Decision No: C///97

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of two references under clause 14 of the First Schedule to the Act

BETWEEN **MARLBOROUGH RIDGE LIMITED**

Appeals : RMA 449/96 and 602/97

Referrer

AND **MARLBOROUGH DISTRICT COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J.R. Jackson (presiding)
Ms J. Rowan
Mr J.R. Dart

HEARING at BLENHEIM on 21, 22 and 23 July 1997

COUNSEL

Messrs A. Hearn QC, R.D. Crosby and M. Hunt for referrer
Mr B. Dwyer for respondent

INTERIM DECISION

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

1. *Introduction*

The "Marlborough Ridge" is the eponymous referrer's name for an outlier ridge running north-north-east from the Wither Hills and protruding into the broad plain of the Wairau Valley approximately five kilometres from Blenheim. The north-eastern toe of the ridge is a small pine-covered knoll two kilometres directly south of the Woodbourne Airfield. Closer to, the ridge is surrounded by vineyards (with famous names such as "Brancott" and "Fairhall") to the west and north, and by a golf course and farmland to the east along Paynters Road. To the south the ridge runs up into the Wither Hills against a starkly handsome backdrop of higher hills and receding small mountains.

The referrer (called "the appellant") owns the eastern half of the ridge to a few metres short of a high point (and trig) called Goulter Hill which is 116 m above sea level. The land proposed to be covered by the zone as notified contained 102.3694 ha. Its legal description was Part Lot 2 DP 570 Marlborough Land Registry). The appellant wished to build an 'integrated' resort on the land. In September 1995 it made a request to the Marlborough District Council (called "the Council") for a plan change whereby the zoning of the land was changed from Rural 1 under the transitional district plan to a special zone (with specific rules) to be called "the Tourist Development (Marlborough Ridge Resort) Zone" (called the "TD zone") in the transitional district plan. This request was approved by the Council and plan change 40 ("the plan change") to give effect to it was notified.

The concept of the plan change was to allow a resort hotel to be built on the north-eastern toe of the ridge and to subdivide and develop the rest of the land in two stages. The first stage, on the lower end of the land and in a rough semicircle around the eastern and southern sides of the hotel, was to be a "cluster of hamlets" each containing a group of houses. The second stage was to be subdivision and development for "rural-residential" purposes of the balance of the land further south-west along the ridge.

The Council adopted the plan change (subject to some amendments) in part on 24 May 1996 as an "interim" decision (the subject of the first reference) and essentially the same decision as a final decision on 26 July 1996 (the subject of the second reference). We say "in part" because while the Council approved the TD zone and its rules for land to be covered by the hotel, and most of the original Stage 1 residential development, (together called "the approved Stage I") it refused to approve the plan for the rest of the land. It is the southern one-half (by distance, not area) of the land containing about 40ha (called "the site") which is the subject of the reference under the Resource Management Act 1991 ("the RMA") in this case: the appellant wishes the plan change introducing the TD zone to apply to this site. The Council opposes that. No other person appeared at the hearing either in support or opposition to the proposal.

There are three uncontested aspects of the matter. The first is that the site, if rezoned and subdivided, would provide sections with spectacular views across the Wairau plains in all directions, but especially out towards Cloudy Bay, beyond which the North Island can be plainly seen. Secondly, there is no issue as to provision of services to the site if subdivided since all those costs have been internalised: the appellant has agreed to install and pay for them. Thirdly, the development has already started to the extent allowed by the Council decision. We now set out briefly how that came about.

The plan change is deemed to have been amended by the Council's decision on the date that the Council gave public notice of its decision [RMA First Schedule clause 10(3)]. We were not given that date but assume it was about 26 July 1996. But thereafter the process for plan change 40 became decidedly complicated. The usual procedure of course is that if there is a reference to the Environment Court under clause 14 of the First Schedule then the plan (change) does not become operative.

However, clause 17(2) provides that a local authority may, with the consent of the Environment Court, approve part of a plan (change) if all submissions or appeals relating to that part have been disposed of. In this case the parties apparently took the view that "part" of the plan change had been disposed of viz

- the wording of the plan change was agreed and
- there was no dispute that the plan change should apply to "the approved Stage I".

The Council formally applied to the Court for approval under clause 7(2) and on 21 February 1997 Judge Kenderdine made an order in these proceedings in these terms (called "the clause 17 consent"):

> *"The part of the Tourist Development (Marlborough Ridge Resort) Zone attached to this order marked Appendix A has not been subject to any appeals as to the extent to which it has been approved by the Marlborough District Council. Accordingly, to that extent, it is approved in part and may be made operative by the Marlborough District Council with the consent of this Court.*

An appeal to the Environment Court (RMA 602/96) remains outstanding by the zone requester, Marlborough Ridge Limited, seeking an extension of the area to be incorporated within the Tourist Development (Marlborough Ridge Resort) Zone. The Zone Statement, Concept Plans and Rules are notated where the appeal may lead to them being increased in terms of boundaries, if that appeal is allowed." (our emphasis)

The notations in plan change 40 (as consented to by the Court) are important because they suggest that the transitional district plan, although approved by the Council under clause 17, can still be amended by subsequently changing, inter alia, the number of sections and the concept plan. We have some doubts about the legality of that, and in the event that this appeal is successful, we would need to hear further submissions as to how to give effect to the rezoning of the site.

2. *The Tourist Development (Marlborough Ridge Resort) zone*

2.1 It needs to be borne in mind that although we refer throughout this decision to the "plan change", that is for convenience only, because the plan change is now part of the transitional district plan as a result of the clause 17 consent. Because the proposal is that the site join the TD zone we need to set out the relevant objectives and policies of the zone. As we do so we will identify matters which may need to be amended if the appeal is successful.

2.2 The TD zone statement explains that:

"The zone is formulated to accommodate tourist development which can build upon, and enhance recreational, cultural and commercial opportunities in the region. It adjoins a golf club, and will provide a considerable range of outdoor and indoor sporting and recreational opportunities. It will include viticultural activity and other rural based

attractions. The zone is well located close to the airport, to Blenheim and to major tourist attractions and clear of land of high value for food production. In addition, the zone will provide for opportunities to live in a rural environment in a variety of property sizes and thus remove pressure from more valuable productive land" [plan change p.1] (our emphasis).

