visible from parts of Wanaka, including roads and the public foreshore areas, albeit at a distance calculated by Mr Espie of some 4.5 to 5 km. From my visual inspection from the building platform it was also clear that any such building would be seen in part from the surface of the lake, although I was not provided with any estimation of the extent of lake surface a building may be visible from. I also note Mr Espie's opinion that a dwelling on the Lot 1 building platform would become another source of light visible from across the lake at night, and

⁷ *Wakatipu Environmental Society v Queenstown Lakes DC C73/2002*

⁸ *The Upper Clutha Environmental Society v Queenstown Lakes DC C104/2002* (Interim Decision) and C47/2004 (Final Decision)

⁹ Section 5.4.2.2(2)

the statement in his assessment report that this building platform would be visible from Ironside Hill and, at a greater distance, from Roys Peak Track¹⁰.

74. The relocation of the proposed building platform on Lot 1 from that consented in RM100798 increases the elevation of the built form that can occur in the building platform and consequently increases its visibility from the surface of Lake Wanaka and parts of Wanaka township. Other than increasing the planting proposed around the building platform, the applicant proposed no additional measures from those imposed on consent RM100798 to mitigate or avoid these effects. I accept Mr Espie's opinion that relocation of this platform will not increase the degree of visibility of development as viewed from elevated vantage points.
75. The applicant conceded that the building platform on proposed Lot 6 would be visible from the surface of Lake Wanaka and relied on Mr Weedon's plan as a demonstration of the extent of visibility. I have some concerns about the reliability of Mr Weedon's plan. This was based on an assistant with a viewing height of some 1.6 m above ground level standing on the proposed platform and advising when Mr Weedon's boat was visible. It was unclear whether his assistant stood in a single location for this task, or whether she tested visibility from each side of the building platform. As the building envelope proposed is 30 m wide and 5.5 m high in the elevation seen from the lake, it is likely that a mass within this envelope would more visible than calculated by Mr Weedon.
76. The building platform on Lot 6 would also be visible from Ironside Hill¹¹. No assessment was provided as to the visibility of buildings on the building platform from that location. I took from Mr Giddens' evidence¹² that views from here were discounted on the basis that it was not well frequented.
77. The access road to the Lot 6 building platform would be visible from the public areas in Damper Bay, including that portion of the Millennium track passing through Damper Bay. Such visibility is likely to be temporary until sufficient vegetation has grown to obscure any exposed cut or fill areas. Mr Espie also considered this access, where it hugged the property boundary before turning into the building platform, would be visible from Wanaka – Mount Aspiring Road. I consider the distance it may be viewed from the road and the portion of the road from where it would be seen, mean that such visibility would be distant and fleeting.

¹⁰ *Sharpridge Trust Limited Subdivision Proposal – West Wanaka – Landscape & Visual Effects Assessment Report*, Vivian & Espie, May 2014, p. 6

¹¹ *ibid*

¹² At paragraph 6.13

- (ii) *whether the proposed development is likely to be visually prominent to the extent that it dominates or detracts from views otherwise characterised by natural landscapes;*

78. Development on proposed Lot 1 is unlikely to be visually prominent during daylight hours, provided adequate conditions were imposed, including conditions which avoided reflections from glazing. Another light source north of those presently existing on the west side of Roys Bay could be visually prominent at night. At present the night-time landscape of that area is notable for the lack of lighting at night, and Mr Espie agreed that shorelines without lights were particularly natural and beneficial to the district.
79. There was disagreement between the landscape architects as to whether development on proposed Lot 6 would be visually prominent. As I noted above, I consider the applicant's experts underestimated the extent of visibility of such development from the surface of Lake Wanaka. I also consider that the fact that any development on Lot 6 may be visible from the lake within the same broad view as the development in Wanaka on the eastern and southern shores of Roys Bay does not in itself remove the possibility that the development could dominate or detract from views of the natural landscape on the western shore of Roys Bay. In my view, the combination of built form in the proposed building platform and the domestication of the adjacent curtilage area, particularly that area between the platform and the lake, could significantly detract from and dominate the views of this area of ONL, but the applicant has provided inadequate evidence to enable me to come to any firm conclusion one way or the other.
80. As no evidence was provided in respect of views from Ironside Hill, I am unable to come to any conclusion as to the magnitude of effects from that direction either.

