

APPENDIX 2

Landscape Assessment Of the Lower Port Hills in Selwyn District

Prepared by Peter Rough Landscape Architects Ltd

Landscape assessment

Of the lower Port Hills in Selwyn District

Prepared for the Selwyn District Council

May 2006



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Purpose of the landscape assessment

In the proposed Selwyn District Plan's planning maps the 60 metre contour line has been identified on the Port Hills which marks the boundary between them and the Rural Inner Plains. It should be noted that the 60m contour appears to be marked as there is no text reference to this line in the District Plan.

There are two issues required to be addressed in this assessment, which are as follows:

- Is the 60m contour an appropriate outstanding natural landscape boundary between the Port Hills and rural plains?
- What degree of landscape management and intervention is required for the lowest slopes of the Port Hills?

Methodology

The methodology of this assessment involved three parts.

The first part involved an on site visual landscape assessment. The approach to this was largely qualitative where observations were made of the landscape within the prescribed area, specifically being the land at and below the 60m contour. This area is identified on the Appendix 1 map.

The second part involved an analysis of the observations which form the body of this report.

The third part involved the assessment of relevant documents which included, principally, the District Plan, the Di Lucas landscape report, and Environment Court decisions. Reference is made to these in the report. Reference to other research documents is also made.

On site observations

The purpose of on site observations is to determine the landscape character and amenity of the land below the 60 metre contour. In undertaking this exercise answers to the following questions were sought.

Q. *Are there any topographical or landuse characteristics that demarcate the 60 metre contour?*

The short answer to this question is no. There are no landscape features, either natural or man made, that specifically denote the 60 metre contour.

The only instance where it comes close is where clusters of dwellings and accessory buildings occur. These are concentrated, relatively speaking, in

Early Valley Road, Otahuna, Holmeswood Rise and Rocklands. In all of these areas buildings occurred below, at and above the 60 metre contour.



Photograph 1: A relative concentration of Houses at Rocklands as seen from Michaels Road

Very few buildings exceeded the 100 metre contour, although there are some at much greater elevations.



Photograph 2: Dwellings at over 200 metres elevation as seen from the Summit Road.

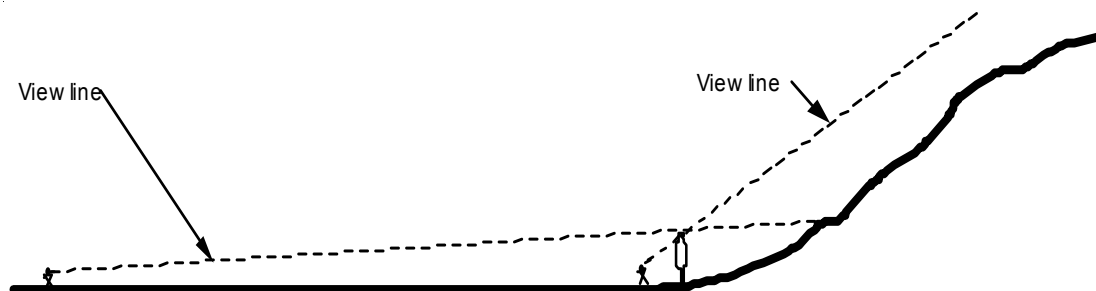
Generally the landscape above and below the 60 metre contour is indistinguishable. Because of this the land below the 60 metre contour has no less importance than that above in terms of Section 6(b) matters. The absence of differentiation between land above and below the 60m contour is apparent in the photographs within this report.

Q. *How discernable is the land below the 60 metre contour?*

This depends on the following variables:

- Proximity to publicly accessible space, principally roads. The toe of the hills become more apparent the closer people get to them. There are a number of instances where roads run along the toe of the hills. This will be discussed in more detail later.
- Height and density of foreground trees. Tall trees obscure views of the toe of the hill up to a maximum height of about 25 metres. The location of trees in relation to vantage points affects how the hills are viewed also. This effect is illustrated in diagram 1 below.

Diagram 1: The distance of viewers in relationship to foreground objects, such as trees and buildings, determines the degree of visibility of background landforms.



- Diversity of land use such as buildings and vegetation. Multiple land uses such as forestry, pastoral farming, and horticulture if concentrated into small areas tend to diminish the landscape's apparent homogeneity. This has the effect of diluting the underlying land form and therefore its appreciation.

The following photographs illustrate the above variables and how they affect visibility of the hill slope below the 60 metre contour.



Photograph 3: A relatively complex landscape made up of various plant types and treatments have the effect of obscuring landform at the toe of the hill. Looking west along Early Valley Road.



Photograph 4: On Early Valley Road also, the absence of trees and predominance of pasture reveals the landform at the toe of the hill. Due to the proximity of the hill to the road the detail of the landscape is very apparent to the public.

It is evident from on site observation and the above photographs that the hills below the 60 metre contour are readily discernable. This is especially so south of Tai Tapu where the landscape is more pastoral and less modified compared to areas north.

The toe of the Port Hills from between McCartney's Road to Gebbies Pass Road is highly apparent from SH 75. This is because the highway runs more or less alongside the toe of the hill between these two points. A comparative lack of landscape modification, especially in the form of buildings, that when combined with a predominance of pastoral farming reinforces visibility of the toe of the hills in this area also. The only exception is where valleys such as the Ahuriri recede from the highway. These valleys are fairly small and are not very long, and so their topographic character is still discernable from the highway. As a result of these factors this area has a high level of naturalness which is easily seen and appreciated from State Highway 75.