Further on, it enlarges on the theme of residential development which is of course the important aspect of the TD zone for this appeal:

"There is a continuing demand for people to live or to have a holiday home in a non-urban environment close to recreation and amenity space and within reasonable commuting distance. This zone provides an opportunity to accommodate demand for low density residential development in a sensitive manner and at the same time preserving natural habitats and visual amenity, and high value productive land.

The zone provides for rural-residential activities and subdivisions for small rural lots with an average area of approximately one hectare, although no land has been zoned specifically for these purposes." [p.1 - From here all unascribed page references in Part 2 of this decision are to the plan change as approved by the Council in its decision].

2.3 Given that background and while the principal objectives deal with the proposed resort, one of the objectives of the TD zone is:

"To provide for limited comprehensive and co-ordinated medium to low density residential development to give a variety of residential and rural opportunities, lifestyle options and land uses." [Plan Change, Objective 1.2 (p.2)]

We note that the **explanation** of that objective has been restated by the Council as a result of its decision so that it now explains that:

> *"The scale of the development will be limited to a maximum of 103 household units and 20 self contained units associated with the resort (in addition to the hotel development) to ensure that the zone remains in scale with its rural surroundings."* (p.2)

This was not in the original Plan Change as notified. Because it is now in the operative transitional district plan, (but subject to a 'notation' "Number of units affected by RMA 602/96") if this appeal is successful as to the rezoning, that explanation will no longer be accurate. It may be that a second "TD zone" will be necessary for the appeal site.

Another objective of the TD zone is:

> *"To ensure that all development is carried out in a comprehensive manner in terms of an appropriate and agreed strategy"* [1.4 Objective, p.2].

The explanation of this objective then states:

> *"In order to facilitate the orderly staged development within the zone, development will be in accordance with an overall and comprehensive development concept which recognises the character and amenities of the zone and the area within which it is located and provides for a staged programme of development of residences, hotel and landscaping. The philosophy outlined within the Concept Plan provides for and enhances the amenities of the area and ameliorates any adverse effects of development."* (p.3)

So if the appeal site is to be developed in accordance with the plan change a "concept plan" is necessary, and it should outline a landscaping philosophy.

More specifically, targeted towards residential development there is an objective:

> *"To ensure that buildings and other structures erected within the Tourist Development Zone are appropriate to the area in which they are located, with regard to external appearance, design and colour."* [1.5 Objective (p.3)]

The explanation then states:

> *"Three types of homes have been provided for to cater for the permanent or semi-permanent resident and resort visitor:*
>
> *(i)* ***Dwellings*** *arranged in clusters within maximum specified densities.*
>
> *(ii)* ***Dwelling units*** *in duplex or single configuration, single or two storeyed, with private driveway and garage facilities and private courtyard areas.*
>
> *(iii)* ***Rural dwellings*** *on sites of approximately 1 hectare in areas specified."* (p.3)

The explanation of that objective continues with its plan - again notated - as to location and design:

"Location of Dwellings

Areas appropriate for the location of residences are shown on the Concept Plan. No dwellings will be permitted outside of these areas, unless otherwise approved by the Council.

Covenants and Controls

All buildings within each particular residential area will follow a unified design theme based on the pitched roofed form and they will be sited to ensure each has a view and is closely related to the rural environment. Tree planting to integrate these buildings into their landscape setting is to be undertaken in advance of building construction. Building design will be controlled by the developer through covenants to ensure a high standard of development." (p.4)

The sensitivity (or "reverse sensitivity") of the surrounding rural activities is recognised, and it is an objective of the plan change:

"To recognise the establishment and management of activities in the zone, in that the zone is located within a rural environment, and that there are legitimate rural activities which should not thereby be restricted." [1.8 Objective (p.5)]

2.4 Turning to the rules we consider the following are relevant.

(1) The relevant permitted activities are described in this way:

"The following activities are listed as permitted within the zone, provided that they conform with the Concept Plan and the development staging

prescribed in Rule 2.5.1 for the Tourist Development Zone and the permitted activity standards specified:

(a) Single unit dwellings (1 per lot) in residential and rural residential areas defined in the Concept Plan, provided that they are constructed in accordance with the staging prescribed in the Concept Plan and Rule 2.5.1 ... " [Rule 2.1 (p.5)]

The concept plan is clearly of some importance, yet no satisfactory plan was produced to us. Further the notation in the approved plan change states:

"Boundaries of concept plan subject to appeal RMA 602/96".

This cannot mean that we are restricted on this appeal to consider only the boundaries shown in the concept plan. But if not, how are any other amendments to the concept plan to be given effect to?

(2) Another potential difficulty arises out of a rule [Rule 2.4 (p.8)] which makes all activities not defined as permitted, controlled or limited discretionary activities into non-complying activities. Consequently, there is some inconsistency between the rules and the explanation to objective 1.5 which contemplated "clusters" and dwelling units in duplex configurations, yet since they are not permitted activities, they appear to be non-complying.

(3) Subdivision is a controlled activity (but again only for "single unit dwellings") and the relevant rule gives a list of matters for the Council to consider on any subsequent application for subdivision under the TD zone rules. These are:

"• *The topography of the site, its vegetative cover, slope stability, gully erosion and the opportunity to minimise the impacts of any buildings or structures.*

- *Any effects on existing vegetation or trees.*

- *Proposals to integrate such buildings and structures into their landscape setting.*

- *The appropriateness of materials used in construction and other structures to the locality, taking into account the design criteria set out in Rule 2.5.7."* [Rule 2.2 (p.7)]

This rule is significant for us in assessing whether the rules of the plan change will be adequate (on any application for subdivision of the site) to protect the amenities values of the surrounding area.

(4) There are some limited discretionary activities, including:

"(b) Subdivisions which will provide lots of less than one hectare in the Rural Residential Areas, providing that Council restricts the exercise of its discretion to the location and size of the lots.

(c) Any subdivision or building development which is not in accordance with specified staging programme, as described in 2.5.1

The Council restricts the exercise of its discretion to the staging of subdivision and development." [Rule 2.3 (p.7)]

There may be concerns here also in respect of (to anticipate) protecting landscape amenities, because by limiting its discretion in this way the Council cannot consider, and if necessary impose conditions dealing with the matters listed in rule 2.2 for controlled activities - see (3) above.