- (iii) *whether any mitigation or earthworks and/or planting associated with the proposed development will detract from existing natural patterns and processes within the site and surrounding landscape or otherwise adversely effect [sic] the natural landscape character;*

81. I consider the earthworks proposed will have little effect on natural patterns or processes provided exposed cuts and fills are suitably revegetated. While the access road to Lot 6 would run parallel to the existing watercourse running through the property, it is unlikely to have any effects on the watercourse given the separation distance and the topography. I do consider the access road would slightly affect the landscape character by drawing attention to the

potential domestication of the northern end of the property as viewed from Wanaka–Mount Aspiring Road, but such access roads are not unexpected in rural landscapes of the type that exist between the road and the eastern hilly area.

82. Provided kanuka and other indigenous species presently found on the property and adjoining reserve area are used, I consider the proposed screen planting would not detract from the matters listed.
83. I am also satisfied that the location of the curtilage area on Lot 1 is located so that planting on it will be largely or entirely enclosed within the existing topography and not detract from the values listed.
84. I consider that the curtilage area of Lot 6 is located such that planting on it could detract from the landscape character by introducing an exotic manicured landscape within an otherwise largely natural landscape.

(iv) *whether, with respect to subdivision, any new boundaries are likely to give rise to planting, fencing or other land use patterns which appear unrelated to the natural line and form of the landscape; wherever possible with allowance for practical considerations, boundaries should reflect underlying natural patterns such as topographical boundaries;*

85. The proposed boundary for Lot 1 follows, for the most part, a change in topography or landform. It also defines separation between the area to be used for pastoral farming and that to be set aside for passive revegetation with light grazing.
86. The proposed boundary for Lot 6 for the most part bears no relationship to landforms and cuts across two watercourses. It also bears no relationship to the proposed land uses, splitting the passive revegetation area along the northern boundary in two, and with two isolated areas of pastoral farming either side of a wetland revegetation area. On the Site Plan provided by Mr Giddens it appears that the boundary may actually cut through the southern part of the wetland, although that may be a distortion of the aerial photography.
87. In my view the boundary between Lots 1 and 6 would be more appropriately located to east of that wetland and run up the gully to the site boundary. As for the remainder of the Lot 6 boundaries, I consider they could be better located in relation to the topography south and west of the wetland.

- (v) *whether the site includes any indigenous ecosystems, wildlife habitats, wetlands, significant geological or geomorphologic features or is otherwise an integral part of the same;*

88. No evidence was presented of any indigenous ecosystems or wildlife habitats. There is a scattering of regenerating kanuka over the site, but no particular significance was raised in this regard, other than the availability of a natural seed source.

89. I have described the wetland in the northwest corner of the site and the area within Lot 6. I have similarly described the roche moutonnee landforms on the eastern part of the site and how they form part of a collection of such landforms around the edge of Lake Wanaka in this area.

- (vi) *whether and to what extent the proposed activity will have an adverse effect on any of the ecosystems or features identified in (v);*

90. There are no apparent adverse effects on the features described.

- (vii) *whether the proposed activity introduces exotic species with the potential to spread and naturalise.*

91. The proposal does not actively involve the introduction of such species, nor does it restrict it.

- (b) *Effects on openness of landscape*

- (i) *whether and the extent to which the proposed development will be within a broadly visible expanse of open landscape when viewed from any public road or public place ...*

92. When viewed from Wanaka–Mount Aspiring Road the only sign of the development envisaged would be the access roading.

93. When viewed from the lake I consider it is the built form provided for and associated curtilage area on Lot 6 which would be within a broadly visible expanse of open landscape. That open landscape runs from a point on the western site of Roys Bay just south of the Laming property¹³ on the lake shore, running up to Roys Peak and then north encompassing the northern extension of the Roys Peak ridge as the backdrop with the collection of roche

¹³

I note at this point that I commented at the hearing that the Laming property was highly visible from the lake. I suspect, having considered the aerial photography of the area, that I was misinformed when on the site visit and the building in question was actually on the site immediately south of the Laming property.

moutonnee along the foreground and running north to the collection of prominent hills enclosing Damper Bay. Thus the landscape is a combination of foreground interest and mountain backdrop. It is within the foreground that development on Lot 6 would be apparent.