Q. *To what extent does the landscape vary below the 60m contour?*

A principle of landscape assessment is that the landscape can be seen as a series of hierarchal layers. At the top level are regional landscape units. In this case the whole of Banks Peninsula would be one as would the Canterbury Plains. Descending the hierarchy means the land form is broken up into increasingly small landscape units. So for Banks Peninsula the basic land form next consists of its major constituent parts such as valleys and ridges. The next level would then be the association of these units with others. There are the valleys and ridges that adjoin the coast and those that adjoin the plains. And so the hierarchal descent continues into smaller landscape units with a corresponding increase in detail.

The same principle applies to land below the 60m contour. I have already established that this land is indistinguishable from that above the 60m contour, so properly it cannot be considered a discrete landscape unit subject to the hierarchy described above. Nonetheless, for the land below the 60m contour it is apparent that there is some variety in land use both vertically and longitudinally. As mentioned the various land uses are not contained by the 60m contour. Still, the hierarchy principle can be applied and is described as follows.

For the most part land use below the 60m contour is pastoral as is the case for the land above. The landscape character of this area can then be divided into two discernable parts which has already been alluded to. These parts are the areas of land from more or less the Tai Tapu area north, and the remaining area to the south, which are identified on the Appendix 1 map.

Generally the area to the north displays greater variety than its southern counterpart. Compared to the latter area it has the following distinguishing characteristics.

- Greater amounts of vegetation.
- Greater variety of vegetation regimes including amenity planting, small woodlots, shelterbelts, small horticultural enterprises (olives for example), forestry and scrublands.



Photograph 5: Young olives, shelter belt and amenity planting are all evident here at Holmeswood Rise. The variability of the this kind of landscape results from small rural residential development.

- Higher concentrations of buildings (dwellings and accessory buildings)
- Smaller holdings denoted by dwellings, driveways, boundary fences, shelter belts and diverse land uses.
- The presence of purpose built rural lifestyle subdivision – Otahuna, Holmeswood Rise and Rocklands.

The southern area has characteristics that are more or less opposite to those listed above. These are as follows.

- Relatively small amounts of large scale vegetation, most being pastoral grassland.
- The vegetation tends to be less diverse.
- Most of the vegetation is functional that in addition to being pastoral it comprises mostly shelter belts and little else.
- There are very few apparent buildings.
- Infrastructure is very pragmatic in appearance such as farm roads, post and wire fences. There is very little that has an apparent amenity purpose.



Photograph 6: The landscape in the area south of Tai Tapu is much simpler compared to its northern counterpart, as seen here from State Highway 75. As a consequence it has a high degree of legibility.

In general, the area north of Tai Tapu displays a greater degree of modification compared to the southern area. It is a more heterogeneous landscape compared to the relatively homogenous landscape south of Tai Tapu. Nonetheless, much of the northern area retains a strong natural character that can be appreciated below the 60m contour.

Smaller landscape units are apparent within each of the northern and southern areas. For example the heads of the valleys tend to be more vegetated than the valley mouth and spur heads. Consequently where the spurs reach into the plains the toe of the hill tends to be more apparent than it does in the valley heads.



Photograph 7: Where the spurs reach into the plains their landform becomes very apparent compared to the valley heads, which tend to harbour greater concentrations of woody vegetation.

Q. *Do any outstanding natural features exist below the 60m contour?*

The short answer to this is no. Natural features do exist which can be described as being characteristic of Banks Peninsula, but they are not especially significant in their own right. These features mostly comprise rock outcrops that when compared to their cousins on the upper hills tend to be smaller and less dramatic in appearance. There are no other outstanding features such as major water courses or stands of remnant native bush. Such features, where they do occur certainly merit protection, and the S6(b) status of the land should be sufficient to achieve this.

The only possible exception beneath the 60m contour concerns general landform, which does display characteristics that indicate its formative processes.¹ In this regard the area of most interest is in the vicinity of Motukarara. Here the toe of the hill is characteristically very steep and is distinctly different from the hill toe in the remainder of the study area. This steepness indicates former coastal erosion, doubtless from a time when Lake Ellesmere's shores reached this part of the Port Hills. The height of these remnant cliffs is around 40 metres.



Photograph 8: In the vicinity of Motukarara the toe of the hills comprises remnant shoreline cliffs. Because of the prevailing pastoral regime, the landform is especially apparent, and its proximity to State Highway 75 means that this is visually accessible to the public.

In contrast, the landform of the hill toe immediately north of the old coastal cliffs is much gentler in gradient. The character of the two land forms is most apparent at the point where they meet as is apparent in photograph 8 above. Furthermore the toe of the hill at the head of the valley between these cliffs is very gentle, so much so that it is difficult to discern just exactly where the toe

¹ One of the 'Pigeon Bay' criteria, listed in Appendix 3.

of the hill occurs. Photograph 9 below and the contours on the Appendix 1 map graphically illustrate this effect.



Photograph 9: The plains in the foreground are not actually part of the Canterbury Plains. Instead they are plains that emanate from the Port Hills in the vicinity of Ahuriri. Even though the toe of the steeper gradients is evident here, the geographical toe of the Port Hills occurs at the point where their plains and the Canterbury Plains meet.

Highlighting these juxtaposed land form features is the fact that the prevailing land use is exclusively pastoral. This means that the land form is not concealed by land use activity and is therefore especially apparent in this area. It also occurs at a point where SH 75 closely follows the toe of the hill and is therefore highly visible to passers by.

Q. *Are there any areas that do not merit S6(b) status below the 60m contour?*

Before answering this it is important to understand that the degree of naturalness forms the threshold between what does and does not constitute an outstanding natural landscape in accordance with S6(b). Under the naturalness umbrella are other factors which are taken account of as well. These factors are now generally referred to as the so called 'Pigeon Bay Criteria'. As established by case law the accepted practise is that landscape assessors employ the 'Pigeon Bay Criteria' to determine whether or not a landscape is outstanding. This criterion is outlined in Appendix 2. Because

the Port Hills land above the 60m contour is mostly indistinguishable from that below, there is no need to apply the Pigeon Bay assessment for this land. That is, there is no apparent reason why the merits of the land above the 60m contour do not and cannot extend below.