(5) Rule 2.5.2 as to landscaping is important. It provides:

"A landscaping Concept Plan is included as part of the zone's provisions. This zone landscaping will be undertaken as part of the zone development in association with roading and services development. Individual site planting does not form part of this and will be undertaken by the site owners. The zone landscaping shall be undertaken in accordance with layout and residential staging shown in the Concept Plan, and shall be completed prior to the issue, by Council, of a completion certificate under s.224(c) of the Resource Management Act for the subdivision of each stage." [Plan Change p.8]

Its importance is enhanced by the earlier references to a "concept plan". Under the existing transitional district plan (as amended by the consent order adding the TD zone) the "concept plan" and the landscape plan for the hotel and Stage I of the subdivision are already set out. As we have said a mechanism may need to be found to substitute a larger replacement concept plan covering the site as well, especially if we find that the appeal should succeed but we accept Mr Hearn's invitation to request an amended concept plan.

(6) Rule 2.5.3 (the third "permitted activity" standard) relates to subdivision (a controlled activity). It appears to provide certain

standards but how they relate to the controlled activity standards and therefore whether they are unenforceable is uncertain.

(7) Rule 2.5.6 is another important "permitted activity" standard - it relates to open space on the site. It states:

"All subdivisions shall be planned, designed, constructed and maintained in accordance with the Concept Plan and prescribed standards. The specification of building site separation will provide great flexibility in the location of boundaries and in individual lot sizes. There will be many opportunities for the establishment of common open space or public open space systems, especially where opportunities are taken to group building sites. The common open space may include such areas as natural resource areas, recreation areas and farmed areas. The subdivision shall indicate the means that will be used to assure the proper permanent administration and maintenance of the common open space. Such means may include:

- *Vesting of open space in the Council if the Council is willing to accept such vesting.*

- *The provisions of easements, covenants and deed restrictions binding on all purchasers of lots in the subdivision.*

- *The creation of a homeowners' association or other appropriate entity to which such common open space land shall be conveyed and which will have an ample source of funds, such as annual assessments on lot owners that are liens on such lots to maintain such open space.*

- *Any other means approved by the Council that will accomplish the requirements of this rule."* [Rule 2.5.6 (p.10)]

While we encourage the methods suggested by this rule we consider it sits uneasily in the rules, because the methods it suggests are not in fact rules [c.f. sections 32(1) and 74(1)(d)].

3. *The Evidence*

We were given the written evidence of ten witnesses for the appellant. Much of it related to the overall concept of the zone and the value of the hotel/conference centre to the Marlborough region, rather than to the specific site subject to the references. The wider evidence was useful to have as background, and indeed Mr Hearn argued that it was relevant because the hotel and conference centre depends on subdivision of the appeal site both to assist the appellants to finance the resort, and also to provide a larger customer base (in the form of residents on the appeal site) for the shops and other facilities at the resort once it is operating.

Evidence of the benefits and costs of developing Marlborough Ridge was given by Mr R.P. Donnelly, a self-employed economic consultant. His evidence, while of the kind to be encouraged because it assists the Court with its assessment under section 32 RMA, was rather misdirected in that it referred to the benefits and costs of the Marlborough Ridge development as a whole (i.e. both the site and the approved Stage 1 resort and residential development) and compared those with the benefits and costs of 'leaving' all the land under farming use. So while the detail of his evidence established that there were synergies by allowing fuller development of Marlborough Ridge, it was not specific enough to show what the benefits and costs of developing the site would be.

However parts of Mr Donnelly's evidence are of some use and we return to them later.

Mr J. Hudson, a landscape architect with 17 years experience, for the appellants produced a "concept plan" for the appeal site (and surrounds). He believed that with appropriate landscaping, especially by tree-planting, the amenities of the surrounding countryside could be protected. In cross-examination, Mr Dwyer for the Council asked Mr Hudson whether the development proposed for the site would not be integrated into the landscape but instead a ribbon of houses along the ridge. Mr Hudson's answer was that the ridge as a landform dictates a stop, and that it would be artificial to stop development halfway along it. He qualified that by saying that landscape conditions would need to be imposed. We agree with that assessment.

However, we do not believe that Mr Hudson's concept plan tacked on, as it appears to be, to the surveyor's unimaginative two-dimensional design, is adequate to satisfy the requirements of the plan change as to landscaping. If the appeal succeeds it would have to be on terms as to the filing of a new concept plan.

Finally for the appellant, Mr R. Stroud, a planner, gave evidence as to the desirability of the plan change in respect of the appeal site. He could see no reason to exclude the appeal site from the TD zone. One of the most significant parts of Mr Stroud's evidence was when he said that he had concerns with the concept that development on a ridgetop is inherently bad. To show us that was not so, he produced three photographs of hilltop development in southern Europe. One was of old villas interspersed with Lombardy poplars along a ridgetop road in Tuscany with a foreground of pasture. The second was of a Tuscan hilltop town (unidentified) with campaniles and other buildings clustered along the skyline. The third was of a similar hilltop town in Provence. We accept that it is

easy to be seduced by touristic photographs, but nevertheless we think Mr Stroud's point is well made that development on a low ridge such as this - set as it is against a backdrop of much higher hills and receding ranges - is not inherently harmful in its effect on visual or landscape amenities. Having said that we do bear in mind that those European landscapes are the product of slow, integrated growth over many centuries. In this case we are confronted with the prospect of mushrooming housing in contemporary New Zealand idiom.

For the Council we read and heard evidence from Mr Seed, an economist, Mr A.M. Rackham, a landscape architect, and two planners Messrs M.N. Baily and A.A. Aburn.

Mr Rackham who has 24 years experience concluded that:

> *"6.4 The proposed residential development would result in 96 dwellings being constructed on, or close to, the prominent ridge. Housing would stretch along the skyline for 1.25 kilometres and would inevitably be highly visible from extensive areas to the east and north. Views from the west would be less extensive because of intervening ridges. However, where views occur, housing would be very prominent and introduce new elements into an otherwise attractive rural scene.*
>
> *6.5 In my opinion the scale and extent of this proposal is such that it will inevitably have significant adverse effects on the rural character of the area. The present rural simplicity of a prominent downland ridge will be compromised. Housing and associated developments will be very visible and reduce the aesthetic coherence of this landscape. It will be a major departure from previous settlement patterns in the Wairau Valley and will*

introduce a new element into an otherwise pleasant rural landscape. The Marlborough Ridge Resort to the north will have a lesser visual impact as it relates more closely to the developed country at the toe of the dry hills."