94. I received no evidence concerning views from Ironside Hill, but note that the Lot 6 building platform would be in the foreground of a view that is largely open and natural.

(ii) *whether, and the extent to which, the proposed development is likely to adversely affect open space values with respect to the site and surrounding landscape.*

95. While I am satisfied that development on the proposed building platform on Lot 6 is likely to adversely affect open space values in the surrounding landscape, the applicant provided insufficient evidence for me to be able to determine the degree to which such effects would be adverse.

(iii) *whether the proposed development is defined by natural elements such as topography and/or vegetation which may contain any adverse effects associated with the development.*

96. As I have noted above, the building platform on Lot 1 is between two ridgelines which serve to diminish the extent to which development on the platform would affect openness or visibility.

97. The building platform on Lot 6 also is enclosed in part by ridges, so that it sits in a small amphitheatre. The landforms serve to contain adverse effects as perceived from Wanaka-Mount Aspiring Road. The northern extent of the western ridge would largely contain visual effects as seen from Damper Bay.

(c) *Cumulative Effects on Landscape Values*

(i) *whether, and to what extent, the proposed development will result in the introduction of elements which are inconsistent with the natural character of the site and surrounding landscape;*

98. The potential built form on Lot 1 would introduce an inconsistent element, but with the application of appropriate conditions, the effects of that would be minor. To achieve that, I consider that in addition to the conditions suggested by Mr Giddens, conditions should also:

- a) Require glazing be recessed behind the roofline or verandas on the eastern face so as to avoid where practicable, or otherwise minimise, glazing reflection over Roys Bay;
 - b) Require the use of a lighting regime that ensured that no light emanating from the building platform or curtilage was visible from outside Lot 1 and that no lighting be provided elsewhere on the site.
99. Based on the evidence provided by the applicant, I consider the development that would be enabled by the building platform and curtilage on Lot 6 would introduce elements inconsistent with the natural character of the site and surrounding landscape.

(ii) *whether the elements identified in (i) above will further compromise the existing natural character of the landscape either visually or ecologically by exacerbating existing and potential adverse effects;*

100. I agree with Dr Read that to allow Lot 6 and its associated development would lead to an extension of built form north along the western side of Roys Bay. It would form a node of development north of Ironside Hill which would reduce the natural character of the landscape adjoining the lake.
101. When viewed from the lake, built form on the western side of Roys Bay is presently confined to the land south of the applicant's property. Ironside Hill forms a natural barrier to views from the lake into this property for a considerable distance. Thus, visible built form north of Ironside Hill would appear from the lake as a new and separate node of development and domestication on an otherwise natural shoreline.
102. I observed use of the Millennium Track around the lakeshore by pedestrians and cyclists when undertaking my site visit. I do not consider the Track or that use diminishes the natural character of that area.

(iii) *whether existing development and/or land use represents a threshold with respect to the site's ability to absorb further change;*

103. When the property is considered as a whole, I consider there probably is the potential for it to absorb further change. I sensed that the applicant's emphasis was on avoiding development being seen from Wanaka–Mount Aspiring Road but I note that any development on the flatter any more open part of the property would be seen in the context of existing farm buildings and a nearby dwelling and associated buildings. I also note that this flat area was only

included within the ONL by the Environment Court because it was too small to comprise a landscape on its own.

104. I was not provided with any evidence that the applicant had asked its advisers to undertake a study of the site and determine the areas where change could be absorbed, and thence a comparative analysis of the most appropriate sites for development, notwithstanding Mr Chapman's submission that a re-assessment of the site as a whole had led to this application.¹⁴

(iv) *where development has occurred or there is potential for development to occur (ie existing resource consent or zoning), whether further development is likely to lead to further degradation of natural values or inappropriate domestication of the landscape or feature.*

105. There is development established south of the property and adjacent to the south west corner, and the development allowed by consent RM100798. I consider that development on Lot 6 would lead to degradation of natural character and inappropriate domestication of the landscape at the north end, which in turn would detract from the natural character of the western shore of Roys Bay.

(d) *Positive Effects*

(i) *whether the proposed activity will protect, maintain or enhance any of the ecosystems or features identified in (a)(v) above;*

106. The proposal does involve the active revegetation of the two wetlands. However, I was not provided any evidence as to actual values of the wetlands or how those values would be maintained or enhanced. Other than the application of a condition requiring planting and maintenance of planting, no explicit protection is proposed.