It is also important to understand that the degree of naturalness is subject to a spectrum ranging from the pristine to the highly modified. Through Environment Court decisions, natural is now generally accepted to mean the extent to which the landscape is modified. The less modification the more natural the landscape is. This is perhaps best summed up in the *Wakatipu Environmental Society v Queenstown Lakes DC*² decision where the Court made the following observation:

“We consider that the criteria of naturalness under the RMA include:

- The physical landform and relief*
- The landscape being uncluttered by structures and/or ‘obvious’ human influence*
- The presence of water (lakes, rivers, sea)*
- The vegetation (especially native vegetation) and other ecological patterns.*

The absence or compromised presence of one or more of these criteria does not mean that the landscape is non-natural, just that it is less natural. There is a spectrum of naturalness from a pristine natural landscape to a cityscape”

This spectrum is illustrated in the diagram below as it applies to the subject land.

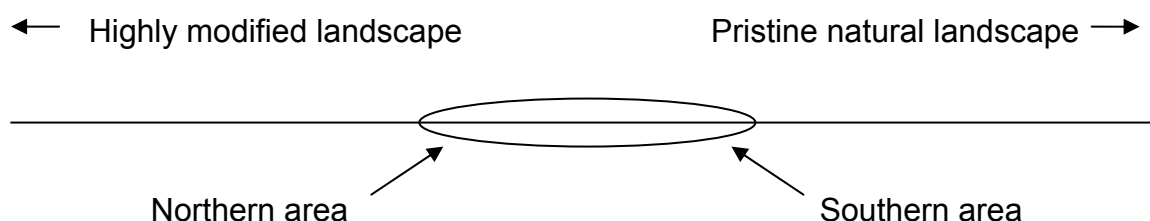


Diagram 1. This diagram illustrates where on the naturalness spectrum the subject land lies. Relative to the northern area, the less modified area south of Tai Tapu falls more toward the pristine end of the spectrum, even though the land here is modified.

² C180/99

What this means for the area of land below the 60m contour is that it can be modified to some degree, as it is, and still be considered sufficiently natural to warrant S6(b) status. It also means that this land, as indeed all other S6(b) land, can be further modified provided its outstanding natural character is protected.

For the land below the 60m contour there are a number of areas that have been irrevocably modified to a point where land can no longer be considered sufficiently natural enough to warrant S6(b) status. These are the rural residential areas of Otahuna, Rocklands and Holmeswood Rise, which are shown on the Appendix 1 map.

To a lesser extent a concentration of housing occurs along Early Valley Road. Most of these are intermittently spread along the road and all appear to be below the 60m contour. In fact most are just above road level. Between these intermittent dwellings relatively unmodified rural land extends down to Early Valley Road, the landscape quality of which is apparent. For this area a relatively high level of naturalness is still apparent, and because it is close to the road it would merit S6(b) status.



Photograph 10: The toe of the hill is very apparent from Early Valley Road, even though the landscape in this northern area is more complex than that for the area south of Tai Tapu.

The remaining areas would merit S6(b) status for the following reasons, (acknowledging that previous landscape assessments have concluded that

the rural Port Hills in general merit S6(b) status, while bearing in mind that the District Plan is not yet operative.

- As mentioned, there is no landscape differentiation between the land above the 60m contour and that which is below.
- For the above reason, the landscape quality of the land below the 60m contour is no less than that above in terms of its naturalness and the Pigeon Bay criteria.
- For the most part the land below the 60m contour is readily apparent to the public from the key vantage points of nearby roads. It is in fact the one point where most members of the public will have their closest encounter with the Port Hills. State Highway 75 is also a major tourist route and so the natural character of the Port Hills in the vicinity of the road is particularly apparent and therefore important.



Photograph 11: State Highway 75 follows along the toe of the hill and is therefore very apparent to travellers on this stretch of the road.

- The point where the plains meet the hills is where the qualities of each land form is most apparent. This is because the different landforms are at their greatest discernable contrast at this point. Photograph 10 on the next page illustrates this effect.



Photograph 12: One of the important principles of landscape assessment is recognising that areas of greatest interest in the landscape occur at the boundary where two different topographic or land use features meet. The shoreline where waterbodies and land meet is a good example of this, the value of which is reflected in elevated real estate prices in such areas. Other examples might include the point where mountains and plains meet, or contrasting vegetation types such as bush and grassland. The conjunction of the rural Port Hills and the rural Plains is another good example of such an edge. In the above photograph the line of poplar trees help to emphasise the contrast between the hill and plains landform at the boundary where they meet.

Conclusion of observations

The following points are concluded from the on site observations.

- There are no landscape features which demarcate the 60m contour.
- The landscape character above and below the 60m contour is generally indistinguishable, although most dwellings are below the contour.
- For the most part the land below the 60m contour is visible from nearby public spaces, these being mainly roads.
- The visibility from public areas varies depending on how close the public space is to the toe of the hill.
- The area below the 60m contour can be divided into two distinct areas that more or less occurs north and south of Rocklands.
- The southern area is less modified than the northern area.
- The southern area is the most visible due to its proximity to State Highway 75 and the predominance of pastoral farming.
- Three rural lifestyle subdivisions exist where the intensity of land use means that their location can no longer be considered natural enough to include within the S6(b) landscape.
- The topographic edge which occurs where the Port Hills meet the Plains plays an important role in defining the character of each land form by virtue of the contrast between them.