Mr Rackham conceded that the site would not be particularly visible from State Highway 6 (Middle Renwick Road) between Blenheim and Renwick. He seemed to be mainly concerned with the views of the ridge from the rural land on either side of New Renwick Road. However, our site inspection showed that the further away from the site that viewpoints are (along New Renwick Road towards Blenheim), the more that shelterbelts and other trees increasingly intervene so that the Marlborough Ridge is less and less visible. It is significant to us that his photographs were taken from only 2 kilometres from the toe of the ridge. Mr Rackham conceded, in cross-examination, that judgment of aesthetic coherence was a highly subjective matter; that there was no community concern being expressed at the hearing about the effects on landscape; that landscape effects were only one consideration for the Court, and that they could be mitigated by appropriate tree planting.

Mr Rackham also supplemented his evidence-in-chief by commenting on Mr Stroud's European photographs. He said that there was no relationship between a Tuscan hilltop town and the Marlborough landscape, and continued "the ability to re-create that is beyond our abilities". In our view, those comments miss the point that Mr Stroud was trying to make - that urban development on a ridge-line is not inherently unattractive. In fact 'landscaping' is often a re-creation of another landscape. We know both from the evidence and our own experience that Highfield Winery some 2-3 kilometres to the west of the site has located a close replica of a Tuscan tower (the tower of Cafaggiuolo) on the toe of the next outlying ridge from the Wither Hills.

In a subtle way Mr Rackham's own evidence confirms the subjective nature of response to landscape (and the role of remembered metaphors which shape that response) when, in the passage quoted above he refers to the compromising of a prominent "downland ridge". However, there is nothing unique about a ridge covered in introduced grasses. To compare it with the "Sussex" or any other "Downs" is no more valid (or less) than Mr Stroud's comparison with a Tuscan landscape.

Mr Seed, an economist, questioned the need for funding of the resort from selling sections on the appeal site. He considered that on the figures he had (which derived from cash-flows earlier given to the Council by the appellant) the hotel/resort as a stand-alone concept (that is, without any attached subdivision) would be a viable financial venture based on a "net present value" analysis. That evidence is relevant to an issue raised in section 5(2) as to the enabling of people to provide for their economic wellbeing and we return to that issue in our evaluation later. His evidence also related to a point that is important for the appellant company - if no-one else. The directors of the company (Messrs Lofts and Bradbury) made it clear in their evidence that the more their company could make out of the subdivision, the more the appellant (rather than someone else) could invest in relation to the resort development. We infer that they will be able to retain a larger share of the equity in the resort proposal.

The appellant's witnesses had also emphasised the synergistic aspects of residential development on the appeal site. Mr Baily criticised this, saying that patronage of restaurants and bars at the resort "would be unlikely to be sufficient to support the hotel and conference centre". That overstates the point which is not that residential use will "sufficiently" support the resort, but that residential use will be one of a number of sources of cashflow (and income) for the resort.

However, Mr Baily did make a useful point when he said with houses closer to the top of the ridge or subsidiary spurs, much of the lower land will be difficult to use and offers no mitigation for density. The unfortunate consequences of allowing thin rectangular sections down steeper slopes for ridgetop roads can be seen in many towns and cities around New Zealand. The lots are usually too thin to allow ready further subdivision and so the land beyond the house is often undeveloped. To us that suggests that some early planning of sections and building sites would be useful so that further subdivision could take place if that was what the owners wanted (and the current owners had not stopped it by deed of covenant and the Council found it appropriate). We also find that at least on the eastern side of the ridge the land at the bottom of the ridge or on the flats especially if planted densely along the creek may be a useful buffer between the adjacent rural zone and the tourist resort zone. It will enhance the character of and provide protection for the creek's catchment.

Mr Baily, as had Mr Stroud, also dealt with the relevant policies in the Council's regional policy statement. We will refer to those in our assessment later.

The main focus of Mr Aburn, the Council's second planner, was on subdivision and residential development activity in the wider Blenheim/Wairau Plains sub-region. He stated that the Blenheim section of the (transitional) district plan provides for "substantial areas that are being ... subdivided" and he identified over 400 lots in the process of being subdivided in various areas on the northwest to southwest side of Blenheim, with the potential for another 1,200 lots southwest of the present built-up area. He also drew our attention to other localities on the Wairau Plains where subdivisions have been approved and not all lots sold. Based on this excess of sections Mr Aburn considered that, read together, clause 22 (of the First Schedule) and clause 1(b) of the Fourth Schedule direct that an Assessment of Effects on the Environment should have considered

"possible alternative locations". As will be seen we consider that issue can be considered more directly by the Court under section 32.

Mr Aburn continued by saying that because "substantial investment has been, and is continuing to be made in subdivisions in these locations" and "given that sustainable management means managing the use and development of natural and physical resources etc then the additional residential lots [on the appeal site] cannot be justified on resource management grounds".

4. *Section 74: The relationship between the matters to be considered*

4.1. Under section 74 of the Resource Management Act when deciding whether to confirm, modify or refuse the plan change we have to consider:

- the functions of a territorial authority under section 31
- the provisions of Part II
- the Council's duty under section 32 [section 74(1)]

We note both that the other matters identified in section 74(1) and (2) are not relevant in this case and that this list of matters is not exclusive: ***Foodstuffs (Otago Southland) Properties Ltd -v- Dunedin City Council*** (1993) 2 NZRMA 497 at 534. For example, other relevant matters are the regional policy statement [section 72(2)] and (in relation to a plan change) the other unamended objectives, policies and methods of the relevant plan.

As a preliminary, jurisdictional point it is clear that the rezoning and proposed uses of the land come within the Council's functions under section 31.

4.2 Early in the hearing we became aware that this was not a case where there were sustaining or safeguarding issues under section 5(2)(a) and (b); nor were there matters of national importance under section 6 (nor Treaty of Waitangi issues under section 8). So section 7 became relatively more important to our deliberations. We saw the relationship between 'efficiency' as a substantive requirement in Part II (section 7(b)) and as a formal requirement in section 32 as potentially relevant. We asked counsel about the relationship between the use of 'enabling' in section 5, 'efficiency' in section 7 and the language of section 32, but they were unable to assist in any detail, so the following analysis is without the benefit of full submissions and therefore as tentative as a judicial decision can be.