(ii) *whether the proposed activity provides for the retention and/or re-establishment of native vegetation and their appropriate management;*

107. Areas are to be passively revegetated, some with, and some without, light grazing. I received no evidence from an ecologist concerning the time frames over which revegetation might occur, or what would be required to ensure weed species did not establish. Other than Mr Espie's comments on what he expected the Ecological Planting and Management Plan required by

¹⁴ Mr Chapman, Opening Submissions, paragraph 12

suggested conditions might contain, I received no clear indication of what such a plan may comprise. I would have expected a draft plan to be presented along with appropriate evidence.

- (iii) *whether the proposed development provides an opportunity to protect open space from further development which is inconsistent with preserving a natural open space character;*

108. The applicant has volunteered a condition to be registered as a consent notice on the relevant titles which reads:

There shall be no further subdivision or development of Lots 1, 3, 4, and 6 except as allowed by the approved Ecological and Vegetation Management Plans.

109. No explanation was provided concerning the exception.

- (iv) *whether the proposed development provides an opportunity to remedy or mitigate existing and potential (ie structures or development anticipated by existing resource consents) adverse effects by modifying, including mitigation, or removing existing structures or developments; and/or surrendering any existing resource consents;*

110. The applicant has volunteered to surrender RM100798 if consent were to be granted to this application and it implemented the ensuing consent. As RM100798 arguably has lesser adverse effects than this proposal I do not count that as a positive effect.

- (v) *the ability to take esplanade reserves to protect the natural character and nature conservation values around the margins of any lake, river, wetland or stream within the subject site;*

111. There is already a reserve along the lake front. Any other esplanade reserve would need to be offered by the applicant. Other than around the wetland in the northwest corner I doubt that the waterbodies within the site have characteristics justifying protection by an esplanade reserve. I note the submission by the Guardians of Lake Wanaka and consider their concern could be met by fencing of all waterbodies so as to exclude stock.

- (vi) *the use of restrictive covenants, easements, consent notices or other legal instruments otherwise necessary to realise those positive effects referred to in (i)-(v) above*

and/or to ensure that the potential for future effects, particularly cumulative effects, are avoided.

112. As well as volunteering the condition regarding future subdivision and the protection of it by way of a consent notice, Mr Giddens, on behalf of the applicant, has proposed that conditions relating to the following relevant matters (for the purpose of this criterion) also be protected by consent notice:

- Maintenance of planting required by the Ecological and Vegetation Management Plans;
- Provision of a landscape plan of curtilage areas;
- Limitation on mature height of trees on Lot 1;
- Design of mounding on Lot 3;
- The protection of an area of landform within Lot 1 shown on a plan not included with the application.

113. There was no evidence regarding the landform referred to in the last point. I am unaware of what it relates to so am unable to consider the protection of it a positive effect.

114. The degree to which the condition relating to the maintenance of planting can be considered a positive effect is dependent upon the degree to which the Ecological and Vegetation Management Plans provide a positive effect. While I accept in a general sense that they would, without ecological evidence I am unable to quantify the positive effect other than in the simple land area terms used by Mr Giddens.

115. I note that it was not suggested that the amalgamation of Lots 1 and 4 be included in a consent notice. I consider that if I were to grant consent, the amalgamation condition should be framed in the way set out in s.220(2)(a) of the Act and included as a condition to be complied with on a continuing basis in a consent notice.

Reasons Activity is Discretionary

116. The second requirement of Step 3 in applying the assessment matters, is to recognise and provide for the reasons for making the activity discretionary and a general assessment of the frequency with which appropriate sites for development will be found in the locality.

117. Section 1.5.3 of the Plan states that discretionary activities have been afforded such status "*because in or on outstanding natural landscapes and features the relevant activities are inappropriate in almost all locations within the zone, particularly within the Wakatipu Basin or in the Inner Upper Clutha area*". It

appears from Appendix 8 of the Plan that this land is within the Inner Upper Clutha area.

118. This statement is not, in my view, determinative of the prospects of a consent being granted. I consider that what it suggests is that the general inappropriateness in the specified areas requires a high level of analysis and evidence to show the proposal is appropriate.