From these observations I conclude that the land below the 60m contour merits S6(b) status, except for the rural lifestyle subdivisions of at Otahuna, Holmeswood Rise and Rocklands.

Literature Review

The purpose of reviewing relevant literature is identify information previously relied upon that may have affected how the land below the 60m metre contour has been managed.

The Selwyn District Plan

How the land below the 60m contour is zoned have implications for its landscape appearance. These implications are as follows.

The rural Port Hills are identified in the Selwyn District Plan as an 'Outstanding landscape and natural feature'³ and are therefore subject to Section 6(b) of the Resource Management Act. This requires...

³ SDP Part 2 pp62 & 63

The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.

The key word here is ‘*inappropriate*’ which I will discuss later with regard to the discretionary matters. What the S6(b) status means is summarised below.

- The District Plan recognises that the owners of land subject to section 6(b) matters can ‘...*continue and to diversify their activities.*’⁴
- The District Plan recognises that one of the values of the rural Port Hills is the ‘*Absence of houses and other buildings and structures, especially on the upper slopes and ridgelines.*’⁵
- The District Plan states that residential development ‘...*may be appropriate or inappropriate, depending on the scale, location and design of buildings and associated infrastructure.*’⁶ It is very likely that the reference to locations would be with the 160m contour in mind, in addition to other considerations such as topography. These considerations are further discusses with reference to the discretionary matters.
- The District Plan objective relevant to landscape outcomes states:

*The Outstanding Natural Features and Landscapes of the District are recognised and protected from inappropriate use and development while still enabling people to provide for their economic and social well being.*⁷

- In achieving the above objective the District Plan will, among other things, only ‘*Allow activities that will have complementary or only minor effects on the landscape values of these areas.*’⁸ It must also achieve the policies referred to below.

The three district wide policies⁹ that apply to the above objective set out to address the extent and nature of change in landscapes subject to section 6(b) matters. Essentially these policies, where relevant, can be summed up as follows:

- Policy 1: Accepts existing levels of landscape modification (farms, forestry, existing dwellings and accessory buildings etc).
- Policy 2: Recognises that outstanding landscapes change over time, and that change should be allowed provided the fundamental character and value of the landscape is maintained.

⁴ Ditto p63

⁵ Ditto p63

⁶ Ditto p63

⁷ Ditto Objective 1 Natural Resources 1.4 Outstanding Landscapes & Natural Features

⁸ Ditto p68

⁹ Ditto p68

Policy 3: Aims to control the removal of native vegetation and to encourage revegetation.

Policies 5 – 11 are specific to the rural Port Hills.¹⁰ They are...

Policy 5 Identifies the Port Hills as an area of outstanding natural landscape. It also identifies specific landscape features such as Gibraltar Rock.

Policy 6 Seeks to avoid the location of dwellings and structures 30.46m below the Summit Road which is not relevant in the case of land below the 60m contour.

Policy 7 Aims to restrict subdivision for residential purposes, especially on the upper slopes (above the 160m contour).

Policy 8 Residential density to be kept at low levels, while maintaining high levels of vegetation.

Policy 9 Buildings to be designed so as to fit in with landscape and maintain visibility of natural features (rock outcrops).

Policy 10 Refers to exotic plantations and encourages their placement in a manner that is sensitive to the landscape setting.

Policy 11 Avoid, remedy and mitigate earthworks by limiting volume and re-contouring to match natural gradients.

- The District Plan describes the environmental results¹¹ it anticipates for the rural Port Hills. There are two that are relevant in this case, which are as follows:

1. Activities on land in Areas of Outstanding Natural Features and Landscapes have only minor visual effects.

2. Most structures and buildings are located on the Lower Slopes of the Port Hills.

- With respect to visual effects, it is worth noting that the Environment Court is putting quite a lot of weight on 'perceptual effects' as well. What this means is that no matter how well hidden buildings are, if the public perceives the landscape to be free of dwellings and therefore as having a high degree of naturalness, then that is an important point to consider. In other words the public have to not only see that the landscape is free of

¹⁰ Ditto p69

¹¹ Ditto p84

dwellings, they also have to know that it is free of dwellings.¹² This has implications for the land below the 60m contour. In the area south of Rocklands, because it is relatively unmodified, the public perception will be that this area is more natural than that for the area north of Rocklands. Consequently they may expect less development to occur in the southern area.

- Regarding development on the lower slopes, then clearly land below the 60m contour is going to be more conducive to development compared to land areas on the upper slopes.
- Another policy concerning building density is also relevant. This is Policy 1¹³ where 1 dwelling per 100 ha is set for the rural Port Hills Upper Slopes above the 160m contour and 1 dwelling per 40ha for land on the lower slopes below the 160m contour.
- Allied to the above policy is a rule which restricts buildings as of right to a floor area not exceeding 40m². The maximum building height is 4m and colour reflectance is not to exceed 37%.

While the extent and location of development on the rural Port Hills is considerably more restricted than what can occur on the rural Inner Plains, it is clear that the District Plan does not rule out such activity all together, subject to the matters of control outlined in Appendix 3 attached to this report. This recognises the fact that S6(b) does not prevent subdivision, use and development from occurring in such land, so long it is not inappropriate. In achieving the relevant objectives and policies we can expect the following outcomes within the lower slopes of the rural Port Hills, including the land below the 60m contour should S6(b) status be imposed.

- A low density of housing (1/40ha).
- Buildings that are not visually prominent in the landscape.
- That buildings will be concentrated on the lower slopes compared to much lower densities on the upper slopes.
- The maintenance of visually prominent natural landscape features.
- The harmonious location of buildings in the landscape.
- Forestry location and extent that is sympathetic to land form.

For the Rural Inner Plains the following outcomes can be anticipated.