4.3 We start with a few remarks about the role of economics in the RMA. There is a distinct thread in the RMA which takes an 'economic' approach to sustainable management of natural and physical resources. This approach derives from:

- section 5(2) - the references to 'enabling' and 'economic wellbeing';
- section 7(b) - reference to 'efficient use';
- sections 9, 13(2), 14(2) and 15(2) where the default option is that activities are allowed as of right unless a rule in a plan states otherwise; (and contrast these with
- sections 11, 12, 13(1), 14(1) and 15(1) with their 'default' requirements in which activities are unlawful unless a rule in a plan or a resource consent states otherwise)
- section 32(1)(b) - benefits and costs;
- section 32(1)(c)(ii) - effectiveness and efficiency.

Referring to some of those sections the High Court in ***Machinery Movers Ltd v Auckland Regional Council*** [1994] 1 NZLR 492 stated:

"The RMA explicitly recognises the importance of having environmental laws which are economically efficient" [at p.502]

In fact our isolation of the economic jargon in the RMA may lead to incorrect confinement of economic issues and principles and misunderstanding of their relevance to the RMA. If, as we understand it, economics is about the use of resources generally, [see R.A. Posner ***Economic Analysis of Law*** 4th Edition (1992) p.7] then resource management can be seen as a subset of economics. Bearing that in mind will prevent unnecessary debates as to whether the use of the word 'efficiency' in the RMA is about 'economic' efficiencies or some other kind. All aspects of efficiency are 'economic' by definition.

5. *Part II of the Act*

5.1 As we have said, in this case the most relevant part of Part II (other than section 5) is section 7. Section 7(b) requires the Court to consider 'the efficient use of natural and physical resources'.

The Concise Oxford Dictionary (Eighth Edition) states:

"efficient ..." means "productive with minimum waste or effort."

This basic definition of 'efficient' is certainly consistent with the purpose of the Act. Its difficulty is that it does not give any guidance as to what is 'waste'. Nor as to how to quantify the waste so that we can ascertain what is 'minimum' (which introduces an interesting quantitative element to the definition). In particular many people would not recognise that the costs imposed by the RMA and plans under it are themselves 'waste' -

economists call them 'transaction costs' - and should be taken into account in assessing efficiency. On the other hand the general definition does show why efficiency is a qualitative goal that has been included in the RMA - most people prefer to avoid 'waste'.

5.2 The issue of efficiency and economic wellbeing was an issue in the ***Marlborough Rail*** cases (which related to appeals on resource consents, not a plan change). In the High Court (***NZ Rail v Marlborough District Council*** [1994] NZRMA 70, 88) Greig J stated:

> *"That economic considerations are involved is clear enough. They arise directly out of the purpose of promotion of sustainable management. Economic well-being is a factor in the definition of sustainable management in s.5(2). Economic considerations are also involved in the consideration of the efficient use and development of natural resources in s.7(b). They would also be likely considerations in regard to actual and potential effects of allowing an activity under s.104(1). But in any of these considerations it is the broad aspects of economics rather than the narrower consideration of financial viability which involves the consideration of the profitability or otherwise of a venture and the means by which it is to be accomplished. Those are matters for the applicant developer and, as the Tribunal appropriately said, for the boardroom."*

But the High Court raised, with respect, a slightly inconsistent note when it continued (p.88):

> *"In this case plainly there was a considerable body of evidence given on each side as to the costs and as to the economics and the potential viability of the proposal for the reclamation and construction of all works and buildings required.*

The contention that the Tribunal was dismissive of this economic evidence is, I think, to misunderstand what the Tribunal was doing. Clearly it considered all the evidence that was put before it but in the end it dismissed the contentions and opinions of Dr Allan and set them aside. It was not satisfied, on the evidence before it, that the apprehensions of that witness and thereby of New Zealand Rail would be realised. This was a judgment on the facts, on the weight of the evidence before it. The Tribunal took into account economic questions, as it was bound to do, in a broad sense and in a narrower sense upon the projected development itself. In the result they came to the conclusion that evidence was not 'sufficiently persuasive to justify refusing consent on economic grounds.'" (Our emphasis).

The decision is unclear as to whether it is the broad economic aspects which are relevant, or the narrower (including viability of a project and/or the benefits to a developer). We consider both are relevant and that economic analysis may show why.

In ***Imrie Family Trust v Whangarei District Council*** [1994] NZRMA 453 the Planning Tribunal (as it was) stated:

"We accept that the efficient use and development of natural and physical resources (referred to in s.7(b)) is an element of the statutory purpose of sustainable management. However we have not found language in the Act to indicate that Parliament intended territorial authorities to attempt quantitative allocation of retailing opportunities in their district plans according to an assessment of potential customer support, so as to avoid duplication of shopping, or under-utilisation of land and buildings intended for retailing. That would be approaching

retail licensing which, in our understanding, is not authorised by the Resource Management Act." (p.463).

Earlier on the same page in ***Imrie*** the Tribunal accepted that:

"...although we need to consider the economic effects of the proposal on the environment, it is only to the extent that they affect the community at large, not the effects on the expectation of individual investors." (p.463).

With respect, we agree with that clear articulation of the planning principles. We raise the issue whether application of microeconomic principles would, as we believe, lead to the same conclusion. This is of more than academic interest since there is a suggestion in some cases that sectoral interests may be protected.

In ***Woolworths NZ Ltd v Christchurch City*** [1994] NZRMA 310 the Planning Tribunal stated (at p.321):

"that the retail commercial sector having made investment decisions on the basis of the [city] plan is entitled to rely on those provisions."

That appears, with respect, to be letting in effects on trade competitors through the back door, although as the Tribunal had earlier reminded itself (p.317) those effects are irrelevant on resource consent applications (section 104(3) RMA).

Where, as in this case, there is a plan change, and section 104(3) does not apply, but section 7 and section 32 (in part) do, further examination of the

aspects of efficiency may possibly enable a simpler and more certain approach to some of these issues.

5.3 In an effort to achieve better definition of 'efficient use' we found that the High Court in a case under the Commerce Act 1986 (***Telecom Corporation of NZ Ltd v Commerce Commission*** (1991) 3 NZBLQ 102, 340) has discussed 'efficiency'. It stated that:

> *"We bear in mind that efficiency has three dimensions commonly referred to as allocative efficiency, production efficiency and dynamic efficiency."* (at 102, 383)

Unfortunately the decision does not define those. However in an article "Meat, Competition and Efficiency..." (1996) NZBLC 216 (also about a case under the Commerce Act 1986) Dr A.W. Maughan describes these types as follows:

> *"(a) Productive efficiency - where the existing, or a higher, output of the economy is produced at a lower cost, or where a better quality good is produced at the same or lower cost.*
>
> *(b) Allocative efficiency - in which resources are allocated to the production of goods and services that society values the most.*
>
> *(c) Dynamic or innovative efficiency - where technological change is encouraged and productivity gains retained rather than frittered away in slackness and 'rent seeking' activities."* (p.221).