Overall Conclusion on Landscape Effects

119. I am satisfied that the proposed building platform on Lot 1 would, once appropriate conditions are applied, have minor adverse effects on the landscape character of the area.
120. I do not consider the same can be said about the building platform proposed on Lot 6. I hesitate to state that the built form and associated domestication on that platform and curtilage area would have significant adverse visual effects because the applicant provided insufficient evidence for such an assessment to be made.
121. Even if the visual effects were not significant in themselves, the insertion of a node of domestication in the location proposed north of Ironside Hill, would in my view, significantly disrupt the landscape and natural character values of that area.
122. The applicant has proposed additional revegetation areas beyond those required by RM100798. Although this is a new application I consider it relevant to compare the difference as it is the difference in ecological restoration proposed that would need to counterbalance the adverse effects on the environment of the proposed Lot 6 and associated activities. There is additional revegetation proposed on Lot 6. However, that would only serve to frame the development as seen from the lake surface, and no evidence was given as to the timeframe within which one might expect a noticeable benefit.
123. The remainder of the additional revegetation proposed is south of Ironside Hill. While that may be beneficial, I do not consider, on the basis of the evidence, that it provides an ecological benefit of a nature or type that adequately would off-set the adverse effects further north.

Ecological Effects

124. There was no evidence concerning ecological matters, apart from the references made by Mr Espie in relation to revegetation. The assessment

matters in relation to nature conservation values (Section 5.4.2.3 i of the Plan) require consideration of the opportunities to protect or enhance indigenous bio-diversity or ecosystems, and the potential for adverse effects on such systems. As I have discussed above, this proposal involves reducing the intensity of grazing over additional areas to allow revegetation to occur. However, there was insufficient evidence to enable me to determine that such land management would enhance biodiversity or indigenous ecosystems. On the other hand, it does appear that the alteration to the location of the building platform on Lot 1 and the proposed building platform on Lot 6 and associated earthworks, including the access, would not harm any indigenous ecosystem of significance.

Archaeological Effects

125. Heritage New Zealand ("HNZ") lodged a submission noting that a desktop assessment of the property appears to show 19th Century pastoral farming features that may be present today, and if so would be protected as archaeological sites. It recommended that an archaeological assessment be undertaken prior to consideration of the application so that if any amendments to the location of building platforms or access roads is required to avoid affecting any archaeological sites that could occur as part of the assessment rather than requiring a subsequent consent modification.
126. Mr Giddens suggested this could be dealt with by way of condition. I agree that on the face of the material provided it appears that any archaeological feature of the type referred to by HNZ would only potentially be affected by access roading. In that circumstance a condition requiring an archaeological assessment prior to final design of the access roading would be an appropriate response. My only concern with the condition Mr Giddens drafted is that it seeks to only relate to the access road to Lot 6. From my assessment of the plan provided by HNZ it could be any part of the access roads serving all three lots that would be affected. I would alter the condition accordingly.
127. With the application of the condition as discussed, with my amendments, this proposal can be designed to avoid or mitigate adverse effects on archaeological sites.

Infrastructure and Earthworks Effects

128. I accept the advice of Ms Overton contained in the s.42A report that, subject to the imposition of conditions, infrastructure can be satisfactorily provided and there would be no undue effects on Council's roading network.

129. The one area of disagreement between the applicant and Council officers was in relation to the provision of telecommunications connections to each building platform. I accept that a physical connection is not the only means of achieving a telecommunications connection these days. However, I also consider that provision should be made, when constructing access roading and associated earthworks for providing electricity reticulation, such as to enable future telecommunication connections underground without the renewed need for earthworks.

130. Mr Giddens proposed as Condition 16(h):

Where no cable communications connection (wire or fibre) has been provided to the building platform, any reticulation that is subsequently installed shall be at the cost of the lot owner, and shall be underground and in accordance with the network provider's requirements/standards.

131. This suggested condition has inherent problems. It is proposed as a matter to be completed prior to s.224(c) certification, but is actually conditioning the future land use. Thus, it cannot be a condition to which s.224(c) applies. In any event, I do not consider it avoids the problem I outlined above where future owners could be required to undertake further earthworks, which because of the lengths involved, could require resource consent.

132. If I were to grant consent I will include a condition requiring the installation of ducting suitable for the future installation of telecommunications cabling to each of the building platforms, and that such ducting is to be located within the easement area containing the relevant access roading.