- Minimum lot area is 1 dwelling per 4ha¹⁴
- Maximum building site coverage is 5% (2000m² dwelling on 4ha)
- Maximum building height is 18m.

There are other rules concerning the location of buildings on sites, mainly relating to setbacks from boundaries.

¹² Also see EC decision Hawea Developments v Manger 2005 where perception was one of the reasons given for refusing consent.

¹³ SDP Part 2 Growth of Rural Area p168

¹⁴ SDP Part 2 Rural Rules 1.14ff

The main permitted baseline difference between the Rural Inner Plains and Rural Port Hills zone lies in the building density and maximum building size provisions. The building density for the Rural Inner Plains zone is ten times greater than that for the Rural Port Hills. The maximum site coverage for the Rural Inner Plains is fifty times greater.

Should the land below the 60m contour be included in the Rural Inner Plains zone, then it is clear that it has the potential to be modified to a much greater level than what currently exists. Should such densities be realised for the land below the 60m contour then it will without a doubt breach the threshold for maintaining the degree of naturalness that would otherwise be anticipated for S6(b) land.

The Di Lucas Study¹⁵

In this study Ms Lucas discusses at length the location of the Port Hills / Rural Inner Plains boundary.¹⁶ In her discussion she makes numerous references to case law which appears to support a rational boundary. Reference is also made to the Christchurch City Plan (now fully operative), but this does not make any reference to a lower contour boundary other than on some policy maps. Ms Lucas in her recommendations seeks a landform boundary wherever it may fall irrespective of the contour. She rightly identifies that in certain places the toe of the hill occurs at about the 10m contour.

I fully concur on the points she raises in her discussion, with the exception of setting the boundary absolutely at the topographic boundary. I support the 20m contour as being the appropriate boundary for the reasons implicit in the following discussion.

The reason why I depart from Ms Lucas's view is that in some areas the landform boundary demarcation is not entirely clear. This is particularly so in the area around Motukarara as identified on the Appendix 1 map.

Another reason is that, especially in the area north of Tai Tapu, most current development occurs at the base of the hill at or around the 20m contour. This is the point where most dwellings, outbuildings, and intensive farm activity occurs.

A further reason relates to ease of plan administration. A fixed contour is easier to identify on topographic maps and is therefore quantifiable. It leaves no room for debate over where the boundary occurs, particularly in those areas where it is less discernable.

¹⁵ Lucas, D Technical Report on Outstanding Landscapes & Natural Features of the Port Hills 2004

¹⁶ Ditto Paragraphs 3.2.64 – 3.2.81

The Canterbury Regional Landscape Study¹⁷

This study carried out in 1993 identified the entire Banks Peninsula area as being ‘...regionally outstanding.’¹⁸ The Study does not specifically identify the lower boundary extent of the outstanding area, although it has this to say:

No detailed analysis of the landward boundary of this area has been attempted however a previous landscape assessment identified a ‘natural dominance’ zone, and the boundary to this zone may be a sensible basis for determining the extent of this outstanding landscape.’¹⁹

Unfortunately no reference is given for the previous landscape assessment referred to. Consequently the referred to boundary is not known or shown in the Canterbury Regional Landscape Study.

The only other relevant point of interest to arise from this study concerns a reference to how the hills may be viewed from nearby roads. In this regard the Study observes;

The State Highway and other key tourist routes are also of special relevance because of the numbers of people that experience the Peninsula from them.’²⁰

This is certainly true with respect to the proximity of State Highway 75 which runs alongside the toe of the hills in many places as discussed earlier.

Hearing Panel recommendations²¹

Regarding the 60 metre contour the Hearings Panel said that , ‘*The 60 metre contour presents a rather more obscure picture.*’²² It then notes that the contour resulted from extensive consultation with interested parties. The panel’s understanding is that the contour was arrived at for the following two reasons.

- It acknowledges historic land use, including housing, being confined to the lower slopes.
- The lower slopes between Tai Tapu and Halswell are generally obscured by intermediate vegetation.

Some submitters sought a higher contour, these being 100m outstanding landscape lower boundary with an above 200m, as opposed to 160m contour, non-complying boundary. The Panel rejected these.

¹⁷ Boffa Miskell Ltd & Lucas Associates Canterbury Regional Landscape Study 1993

¹⁸ Ditto p.45

¹⁹ Ditto p.47

²⁰ Ditto p.45

²¹ Selwyn District Council Recommendations of Hearing Panel No. 48 2004

²² Ditto p 11

Significantly NZ Fruit Growers and Vegetable and Potato Growers Federations acknowledged that, as reported in the Panel's decision, '*...there is little to differentiate the management regimes of the Upper and Lower Slopes.*'²³ This statement aligns with the observations noted earlier in this report.

Finally the Hearing Panel's discussion concerning the areas of activity within the rural Port Hills noted that '*..."outstanding natural" denotes a quality that comes in degrees.*'²⁴ This view concurs with Diagram 1 and the accompanying discussion in this report along with that part in the conclusion to follow concerning Professor Barton.

In its decision, the Panel recommended that the Council precisely identify the Upper and Lower Slope boundaries on the Port Hills. It then goes on to recommend that the 160m and 60m contours be referred to on the planning maps. Despite this and of note, the Panel did not categorically state that the 60m contour should be the appropriate one delineating the Outstanding Landscape and Inner Rural Plains zones.

Recommendations

The following are the recommendations in response to the two issues to address in this assessment.

Q1. Is the 60m contour an appropriate boundary between the Port Hills and rural plains?

The boundary line between the Port Hills and the plains should follow the topographic boundary at the point where the two features meet. This line is shown on the Appendix 1 map. For ease of plan administration the line should be drawn at the 20m contour.