Tentatively we find these descriptions may be useful because [as (c) suggests] they also imply that activities or conduct which is the opposite of

each of those descriptions is inefficient. (We will really only be able to consider (b) in this case, because we did not hear evidence as to the others).

5.4 The potential advantages of examining 'efficiencies' at a slightly more technical level under section 7(b) are:

- the approach is relatively value free;
- in some cases it may allow for an objective, quantitative approach;
- it allows for an overall perspective, provided of course, that all aspects of efficiency are examined;
- it provides a useful technique for assessing objectives, policies and particularly methods under the Act; and
- it appears to be required under section 32 (see part 6 of this decision).

The potential disadvantages are that:

- it encourages expert evidence from economists - with an attendant increase in another sort of jargon;
- it produces solutions that sometimes appear counter-intuitive and therefore require considerable explanation; and
- full-blown mathematical analyses of benefits and costs are both expensive and complex.

But at least this division of the Court would, in other cases, encourage fuller evidence from economists identifying the microeconomic principles that are relevant in their opinion, and then applying them to the particular facts of the cases.

5.5 In introducing section 7(b) Parliament must be taken as considering that the advantages of 'efficient use' should be considered. It is the role of section 7(b) in assessing methods under the RMA which might make it a

particularly powerful tool. We add that its inclusion in section 7 (which is otherwise mainly a section dealing with substantive matters to be considered) shows that Parliament recognised (inter alia) that the substance/form distinction has a blurred edge, and wished to ensure that efficiency was recognised as a normative goal as well as a technique. As the High Court stated in ***Telecom*** of different legislation (the Commerce Act):

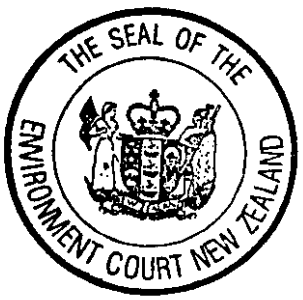
> *"The more efficient use of society's resources in itself is a benefit to the public to which some weight should be given."* (p.102,386).

Curiously, the RMA by including section 7(b) is more explicit than the Commerce Act 1986 about the social desirability of the efficient use of resources.

One consequence of this regard to efficient use is, to paraphrase and adopt a Ministry of Commerce review approved in ***Telecom*** (at p.102, 386), that economic efficiencies are real and promote sustainable management *"even if little or none of the benefit directly accrues to others than the owners of the business"*.

It is for this reason that we have some doubts about whether it is impermissible or irrelevant to have regard to the benefits of a proposal for its promoter, [cf ***Port Marlborough, Imrie***] but that issue does not need to be decided here. Equally the effects on and of trade competitors need to be considered in respect of all dimensions of efficiency.

We now turn to consideration of the formal use of efficiency in our discussion of section 32.



6. *Section 32*

6.1. Role of the Environment Court under Section 32

The section 32 duty applies to the Court by virtue of section 290 which imposes the same duty on the Environment Court that the Council has: ***Countdown Properties Limited v Dunedin City Council*** [1994] NZRMA 145 at 176-197 (Full Court).

Some of the wording in section 32 is difficult. First, the various tests are not altogether consistent with each other, especially the alternation between 'economic' and 'planning' language. Nor do the paragraphs appear to be in the most logical order. And finally, the wording does not fit particularly comfortably with the role of the Environment Court. We turn to the tests next, but as for the Court's functions under section 32 it is clear from existing authorities that there are limitations on how the Court can approach its tasks. These are:

(a) the Court is an appellate body which deals with (and only with) the matters referred to it under clause 14 of the First Schedule ***Fletcher Forests v Taumarunui County Council*** (1983) 11 NZTPA 233 applied in ***Leith v Auckland City Council*** [1995] NZRMA 400;

(b) in particular, any issue under section 32(1) must be raised in a submission on the proposed plan (change): section 32(3) as applied in ***Hodge v Christchurch City*** [1996] NZRMA 127; [but see ***Financial Systems Ltd v Auckland City Council*** A11/97 as to whether the same result cannot be achieved by reference to Part II of the Act (in particular, we assume, section 7(b))] and

(c) as far as the evaluating function in section 32(1)(b) is concerned: "[T]he Tribunal is not itself a planning authority with executive functions..." ***Waimea Residents Association v Chelsea Investments*** [High Court, Wellington, M616/81 Davison CJ, 16/12/81].

We consider that while section 32(3) precludes any challenge to a plan or plan change on the grounds that *"subsection (1) of this section has not been complied with"* the reference to compliance applies to the various procedures in section 32(1)(a) and (b) rather than to the test in section 32(1)(c). A different interpretation would mean that the section 32(1)(c) test was never applied to a requested plan change. We cannot accept that Parliament intended that privately requested plan changes should not be subject to the discipline of section 32(1)(c). Our interpretation is consistent with the scheme of the Act - that the Environment Court should decide the same matters as the Council, and (so far as possible) apply the same tests as to the appropriate methods (and objectives and policies).

6.2 Section 32(1) Analysis

We consider that the effect of the Full Court's interpretation in ***Countdown Properties Ltd v Dunedin City Council*** [1994] NZRMA 145 (the appeal from ***Foodstuffs***) of the relationship between sections 32 and 74 of the Act is that section 32 provides:

(1) methods for resolving the various matters to be considered under section 74; and

(2) a threshold which a proposed plan or plan change or any relevant 'challenged' provisions in the plan must pass (this latter point tends to be overlooked).

The High Court in *Countdown* found that there are two tests for a plan change (or a new plan) under section 74: first the "rigorous" test of section 32(1)(c) and then "the broader and ultimate issue of whether it should action the change or direct the council to modify delete or insert any provision which had been referred to it." [*Countdown* p.179]. That ultimate test merely needs to be satisfied "on balance" as opposed to the rigor of the section 32(1)(c) test.

Because there has been no challenge to the section 32(1) procedures in this case we do not have to consider section 32(1)(a) and (b), only (c).