Natural Hazards

133. I accept Ms Overton's advice that the building platforms are located away from any potential natural hazard area.

Positive Effects

134. I have discussed the positive effects associated with the revegetation programme. If consent is granted there will also be positive effects on the applicant and its beneficiaries, not merely in a financial sense, but also in the sense of ending the uncertainty over future use alluded to by each of the family members in their evidence.

Regional Policy Statement Provisions

135. Relevant provisions were set out in the applicant's Assessment of Effects and also referred to by Ms Afifi in her report. These provisions are more fully developed in the District Plan. While I take account of the RPS provisions, I consider more focus needs to go on the District Plan provisions.

District Plan Provisions

136. I have dealt with the relevant assessment criteria in considering the effects of the proposal. Mr Giddens and Ms Afifi both addressed the objectives and policies of the Plan in detail. While I have considered the Plan provisions in the round, I comment below only on those provisions that I consider need further elucidation.
137. The objectives and policies relating to nature conservation values¹⁵ are in large part dealt with in the landscape assessment criteria. In addition, they focus on areas containing indigenous plants and fauna of significant value. As I noted above, no evidence was provided that any such plants or fauna are found on this property. Policy 1.5 discusses the encouragement of removing or management of existing exotic vegetation that has the potential to spread. This was not addressed in the application
138. Section 4.2 outlines the importance of the landscape of the District to its economic well-being and the importance of the hill and mountain slopes around the lakes in providing a setting for the lakes. The primary issue in the ONLs of the District is *"their protection from inappropriate subdivision, use and development, particularly where activity may threaten the landscapes [sic] openness and naturalness."*¹⁶
139. The policies relating to Future Development and Outstanding Natural Landscapes (District-Wide/Greater Wakatipu) require a determination of the areas vulnerable to degradation and those able to absorb change. The applicant's evidence did not provide information to enable such a determination to be made. Rather, particularly in respect of Lot 6, it started with the preferred building platform and then assessed its level of appropriateness. In my view, the objectives and policies relating to ONLs require an examination of the property as a whole and from that an analysis of those areas vulnerable to degradation and those able to absorb change, with appropriate gradation between the two. Only then can appropriate locations

¹⁵ Section 4.1.4
¹⁶ Section 4.2.4(2)

for development be determined, including the adequacy of mitigation measures.

140. Policy 9 relating to structures emphasises the need for structures to harmonise with the landscape. The difficulty an applicant for a building platform faces is that consent is essentially sought for a cube of built form. It is frequently difficult to conclude that the cube, or building envelope, is in harmony with the landscape. I would have expected a level of presentation, above what the applicant presented, of how development in the proposed building platform would harmonise with the landscape and surrounding environment. I was essentially left with the conflicting evidence of Mr Espie and Dr Read to choose between. Photomontages are a common tool which help considerably in judging the efficacy of such conflicting opinion. They would have helped in this case.

141. The Environmental Results Anticipated¹⁷ include –

- (i) *The protection of outstanding natural landscapes and features from inappropriate subdivision, use and development.*
- (ii) *Maintenance and enhancement of openness and naturalness of outstanding natural landscapes and features.*
- (vi) *Protection of the visual and landscape resources and values of the rivers and lakes.*
- (vii) *Improved public awareness and acceptance of the fundamental importance and value of the landscape to the well being of the District.*

142. These assist in framing the parameters of what comprises sustainable management of natural and physical resources in an ONL.

Overall Consideration

143. Section 6 of the Act requires that in making my decision I recognise and provide for the following relevant matters of national importance:

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

¹⁷

- (f) *the protection of historic heritage from inappropriate subdivision, use, and development.*

144. In 1998 the Environment Court¹⁸ determined that the “margin” of a lake was confined to the upper limit of wave action. Following that ruling, s.6(a) is not relevant to this case in relation to the margin of the lake. However, more recently the Court has reconsidered this ruling, albeit as an obiter opinion¹⁹. In that case the Court said

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.

145. This may be one of those instances where the margin of the lake extends further than a mere 20-50 m. The landforms adjoining the lake were created by the same natural forces that created the lake and the natural character of the lake margins must include to some extent those adjoining landforms, particularly as they are in a largely natural state.

146. It is my understanding that I am bound by the 1998 ruling of the Court on this matter so take it no further.

147. Notwithstanding that, s.6(a) also relates to wetlands. The revegetation plans include the revegetation of two wetlands on site and the other works do not disturb the natural character of those wetlands or their margins.

148. There is no disagreement that the land in question is within an ONL. The question I have to determine is whether the subdivision and development provided for on the building platforms is appropriate. I will return to this below.

149. Section 6(f) can be provided for with an adequately worded condition.

150. Section 7 requires me to have particular regard to, relevantly, the following:

- (aa) *the ethic of stewardship:*
- (c) *the maintenance and enhancement of amenity values:*
- (f) *maintenance and enhancement of the quality of the environment:*
- (g) *any finite characteristics of natural and physical resources:*

¹⁸ In *Upper Clutha Environmental Society Inc v Queenstown Lakes DC* C12/98 at p.15
¹⁹ *High Country Rosehip Orchards Ltd v Mackenzie DC* [2011] NZEnvC 387 at paragraph 140, p.67

151. I note the stewardship the Trust has applied to this land, and that is proposed via the revegetation programmes. With the application of appropriate conditions, the amenity values of the area, including adjoining sites, will be maintained or enhanced. Similarly, the proposed land use pattern in terms of revegetation and pastoral use would maintain or enhance the quality of the environment. Finally, I have had particular regard to the finite nature of resources that make up the landscape in this area.
152. Coming to an overall conclusion requires an assessment of the various factors under s.5 with appropriate weight given to the matters in section.
153. In my view, when dealing with a matter of national importance, it is incumbent on the applicant to provide sufficient and appropriately detailed information to enable a decision-maker to come to a clear conclusion on the appropriateness or otherwise of the proposal, particularly where the experts do not agree. I have alluded to the inadequacies of the evidence when considering both the effects of the proposal, and the objectives and policies of the District Plan.
154. I have come to the conclusion I have inadequate information to determine the proposal represents appropriate development in respect of proposed Lot 6. I do not consider that can be cured by a request for further information from the applicant because I consider the inadequacies include a failure to undertake an analysis of the constraints and opportunities on the property, and the failure to consider alternative locations or methods given the potential for significant adverse effects. The evidence I have received has left me concluding:
- a) There will most probably be disruption of the landscape character of the area;
 - b) There will most probably be increased domestication of the landscape in the northern part of the site that is inappropriate.
155. While the built development provided for on the building platform on Lot 6 will be visible, there is insufficient evidence to conclude that it would not disrupt the values of the outstanding natural landscape that it would be located in, whether those views are obtained from the lake or Ironside Hill. On the evidence, including the views I obtained from the site and into the site, I would have to conclude that consent cannot be granted in respect of Lot 6.
156. I am satisfied that with appropriate conditions, and taking account of the additional revegetation proposed, the relocated building platform on Lot 1

would represent sustainable management of natural and physical resources and could be granted consent. Given that no change is proposed to Lot 3, I come to the same conclusion in respect of that lot.

157. I have considered whether I am able to grant consent to just Lots 1, 3 and 4, but have concluded that the volunteered conditions were volunteered on the basis of the whole application being granted consent. I do not consider I am able to grant a partial consent and impose a condition limiting future subdivision as volunteered by the applicant. Thus, I am left with the conclusion that I must refuse consent to the entire application.

Decision

158. Pursuant to sections 37 and 37A of the Resource Management Act 1991 the time limits for lodging submissions are waived in respect of the submissions lodged by:

- Guardians of Lake Wanaka, dated 28 November 2014;
- Mr F J Culverwell, dated 5 December 2014; and
- Ms S Ironside, dated 5 December 2014.

159. Pursuant to s.104B of the Resource Management Act 1991, resource consent application RM140373 for:

- a) Subdivision consent to subdivide Section 11 Block XIII Lower Wanaka Survey District (CFR OT9C/939), Lot 2 Deposited Plan 306288 (CFR 24711), and Lot 1 Deposited Plan 306288 (CFR 24710) to create four lots (Lots 1, 3, 4 and 6); and
- b) Land use consent to identify a building platform on each of Lots 1, 3 and 6, and for associated landscaping, earthworks, servicing and access construction;

is refused consent for the reasons set out above.

Dated 2 March 2015



Denis Nugent
Hearing Commissioner