The reason for this is:

- That there is no logical rationale for having the 60m contour based on existing site conditions such as a change in land form and levels of modification. That is, there is no existing landscape distinction between one side of the 60m contour and the other that would otherwise identify the boundary's position.
- That most existing irrevocable land use activities (buildings) occur below the 60m contour.
- The meeting point of the two topographic features of the plains and hills defines the landscape quality of each.

²³ Ditto p.12

²⁴ Ditto p3

- That the topographic boundary between the two landscape features is, for the most part, very apparent from key vantage points, especially SH75 and Old Tai Tapu road.
- That between MacCartneys Road and Gebbies Pass Road the toe of the hill is especially apparent from SH 75. Furthermore, because the hill slope is so close to the highway, landscape detail is highly visible. It is therefore vulnerable to disturbance as seen from this important vantage point.

The exception to this is where the three clusters of housing occur at Otahuna, Rocklands and Holmeswood Rise. These areas can be excluded from the 20m contour as shown on the Appendix 1 map.

Q2. What degree of landscape management and intervention is required for the lowest slopes of the Port Hills?

Essentially the policies, rules and matters of discretion²⁵ that apply to the Port Hills below the 160m contour should apply down to the 20m contour. These matters go some way to address consent applications that have the potential to adversely affect the landscape above the 20m contour. There is however, a need to add discretionary matters that are more specific than the existing ones. More specific matters lessen ambiguity and assist all parties in the consent process to provide and consider relevant information. Furthermore, because discretionary matters rely on the context of proposed development, more specific matters give better direction as to what is of contextual importance.

Existing discretionary matter 3.2.1²⁶ asks that consideration be given to:

Whether the site is appropriate for a building, and any associated infrastructure (including access and utilities), considering the topography, stability, prominence of the site and the extent to which the site and surrounds have been modified by buildings and structures.

Although this matter covers most of the general contextual concerns, it could be reinforced by more specific matters. The recommended matters also relate more directly to the relevant policies discussed earlier. With this in mind the following discretionary matters are recommended.

Recommended Discretionary Matters

- The degree of site visibility as seen from key vantage points accessible to the public, such as nearby roads, parks and recreational areas.

²⁵ SDP Vol.2 Rule II Tree Planting and Removing Heritage Trees 9.2ff and III Buildings 3.2ff

²⁶ Ditto Buildings 3.2ff.

- Whether or not the proposed activity is contiguous with existing modified areas, namely Otahuna, Holmeswood Rise and Rocklands.
- Whether or not there are opportunities to provide for environmental compensation such as the gifting of balance land for public use (see Appendix 4 for an example of an environmental compensation policy).
- The degree to which application sites and balance land is enhanced so as to improve its natural landscape character in a way that significantly benefits the public and ecosystems.
- Whether or not prominent natural features, such as rock outcrops, stands of bush and water bodies are affected by the proposed development.
- What measures are taken to avoid, remedy or mitigated the visual prominence of buildings, curtilage areas and earthworks.

Outstanding references (Appeals)

Of relevance to the subject of this report there are a number of references²⁷ before the Environment Court concerning landscape matters. In summary these are as follows:

- The maximum amount of earthworks is limited to 20m³ per 5 year period. The referrer, Federated Farmers, seeks relief for all earthworks to be a permitted activity.

Earthworks have the potential to substantially affect the natural character of the landscape in an adverse way. This is especially so in outstanding natural landscapes where there is an expectation that their character and amenity is to be protected from inappropriate subdivision, use or development. Hill areas are particularly sensitive in this regard because their elevation means that they are much more visible than areas on the plains. Consequently earthworks on the hills have the potential to be highly visible in such locations.

The potential adverse effects of earthworks are not only confined to the visual. Earthworks may entail the removal of native vegetation and habitat, which could also adversely affect the natural character and amenity of outstanding natural landscapes.

Another adverse effect arising from earthworks concerns subsequent water run off. Run off from bare exposed land may affect streams through sediment contamination, thereby jeopardising water quality and natural habitat. It may also exacerbate erosion, of which the Port Hills are particularly susceptible.

²⁷ Reference D – Port Hills

I recommend that the rule remain as it stands.

- The second reference seeks to substitute the word 'building' in Table 1 and for rule 1.2 and 3.1.2 for the words 'residential dwellings.'

In the outstanding landscape areas the Selwyn district plan sets a maximum permitted building size of 40m², which is about the size of a large double garage.

Residential dwellings can have adverse effects on outstanding natural landscapes that can be more significant than those associated with utilitarian farm buildings. The potential adverse effects may include 'domestication' of the landscape that surrounds dwellings, such as manicured lawns, swimming pools, tennis courts, vehicle manoeuvring areas, patios, clotheslines and so on. The abundance of reflective windows and lighting at night can also have adverse effects on the landscape. Roading and services to and from dwellings can also adversely affect the natural character of the landscape.

Farm utility buildings are less likely to bring with them such peripheral effects. They can nonetheless have a significant impact on the landscape character of outstanding natural landscapes. These adverse effects can arise from their location, for example on the top of ridgelines. Being utilitarian, they are often clad in highly reflective materials such as unpainted corrugated iron. De facto activity such as the storage of machinery and materials around farm buildings may also adversely affect the natural character of the landscape. Farm buildings can be very large too, such as hay barns, implement sheds or accommodation for intensive animal production like pork and poultry.

I recommend that the rule remain as it stands.

- The deletion of the rural Port Hills as an outstanding natural landscape is sought.

For the area above the 60 metre contour this is now beyond challenge, and is therefore beyond the scope of the relief sought. For the area below the 60 metre contour the outstanding natural landscape status is within scope. The reasons for retaining it, or otherwise, as an outstanding natural landscape is the subject of discussion in this report. To reiterate, how the Port Hills were deemed to be an outstanding natural landscape is not discussed. Instead, the assumption is made that because there is nothing to distinguish the outstanding natural landscape above the 60 metre contour from that below, there is no apparent reason why the outstanding natural landscape status cannot be extended below the contour either.