6.3 Section 32(1)(c): The threshold test

Section 32(1)(c) requires Councils (and, on appeal, this Court) to be satisfied that any plan or plan change can cross a two-step threshold:

(i) that the proposed rules are 'necessary' to achieve the purpose of the Act; and

(ii) that the proposed rules in the plan (change) are the most appropriate having regard to efficiency and effectiveness "relative to other means".

It may be more useful in the context of a plan change to start with subparagraph (ii) since it is useful first to consider what the "alternative means" are in such a case. Really the options are: the plan change, or the existing plan, or some compromise between the two. That follows from both the wording of section 32 and the numerous decisions on jurisdictional limits [the leading case is *Countdown*].

In our view both the necessity for and the appropriateness of a plan change need to be weighed against the existing plan (especially where the latter is a transitional plan) because necessity is a relative concept in this situation. A plan change only needs to be preferable in resource management terms to the existing plan to be 'necessary' and most appropriate for the purpose of the Act and thus pass the threshold test.

7. *Application of Section 74 in this case*

7.1 Part II - Section 7(b)

As we have said, there are no relevant matters in section 5(2)(a) or (b); nor are there matters of national importance under section 6. The most relevant parts of Part II from the Council's perspective are section 7(b) (efficient use etc) and section 7(c) (maintenance and enhancement of amenity values).

On section 7(b) Mr Dwyer for the Council, submitted:

> *"In this instance it is the Council's view that the referrer's proposal had adverse effects pertaining to the following issues:*
>
> *(i) the efficient use and development of natural and physical resources (section 7(b)).*"
>
> *"Notwithstanding the evidence of Mr Donnelly that this is purely a question of economics and best left to the market it is submitted that it is not an efficient use of the land resource of the district to allow the establishment of a satellite residential enclave of the size proposed in a situation where there is a substantial existing residential land resource available.*"

...

There is no unmet need for residential land which the applicant's proposal is intended to satisfy".

Counsel quite rightly acknowledged that some residential development had already been allowed by the Council when it approved the TD zone for the lower end of Marlborough Ridge, a decision which weakens the Council's case. We see a further difficulty with the Council's position in the evidence of Mr Donnelly which was uncontested on these general issues. He wrote in his evidence-in-chief:

"The economic response to these planning issues is the Council does not understand the concept of efficiency and how to promote section 7(b) and/or the enabling aspects of section 5(2). If it did it would not be so naive to think it could determine what is efficient allocation of resource use including land or that it had the ability to plan sustainable development.

Market forces encourage efficiency and sustainable management by encouraging resources to gravitate to their most productive use. If the Marlborough Ridge development can out bid rival uses it is indicative of it being the most productive economic use of the land and the most efficient use of natural resources as a whole. The Council's role is defining justifiable environmental standards not allocating resources. If there is no market failure there is no economic or resource management basis for encouraging sub-optimal production decisions and/or second best consumer choice.

In the absence of adverse environmental effects that require avoiding, remedying or mitigating, the market should decide which is the preferred

economic use of land both now and in the future. Where relevant to their functions resource managers should encourage the market to determine allocation issues as it is better equipped to determine the most efficient and sustainable use of land."

We do not accept his views on what the RMA requires - that is a legal issue for us to decide, but otherwise we accept his (uncontroverted) evidence as to the operation of markets on natural and physical resources.

His answers to Mr Dwyer in cross-examination were consistent. Mr Dwyer put to him the proposition that it is not an efficient use of land to allow residential development of land when there is a body of appropriately zoned land elsewhere. He replied:

"No, efficiency has many aspects, and we must have regard to consumer needs".

And we infer that those "needs" do not have to be specifically identified but generally enabled from his subsequent answer:

"From an economist's perspective I see section 7(b) as a key to achieving the enabling aspects of section 5."

To the extent that there is a conflict between counsel's submissions and an expert witness' opinion on a matter of economic fact or principle we must prefer the latter's opinion.

As for the effect on the landscape amenity and the application of section 7(c), we deal with those next.

7.2 The threshold test: is the plan change necessary and appropriate? [section 32(1)(c)]

The arguments as to the **necessity** for the plan change between the parties really come down to the meaning of and weight to the matters in section 7 to which we are to have particular regard, viz:

> " *(b) the efficient use and development of resources*
> *(c) the maintenance and enhancement of amenity values*
> *(d) the maintenance and enhancement of the quality of the environment"*

We start by *"having particular regard"* to the matters raised in section 7. We give the phrase *"have regard to"* the meaning discussed in ***New Zealand Fishing Association v Ministry of Agriculture and Fisheries*** [1988] 1 NZLR 544 (C.A.) Cooke P, quoting McGechan J in the High Court, said:

> *"The phrase is 'have regard to' not 'give effect to'. They may in the end be rejected, or accepted only in part. They are not, however, to be rebuffed at outset by a closed mind so as to make the statutory process some idle exercise."* [p.551]

As to what efficiency under section 7(b) requires in this case, we accept Mr Donnelly's evidence so far as it goes.

Paragraphs (c) and (d) in this context both come down to the effect on views and landscape. We find these issues are easy to dispose of in this particular case. It was common ground first that the smaller-scale landscape in which Marlborough Ridge will be seen is not an outstanding landscape

(under section 6(b) of the Act), and secondly that there was no expressed public concern (other than through the Council) about effect on amenities. We also take into account that the ridge has already been compromised by Stage I of the subdivision which is well underway. We are satisfied that, provided sufficient landscaping is planned and carried out, any adverse effects would be sufficiently mitigated subject to consistency with the Regional Policy Statement. The practical difficulties are how that can be done, and how it is translated into the "concept plan' contemplated by the zone rules.

As to whether rezoning the site is the most appropriate way of exercising the function of integrated management of the effects of the use and development of the land we hold that it is for the reasons set out in paragraph 7.4.

Overall we consider that the plan change passes the section 32(1)(c) threshold test as follows:

(a) As far as the proposed residential land use is concerned, the plan change is both necessary and efficient because the possible adverse effects on the landscape can be sufficiently avoided or mitigated.

(b) As far as the proposed subdivision rules are concerned, there are obvious advantages in the new rules. The alternative - keeping the rural subdivision rules - is less efficient than the new rules so long as all externalities (traffic, sewage, stormwater etc) issues are internalised, that is paid by the developer - which they will be under the TD rules.