I recommend that the rule remain as it stands.

- Relief is sought to allow horticultural activity as a permitted activity below the 160 metre contour.

The outstanding question in this regard relates to whether or not the effect of horticultural activity has the potential to adversely affect the natural character of the landscape. Some horticultural activities may involve the installation of structures such as support frames for crops (vineyards) and hot houses. They may also involve extensive earthworks such as benching to enable access for machinery. Other horticultural activities have much less impact, such as market gardening.

As mentioned, it is generally accepted as a result of Environment Court decisions that outstanding natural landscapes are subject to degrees of naturalness, and that because a landscape is modified, it does not mean that it is not natural.

In light of that, and given that horticultural activity generally has a low impact compared to plantation forestry, there may be scope to relax the rules in this regard. It should also be noted that compared to buildings, horticulture is not an irrevocable activity provided the potential to restore the landscape to a more natural state is retained.

In allowing such activity below the 160 metre contour, we have to be mindful that horticulture is often accompanied by accessory activity such as pack houses, implement sheds, irrigation infrastructure and access roads, all of which can have an adverse effect on the natural landscape. These latter activities would be subject to other rules relating to, for example, earthworks and buildings.

Because there is some risk to visual amenity associated with horticultural activities, including the non-landscape concern of reverse sensitivity, I would recommend that these are permitted except for those that involve the extensive installation of support structures. For these I would recommend a rule along the lines that where support structures over 1.5 metres high that cover an area of greater than 2ha are considered a limited non-notified discretionary activity. Discretion would be limited to two matters. The first would concern the location of the activity with regard to its visibility from the key viewpoints of the Summit Road, State Highway 75 and Tai Tapu Township. And the second would relate to what measures are taken to avoid, remedy or mitigate the adverse effects on visual amenity.

Overall with regard to the above references, it is important to understand that Section 6(b) status does not necessarily preclude the aforementioned activities. Even though the landscape in which such activities may occur is outstanding, there will be circumstances where most rural activity can be undertaken subject to limited intervention from the Council. Nonetheless, the Council has a duty to achieve Section 6(b) and ultimately the purpose of the RM Act, but as case law suggests this section of the Act does not prevent development. Instead it seeks to prevent 'inappropriate' development, and because of that it is necessary to maintain a level of discretion or regulatory

intervention. This is because there is such a wide range of contextual factors relating to the proposed activity and its location that influence whether or not activity is inappropriate.

Conclusion

In undertaking this study it is clear that there is no landscape evidence to suggest that the 60m contour forms a justifiable land management boundary for the reasons discussed in this report. The hearings panel report suggests that at least north of Tai Tapu (Rocklands) the land is sufficiently modified not to merit inclusion as a S6(b) landscape. With the exception of the rural lifestyle developments at Otahuna, Holmeswood Rise and Rocklands, there is not sufficient modification in these areas to exclude the land below the 60m contour. In other words the remaining areas display a high degree of naturalness.

An argument can be put for providing a greater degree of enabling development below the 60m contour because it is very low and it abuts areas of areas of comparatively high modification. These are contextual matters, and S6(b) status does not preclude greater development in such areas. But this can only occur if context is taken account of, which is the purpose of the discretionary matters.

It is important to understand that S6(b) does not rule out subdivision, use or development with land subject to this status, provided it is not inappropriate. At this point it is perhaps useful to refer to an enlightening conference paper prepared by Professor Barry Barton²⁸ where a discussion was entered into over what constitutes inappropriate development or use within S6(b) landscapes. The subject of Professor Barton's paper focuses on outstanding natural landscapes which provide a very good summary of what is meant by outstanding natural landscapes within the RMA context.

In his paper Professor Barton notes that resulting from Environment Court decisions, '*...s 6(b), like s 6(a), does not entail that landscapes and features are protected at all costs.*'²⁹ He also notes that it is the "inappropriate" subdivision, use and development that outstanding natural landscapes are to be protected from. He then goes on to ask the question '*...what development can there be in an outstanding natural landscape or on an outstanding natural feature? It is generally accepted that the restriction on "inappropriate" subdivision, use or development does not mean a veto or embargo.*'³⁰

Professor Barton then cites a case where it is concluded that '*Categorisation of a landscape as outstanding does not preclude development or subdivision.*'³¹ To push the point home he then cites another case where the

²⁸ Paper entitled Outstanding Landscapes Paper delivered at NZ Law Society seminar 2005 Barry Barton is a Professor of Law at Waikato University.

²⁹ Barton p83

³⁰ Barton p85

³¹ Barton p85 citing *Prospectus Nominees Ltd v Queenstown Lakes District Council* C283/2001

Court noted that '*Just because an area is or contains an outstanding natural landscape does not mean that development is automatically inappropriate.*'³²

³² Barton p85 citing *First Queenstown Lakes Decision [2000] NZRMA 59*.



Orange = 60m contour
Blue = 20m contour
North/South Demarcation Line

Existing Outstanding Landscape/ Rural Inner Plains Boundary
Proposed Outstanding Landscape/ Rural Inner Plains Boundary
Indicates less modified landscapes to the south

Map of existing 60m and proposed 20m Outstanding Landscape and Rural Inner Plains Boundary

The Pigeon Bay criteria.

- a) The natural science factors – the geological, topographical, ecological and dynamic components of the landscape.
- b) Its aesthetic values including memorability and naturalness.
- c) Its expressiveness (legibility): how obviously the landscape demonstrates the formative processes leading to it.
- d) Transient values; occasional presence of wildlife; or its values at certain time of the day or of the year.
- e) Whether the values are shared or recognised.
- f) Its value to Tangata Whenua.
- g) Its historical associations.

Listed below are Selwyn District Plan provisions that are to be considered in the event that subdivision and land use consents are lodged for application sites in the rural Port Hills.

13. Rule IX – Subdivision (pp. 342 ff)

Rule 1.1 – Any subdivision is a controlled activity where it meets the required standards in the District Plan. This proposal does not meet all of the standards and terms due to the size of the sites, and their location in an outstanding natural landscape. Subdivision consent would be needed for a non-complying activity. The matters of control provide guidance of what will be considered.

Matters of Control relevant to the landscape include the following:

3.34ff Outstanding natural landscapes

3.34.2 Allotment boundaries – with regard to following natural or physical boundaries. Consideration would need to be given to having boundaries follow natural features such as ridgelines and water courses.

3.34.3 Positive effects to offset adverse effects. The proposed walkway is a positive effect. The benefits of this would have to be offset against the liability of maintenance. Revegetation with native plants would be another positive effect.

8.4 Subdivision of Lots Smaller than the Minimum Size.

8.4.5 The shape and location of the balance land to be kept free of dwellings is a consideration.

8.4.6 On the rural Port Hills the location of allotments regarding Subdivision rules 3.1.1 and 3.34.2 (wrongly shown in the District Plan as rules 3.1.2 and 3.43.2). Essentially any effects the proposed subdivision has on landscape values.

8.4.7 The balance area of land regarding the applicant's understanding and enforceability of restrictions ensuring that balance land is kept free of dwellings. That is, there is no chance for further subdivision on the balance land outside of the permitted baseline.

8.4.8 Any positive effects – see 3.34.3 above.

14. Rule III – Buildings (pp.229ff)

Because the proposal is non-complying it is regarded in the District Plan as 'Other Activities', and is therefore subject to the following assessment criteria.

3.1 *Outstanding natural landscape areas* - Council's discretion is restricted to:

3.2.1 Site appropriateness concerning topography, prominence and degree of modification.

3.2.2 Building design – colour, reflectance.

3.2.3 Access siting and design.

3.2.4 Siting of utilities that serve the building – power lines, pipes and reservoirs etc.

3.2.5 Landscaping for mitigation purposes – design and species needed. This will mean that a landscape plan will have to be drawn up for each house.

3.2.7 Positive effects as discussed above

3.2.8 Monitoring. The Council will check that mitigation measures have been implemented and maintained.

13.1 *Residential Density*

Erecting dwellings on sites less than minimum specified size shall be a restricted discretionary activity where the following criteria apply.

13.1.4 & 13.1.5 The balance land is kept free of dwellings

13.1.6 The balance land not to include river beds, reserves, and legal roads.

13.1.7 Total number of dwellings not to exceed 3

The Council's discretion is restricted to:

13.2.1 Suitable size and shape of allotment to avoid reverse sensitivity effects.

13.2.2 The maximum number of lots under the rule.

13.2.4 The shape of balance land to maintain open space around dwellings.

13.2.5 The balance area of land – applicant understands and enforceability of restrictions ensuring that balance land is kept free of dwellings.

13.2.8 Any positive effects.

Below is the environmental compensation policy from the Christchurch City Plan. The purpose of including this policy in this report is to demonstrate an effective tool that enables the subdivision, use and development of parts of outstanding natural landscapes in return for land that benefits the public and / or guarantees the protection of balance land. As is the norm, this policy is implemented in concert with all other relevant policies.

In Christchurch City this policy has successfully enabled urbanisation of some relatively small areas of outstanding natural landscapes in return for the provision of balance land for protection and recreation purposes. While the benefits of environmental compensation may be substantial, there are costs as well. Apart from losing a portion of outstanding natural landscape, the Council may inherit the cost of land management, for example, in the form of pest and weed control, and possible development costs such as the installation of walking tracks.

6.3.14 Policy : Environmental compensation (Updated 22 May 2006)

In limited circumstances, to apply the concept of "environmental compensation" where:

- (a) land of high landscape or natural value is protected or made available for public use and/or:**
- (b) significant public benefit will be gained from hazard mitigation measures which would substantially enhance amenity values.**

Explanation and reasons

In some circumstances development may be proposed on land, where there are significant open space or natural values, an example being portions of the Port Hills. The ability to acquire or protect such land in exchange for development opportunities, is an option the Council will explore in appropriate circumstances.

The acquisition or protection of land having high landscape or natural values is often impractical on account of land purchase costs. The use of the concept of "environmental compensation" (public ownership or covenants) for development rights has to be approached with some caution, but does offer a cost effective means to the community of achieving environmental benefits. This may result in development in locations which may not meet all other policy criteria, but any such arrangement must still require permitted development to be sustainable and environmentally acceptable.

The acquisition of land by the Council as environmental compensation for development opportunities in terms of Policy 6.3.14 would generally be in addition to, and not instead of, any requirement to provide land or cash for reserves under the Council's Development Contributions Policy. The Development Contributions Policy requires provision for public reserves for open space and recreation at the time of any residential and/or business development and/or subdivision. However, the provision of environmental compensation may be a situation where it is appropriate for the Council to exercise its discretion to reduce the amount of development contribution payable under the remission provisions of its Development Contributions Policy.

Environmental compensation may also be appropriate in circumstances where a public benefit is obtained from hazard mitigation, but only where as a result of such measures, there is a significant enhancement of amenity values (eg plantings, or wetlands for flood retention). It would not apply to normal sound management practices which landowners can be expected to undertake. Environmental compensation would arise in circumstances requiring significant development proposals, which would arise through plan changes, variations or resource consents, the outcome of which would still be subject to rights of submission and reference under the Act.