7.3 The Regional Policy Statement

The policies in the regional policy statement broadly support the proposal. "Objective 7.1.7 - Economic Benefits" refers, under "Methods", to:

"...enabling appropriate type, scale and location of activities by: clustering activities with similar effects; ensuring activities reflect the character and facilities available in the communities in which they locate; promoting the creation and maintenance of buffer zones (such as stream banks and greenbelts)." [Marlborough RPS p.59]

While we consider that the plan change does enable an appropriate type, scale and location of activities by clustering the various residential uses on the Marlborough Ridge, we are less certain that adequate buffer zones are created. We return to this issue later.

And in the section on "Protection of Visual Features" the objective expressed is:

"8.1.2 Objective - Visual Character

The maintenance and enhancement of the visual character of indigenous, working and built landscapes." [Marlborough RPS p.80]

The anticipated environmental result of that objective is expressed as:

"There is clear differentiation between landscape types shown by protection of outstanding landscaping features, and the maintenance of those criteria which define the nature and character of indigenous, working, and built landscapes.

The features which make the landscape special need to be recognised and protected to ensure that what we enjoy now is available for future generations to also enjoy. The diversity between and within landscapes is important to the values which we place on those landscapes. Outstanding landscapes need to be protected in a form similar to their present form, while the working and built landscapes need to accommodate and reflect the dynamics of their use and development." [Marlborough RPS para 8.1.8 (p.82)]

As we have said, the Council did not argue that Marlborough Ridge was in itself an 'outstanding landscape', and so the development of the ridge, if carefully planned with a landscape perspective, may enrich the wider landscape by adding to its diversity.

On that assumption we consider that inclusion of the deleted area is not contrary to the objective expressed (and we did not understand the Council to argue otherwise).

7.4 Conclusion

We now turn to the ultimate test (***Countdown***) that on balance we must be satisfied that the plan change (rezoning) achieves the purpose of the RMA.

Section 5(1) states:

"(1) The purpose of this Act is to promote the sustainable management of natural and physical resources."

and then section 5(2) gives the definition:

"(2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while -

(a) Sustaining the potential of natural and physical resources (excluding minerals)

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment." (Our emphasis).

Both parties relied on the definition in section 5(2) and especially the underlined words. The appellant argued that allowing the rezoning would enable

- the appellant to provide for its economic welfare; and
- potential residents to provide for their social, economic and cultural wellbeing

The Court accepts that the development, given its proximity to the resort complex and golf course, may enable significant social and economic (even cultural) benefit to the community.

For its part the Council's position was that community social and economic wellbeing would not be enabled because of:

- the effect on landscape and views;
- the effect on the Blenheim urban growth strategy and in particular the "oversupply" of sections on the fringes of Blenheim.

The Council's witness Mr Baily said that "any perceived benefits from the hotel and conference facility ... are not a confirmed outcome". Quite apart from the fact that that issue is only indirectly raised by this case about residential subdivision, we question whether it is the role of this Court to make judgments about social, economic or cultural wellbeing (as opposed to creating circumstances which enable that wellbeing to be created by people and communities) except possibly in the clearest cases (cf see ***Countdown Properties (Northlands) Ltd v Ashburton District Council*** [1996] NZRMA 337 which was more a case about not disenabling the community's centre by the grant of a resource consent). Our role as we perceive it under section 5 is to enable people to provide for that wellbeing. In other words, the scheme of the Act is to provide the 'environment' or conditions in which people can provide for their wellbeing.

We are satisfied on balance and having regard to all the relevant factors referred to in section 74 that the plan change should be allowed (applying ***Elderslie Park Ltd v Timaru District Council*** [1995] NZRMA 433).

8. Determination

The issue then arises as to how to give effect to the decision since we find:

(a) that the zone statement and rules as they stand are inadequate to control development on the appeal site for the reasons stated earlier. It may even be desirable to amend the rules to provide for a "No. 2 TD zone".

(b) that it might be fairer on the appellant if its financial contributions under the Act were in the form of land to be vested as reserve (for

example - without determining the issue - in the head of the valley leading down to the lake on Stage 1 land).

(c) that a fuller landscape concept plan will need to be drawn up, and attached to the amended set of rules.

(d) that the amended concept plan should deal with the matters referred to in the zone's rule 2.5.3(b) (so as not to be inconsistent with the Regional Policy Statement), specifically and by way of illustration:

- It should, to preserve natural topography, make the boundaries for allotments (especially those south of the road branch on the site) reflect and be sensitive to the contours rather than the present rectangular grid.

- It may be useful to sketch in all lots and building platforms. Some further infill could usefully be sketched in (even though that will require a discretionary consent later) so that potential problems with access are anticipated.

- At least some plantings on berms should be on the ridgetop - not less than 50% of the ridge line south of the road branch saddle.

- At least two clumps of plantings should be planned for on the eastern face of the zone in prominent places.

- Consideration should be given to placing a further woodlot on the site's high point adjacent to Goulter Hill.

- Plans should be shown for Long Paddock so that landscaping is coordinated with the lake in Stage I (outside the appeal site).

- There is a farm track at the northern end of the appeal site (it may in fact start on the Stage I land not subject to the site). It may be appropriate to form that as a right-of-way (easement in gross) down to and then along the eastern boundary of the land. The slopes both up and downhill could be planted (and protected by restrictive covenant) on subdivision. This would achieve various advantages:
  (a) an interesting tree line
  (b) a pedestrian footpath
  (c) a useful buffer between zones along the eastern boundary.

- Two further rights-of-way for the public should be shown (and required on any subdivision plan):
  (a) a footpath from the cul-de-sac to the paper road at the southern end of the site
  (b) a footpath down the long paddock to the Stage I land and a (dead-end) connection to the boundary of the adjacent land to the west.

- Consideration should be given to dropping the road down the east side of the last hump in the ridge before the road branch saddle so that a more intensive residential development can be sited (if that is what a purchaser wants) on that knoll.

- That so far as possible within the parameters of Plan Change 40 it would be desirable to allow greater intensity of development on some sites and again, if possible, fewer or at least better bulk and location controls to maximise opportunities for imaginative residential design

(some of the material in the rules might be left to the owners to impose by restrictive covenant).

Accordingly we further adjourn the case and invite:

(1) Preparation of an amended concept plan and amended rules (if necessary) for the TD zone as it applies to the site.

(2) Submissions from counsel as to the appropriate machinery for rezoning the site if the parties cannot agree on (1).

DATED at CHRISTCHURCH this 16th day of **October** 1997.

J.R. Jackson
Environment Judge

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND