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The Remarkables Skifield: A Case Study

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A thesis submitted for the degree of
Master of Arts
at the University of Otago, Dunedin,
New Zealand.
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Abstract

This thesis provides a case study of the decision making process for planning a skifield in the Remarkables Mountain Range, near Queenstown, New Zealand. I have examined the proposition that the ability to influence decision makers is distributed disproportionately amongst interest groups. Less affluent groups, newly established or potential groups and groups representing general or fragmented interests will be disadvantaged in decision making.

I analysed events in the Remarkables case from 1973, when a developer first applied for a lease to build a skifield on Crown land, until 1980, when planning permission for the field was finally confirmed. From the results of the case study I have argued that environmental interests were principally represented by new groups lacking financial resources. These interests were disadvantaged by a decision making process that was reactive and incremental.

I have acknowledged that generalisations cannot be made from one case study but these results have led me to conclude that certain conditions are required before effective public participation can be achieved in decision making. However I have stressed that the purpose of that participation must be established first.
Acknowledgements

I would like to thank the staff of the Department of Conservation, particularly Ms Dinah Wakelin and Mr Phil Doole and staff of the Queenstown Lakes District Council: Ms Stella Luoni and Mr Bill Byers for their help in providing access to files and locating information.

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Chapter 1

Public Participation

1.1 Introduction

This thesis considers the proposition that the ability to influence decision makers is distributed disproportionately among interest groups in the case of planning for a skifield in the Remarkables Mountain Range.

Application for a lease to develop a skifield was made by the Mount Cook Company in 1973. The site for the proposed field was for an area of Crown land known as Double Cone Run on the Remakables (See Figure 1.). The proposal was the subject of lengthy public debate. Much debate focused on the need to minimise visual and ecological damage to the area from a skifield and access road. A number of objectors were not prepared have any development at all. These objectors wanted the area preserved as a scenic reserve with access restricted to private climbers and skiers only.

Planning was a complex process with permission required from three separate authorities: to develop crown land, to provide a skifield in an area under the jurisdiction of a local territorial authority and to discharge effluent. Planning permission was not confirmed until 1980, seven years after the initial application had been made.

In this thesis I consider the purpose of public participation in decision making and how that participation can be seen as “effective” in terms of appropriate to that purpose. I will reconstruct the decision making process for the Remarkables case from the initial lease application until confirmation of planning permission in 1980.

Sources of information for this study are unpublished Government files (held in the Department of Conservation Regional Office, Dunedin) and minutes of the meetings of the Land...
CHAPTER 1. PUBLIC PARTICIPATION

Settlement Board. Published sources include official and unofficial reports relevant to the case and newspaper accounts of the period.

From this analysis I have argued that environmental interests in the case were principally represented by newly established groups which lacked financial resources. These interests were disadvantaged by a reactive and incremental decision making process. I will argue that the purpose of participation needs to be established and that there is a subsequent need to redress the disadvantages faced by the environmental groups with transparency, accountability and support to overcome a cost/benefit problem inherent in participation.

1.2 The Purpose of Public Participation

Public participation is a fashionable term and is used extensively with reference to policy making, particularly in discussion about environmental policy. Public participation will be defined here as the input of non governmental organisations, groups and private individuals into public decision making. Public decision making is defined as the authoritative process of allocating values in a society, by elected representatives or officials delegated to act on their behalf.

Writers differ about the purpose of public participation. A 1979 symposium on public involvement in environmental planning in New Zealand concluded that, there is as yet:

"no widespread understanding on the part of the public policy makers and managers of the reasons why the public should be given the opportunity to participate in environmental planning and management, of the techniques available to involve the public or of the problems or limitations that are inevitably associated with public involvement".\(^1\)

The lack of a clear purpose has contributed to confused or conflicting assessments of particular public participation programmes. The authors of a recent working document for an OECD Review examined the process of development planning in New Zealand. They concluded that New Zealand’s environmental administration was improving, providing “more effective and

more timely opportunities for public scrutiny of, and contribution to, planning decisions ...").²

In contrast, however, W.A. Robertson applied Sherry Arnstein's³ 'ladder' of participation to New Zealand environmental legislation.⁴ The 'ladder' differentiates between degrees of public capability to influence decision making. Each rung corresponded to "the extent of citizen power in determining the end product".⁵ For example the bottom rungs of manipulation are seen as examples of non participation, contrived by power holders to educate participants. The top rung of citizen control is achieved when citizens obtain the majority of decision making seats or full managerial power.⁶ While his study was weakened by the absence of a critical appraisal of such an approach, Robertson concluded that despite the appearance of "a lot of opportunity" for public participation, the actual level of participation provided for in New Zealand environmental legislation was low. "All but two Acts can be judged in the terms of limited participation or tokenism".⁷

It is not possible to assess the extent to which public participation has fulfilled its purpose in a particular case unless the reasons for that participation can be identified. Within this chapter it is argued that two factors have inhibited the development of a clear understanding of the purpose of public participation. First, New Zealand's environmental legislation is fragmented with differing criteria for public rights to participate. In the absence of definition, public participation has been equated with the legal concept of locus standi or the title to sue which is derived from having an acknowledged interest in an issue and for which there are a number of statutory definitions.⁸ In practice, the right to participate in environmental management or development decision making has been related to the legal doctrine of locus standi rather than on the basis of democratic theory and the rights of political equality.

⁴W.A. Robertson, "Public Participation in other Planning Procedures," Public Involvement in Environmental Planning Symposium, Proceedings 1979 (Wellington: Commission for the Environment, 1979), p.28-33,
⁶ibid.
⁷W.A. Robertson, "Public Participation in other Planning Procedures," p.32.
A variety of specific town planning controls have existed since the nineteenth century: see for example the Towns’ Regulation Act, 1875. The first comprehensive power to regulate land was introduced under the Town Planning Act, 1926. Today alongside the more recent Town and Country Act, 1977 are a variety of laws relating to: water, air pollution, wildlife management, marine development, national parks and reserves, urban renewal and mining.

These statutes provide fragmented and restrictive definitions of public rights of participation. The doctrine of *locus standi* is restrictive in that there is no right to participate in a case unless an acknowledged interest can be shown. For example, two statutes relevant to the case study of this thesis are the Water and Soil Conservation Act, 1967 and the Town and Country Planning Act, 1977. Criteria vary, under the Water and Soil Conservation Act, 1967, “different tests of standing appear in different sections of the Act”. Under that Act the rights of objection and appeal with respect to applications for water rights could be conferred upon “any person” on the grounds that it would detrimentally affect the individual’s interests or interests of the public generally. In contrast, the Town and Country Planning Act 1977 gave the right to object *inter alia* to “... any person or body representing some relevant aspect of the public interest”.

Aside from legislation, the 1973 Environmental Protection and Enhancement Procedures (EP and EPs) affected the Remarkables decision. Under the EP and EPs public participation was defined implicitly in practice in a restricted manner. Participation was an instrumental process of comment and submission on site and project specific details only. Submissions on policy questions were not taken into consideration. This interpretation has been confirmed in a review of the Environmental Protection and Enhancement Procedures conducted in 1981.

A second factor which has inhibited understanding on the part of New Zealand planners

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13 D.A.R. Williams, *Environmental Law* s 1003 note (1).

14 *ibid.*

and policy makers, of the reasons for encouraging public participation is that there appears to have been inadequate analysis of the implications of a participationist theory of democracy which has been closely associated with recent environmental debate. In the 1960s and 1970s a "loosely connected set of democratic arguments" emerged internationally. The school is broadly called participatory democracy. The writers of the participationist school shared a common opposition to a theoretical movement they termed 'revisionist' and which they argued resulted in too easy tolerance of elite rule and ignored the importance of widespread political participation in democratic societies. Carole Pateman is perhaps the most notable apologist for the participationist school. Her approach to democracy emphasises the importance of direct participation by all members of society in decision making. Pateman advocated small, local units of decision making as the best way to encourage maximum participation. The theory had important implications for the definition, role and expected impact of public participation which will be discussed shortly. These implications do not appear to have been frequently analysed in international environmental planning literature. In New Zealand the implications do not appear to have been recognised at all, resulting in confused definitions of public participation. Small scale decision making emphasising direct popular involvement and small scale environmental development were threads which became entangled.

The influential treatise by Schumacher: Small is Beautiful explicitly linked desirable environmental development with direct popular input into decision making. In Britain, a review of the Town and Country Planning Act, 1968 also included many of the arguments of the participatory school. In a critique of this review however, Andrew Thornley argues that the authors of the report were unaware of the political implications of their arguments and that "many of the subsequent [British] problems of participation can be said to stem from this lack of awareness". In New Zealand direct public involvement in environmental decision making, particularly in local government, was encouraged in publications by the Ministry of Works and Development. But none of these publications discussed a theoretical framework

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for public participation or provided a critical assessment of the concepts of 'participation' or 'democracy'.

1.3 A Pluralist Model of Public Participation

To provide criteria for assessing the effects of public participation in this case study a definition of public participation is presented here in terms of purpose. Definitions of public participation are the product of particular theoretical approaches adopted by writers. Two broad ways public participation can be defined are:

(i) from the perspective of the school of participatory democracy, for example Carole Pateman; and
(ii) from a pluralist perspective, as it has been applied to New Zealand by Richard Mulgan.

For this study, the second way is chosen. Jack Lively and William Nelson have compared the role of participation in pluralist and participationist theories of democracy. Within a pluralist model, democracy can be defined procedurally as "... political equality in the making of political decisions". The scope for discussion of participation is defined instrumentally as a means to achieve the operational principle of democracy, political equality. In contrast, under the participation model, participation is equated with democracy where democracy is defined as the maximum possible participation of all citizens in the activity of decision making. In theoretical terms, the role of participation appears to have been frequently confused when researchers failed to distinguish between the participationist use of the concept of participation

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(Wellington: MOWD, 1974).


to define 'democracy' and the pluralist use of to justify ‘democracy’. This confusion is increased because of an implication within Pateman’s work that participation not only defines democracy but has an instrumental purpose as the means to achieve other effects, notably the development of the self.

It is asserted here that a definition of ‘public participation’ can be most appropriately constructed within a moderately pluralist model of democracy because of the nature of New Zealand society. A participationist model has a deficiency in that it presupposes common interests can always be identified. However under a pluralist model the public is defined as a composition of multiple groupings with different interests. A pluralist approach is useful because it provides a normative or ideal model, and it usually describes empirical reality. In New Zealand, for example, there does not appear to be a single homogeneous public opinion on environmental issues. Rather, Roger Wilson has documented a wealth of viewpoints, even amongst groups who share similar conservation interests. But the pluralist recognition that individuals and groups hold different interests is moderated here. Our model does not preclude the possibility that groups may share overlapping memberships or common interests.

An individual can at one time share a larger collective interest in an unpolluted environment and simultaneously a more restricted interest as a shareholder benefitting from increased profit obtained where a firm has externalised its costs by over-use of natural resources for which no market currently exists.

The pluralist model also has the advantage in comparison with a participationist model in that it allows for consideration to be given to different degrees of affected interest. This is important in environmental debate where a decision may place heavier costs on a particular group (for example a local community) than on others who also claim to have an interest in a proposal. If public participation was maximised according to a simple majority principle (as implied by the participationists), for example in a referendum, the result would be to “...weight

26 ibid.
27 ibid.
decisions overwhelmingly in favour of the larger general interests, however dilute or distant they may be from each individual".31 Furthermore, participation does not have to be active. The pluralist model allows for recognition that latent participation, that is potential influence, exists and affects active decision makers. ‘A’ may affect the actions of ‘B’ where ‘B’ refrains from a particular activity because he or she anticipates a reaction from ‘A’ which he or she may wish to avoid.32 In this thesis I focus upon the extent to which participation by the public is effective in securing equality in the distribution of political resources, in particular the ability to influence decision makers. The focus of the discussion is confined to the conditions under which decisions were made rather than the outcome of those decisions.33

1.4 Conditions For Effective Public Participation

In the pluralist model the maximisation of participation is not necessarily desirable.34 The objective of democracy is to secure political equality, rather than to maximise participation. In the pluralist model participation in decision making is only maximised within an “appropriate constituency” identified for each issue. The appropriate constituency is the population whose interests are affected by a particular decision.35 Effective participation has to be regulated according to the principle of proportionate equality which requires that “individuals be treated differently from one another depending on the degree of immediacy of their interests”.36 Mulgan argues that the individual can determine whether his or her interests are affected on the basis of a judgement about whether he or she is benefited or disadvantaged by a decision.37 Mulgan suggests there needs to be a system of public accountability in both the delineation of the appropriate constituency for any decision and in allocating decision making ‘power’ by

33 For discussion of the difference between political equality in the conditions of decision making and political equality in the distribution of outcomes of that decision making see A. Ware, “The Concept of Political Equality: A Post Dahl Analysis,” Political Studies 29 (1981), p.392-406
34 For example see, R.G. Mulgan, Democracy and Power in New Zealand, pp.24–27.
37 ibid.
the degree of immediacy of interest. The legitimacy of an individual’s claim to an interest in a case should be subject to an independent test. The individual should have the opportunity to present evidence and appeal the decision. A similar process involving the presentation of evidence and rights of appeal could also be adopted to regulate decision makers where they have the power to recognise differing degrees of affected interest in the process of decision making.

However giving due consideration to all interests in decision making involves more than establishing accountability. In particular a number of authors have argued that uneven distribution of the resources or means to participate leads to uneven access to public influence. Verba and Nie suggest that the effect of participation in securing equality is lessened where governmental leaders are only responsive to specific methods of participation which in turn are dominated by particular socioeconomic groups. They conclude that participation could only secure equality if all groups had the ability to form and attempt to influence government. Mulgan argues therefore, that if public participation is to be effective in securing proportionate equality, decision makers must be responsive to citizen demands. He argues this requires certain essential ‘rights’. These rights include freedom of association and free speech. These ‘rights’ maintain an open element in the operation of the political system in that new groups have the opportunity to form and a chance of influencing public policy.

But Mulgan has suggested that some interests persistently receive less than their fair share of attention in decision making. Those interests are characteristically the interests of less...
affluent groups. These groups lack the resources to contribute to pursue their goals. Newly established or potential groups are also disadvantaged. Mulgan gives the example of a large public development proposed for a particular locality:

it will be supported by well developed organisations with powerful resources and experienced staffs. Local residents, however, may have had little previous cause to fear any disruption to their lives and livelihood and will therefore have had no reason to organise themselves in advance.

Mulgan argues that in addition to the lack of resources faced by local groups (in comparison with national enterprises) these groups "have to face the additional disadvantage of mobilising support for the first time". Groups representing fragmented or general interests are also argued to be disadvantaged in negotiation, in comparison with sectional groups. This is because they lack a cohesion and unity of purpose which is derived from the pressing nature of their members interests.

In this thesis participation will be considered instrumentally as a means of achieving political equality and not as the definitive characteristic of a democracy. It is argued that for public participation to be 'effective', it must be regulated according to a principle of proportionate equality. I have reviewed the argument that the ability to influence decision makers is distributed disproportionately amongst the interest groups. Less affluent groups, newly established groups and groups representing general or fragmented interests will be disadvantaged in decision making. In this thesis I examine that proposition with reference to a case study of the decision making process for the planning of the Remarkables skifield.

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44ibid. p.110.
45ibid. p.115.
46ibid.
47ibid.
Chapter 2

Public Decision Making:

Setting the Scene For The Remarkables Skifield Case

2.1 Introduction

In this dissertation I consider the effect public participation had in the planning stages for a skifield development in the Remarkables Mountain Range, near Queenstown, New Zealand between 1973 and 1980. It is concluded that, in the absence of certain conditions, public participation could have but a limited effect upon development decision making. The Mount Cook and Southern Lakes Tourist Company (the Mount Cook Company) first applied for planning permission to develop a skifield on the Remarkables Mountain Range in 1973. Planning permission was not confirmed until 1980. The skifield opened in August 1985. Development of the skifield required permission from three bodies: the Land Settlement Board, on behalf of the Crown because Crown land was involved in the proposal; the Lake County Council as the local territorial authority; and the Otago Catchment Board because the Mount Cook Company needed permission for effluent discharge into the Rastus Burn. Each planning application provided formal opportunity for comment or objection by the public. In addition, at the central government level, the proposal (with respect to the use of Crown Land) was subject to review by the Commission for the Environment under the 1973 Environmental Protection and Enhancement Procedures and (with respect to the decisions of the local territorial authority and catchment board), to appeal to the Planning Tribunal, under the Town and Country Planning Act, 1977. This chapter provides an overview of the planning process and authorities relevant to the Remarkables skifield development. I will identify the opportunities intended to provide
CHAPTER 2. PUBLIC DECISION MAKING:

for public participation, and in subsequent chapters evaluate the opportunity these participation procedures provided for all interests to influence decision makers.

2.2 The Land Settlement Board

The Land Settlement Board was established under the Land Act 1948. Chaired by the Minister of Lands or, as his deputy, the Director General of Lands. The Board was responsible for the management, protection, administration, development, alienation, settlement and care of Crown land.1 As the controlling agency for Crown land, the Board had the power to classify land according to purpose.2 Membership of the Land Settlement Board included the Secretary of the Treasury, Director General of Agriculture and Fisheries and the Valuer General or delegated representatives. The Board also included two members appointed by the Minister of Lands after consultation with the Federation of Farmers (N.Z. Inc.) and could include not more than two other members appointed by the Minister.3

Relevant to the Remarkables Skifield application was the power of the Board to conduct a hearing for the purpose of determining any application submitted to it. When conducting a hearing the Board had the authority to summon witnesses and hear evidence. In addition, the Board could conduct inquiries in the course of collating information to assist it in its deliberations.4 In practice, the Board had a discretionary opportunity (not provided by statutory requirement) to invite the public to participate in an inquiry through submissions. In addition, under the Act any person aggrieved by any decision of the Board could apply for a rehearing within twenty one days of being notified of that decision. The Board had the discretion to grant a rehearing if it thought that justice required it.5

1 Land Act 1948, s.51(d).
2 ibid., s.51.
4 ibid., ss.6 and 7.
5 ibid., s.17
2.3 The Environmental Protection and Enhancement Procedures

The 1973 Environmental Protection and Enhancement Procedures (EP and EPs) affected the Remarkables Skifield proposal in that they were intended to apply to any private project requiring government licence, finance or permit, that might impact upon the environment. The intention of the Environmental Protection and Enhancement Procedures has been described by R.K. Morgan as twofold:

(i) To subject a proposed development to environmental impact assessment and;
(ii) To provide increased opportunity for public scrutiny and review early in the planning process by providing opportunity for the public to comment on an Environmental Impact Report prepared by the project proponent.

The Environmental Protection and Enhancement Procedures were intended to increase public involvement in the decision making process. The aim was to ensure that the public was informed of the potential environmental consequences of a proposal so they could respond accordingly to the Commission for the Environment. The first step required under the EP and EPs was an assessment of the environmental consequences of choosing between various options for development. This initial step was to be undertaken by the project promoter. At its most simple level it needed to be no more than a "mental check" of the likely environmental consequences of various options which might be available to the decision maker.

The second stage of assessment involved the preparation of an Environmental Impact Report (EIR). The EIR was a written statement setting out the environmental consequences of a proposed action, alternatives to that action and ways of avoiding or ameliorating harmful impacts. The project proponent was responsible for the preparation of the EIR. The completed EIR was to be submitted to the appropriate statutory authority (the statutory authority, in this

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7 ibid.

8 ibid.

case was the Land Settlement Board). The EIR was then forwarded to the responsible Min-
ister,( The Minister of Lands). On the Minister's decision the EIR would be referred back to
the authority for revision under the supervision of that authority or it could be submitted to the
Commission for the Environment for public notification and auditing.10

An Environmental Audit at the time of this case, was the third step in the assessment pro-
cess. The purpose of an Environmental Audit was to provide independent opinion from the
Commission about the environmental implications of the proposal described in the EIR.11
Upon receiving the EIR, the Commissioner for the Environment was to publicly advertise the
availability and nature of the EIR and invite written submissions to be forwarded to the Com-
misson within six weeks. In the subsequent process of preparing an Audit, the Commission
for the Environment had the authority to seek further expert advice and was to "take into ac-
count any representations made by the public as were appropriate".12 Upon its completion, an
Environmental Audit was to be made available to the public for inspection. The Audit was
required to accompany the submission of an EIR for approval before the appropriate statutory
authority.

Under these procedures the public had two opportunities to make submissions. The first
was the informal opportunity that had emerged in the practice of preparing EIR's. It was com-
mon practice for a project proponent to approach selected groups and individuals for advice
or comment on its Environmental Impact Report.13 The second participation point under the
EP and EPs was the formal opportunity for written and oral submissions following the public
release of the Environmental Impact Report, by the Commission for the Environment.14

10 ibid.
11 For a discussion on the changing role of the Commission for the Environment with respect to its right to be heard
as an independent authority on environmental issues see: R.A.K. Morgan, "The evolution of Environmental
Impact Assessment" p.145.
13 G.S. Markham, "How Effective is Environmental Impact Assessment and Review Process in New Zealand,"
Planning Quarterly 69, pp.7-12.
14 New Zealand. Commission for the Environment, Environmental Protection and Enhancement Procedures
(1973).
CHAPTER 2. PUBLIC DECISION MAKING:

2.4 The Local Territorial Authority.

Under the Town and Country Planning Act 1977, each local territorial authority was required to have a District Scheme providing controls, prohibitions and incentives for the land area it administered. In the case of the Remarkables Skifield application there was provision under the Act for a number of local territorial authorities to combine to jointly administer one district scheme for their combined land area. Where a district scheme was jointly administered a planning committee could be constituted under the Local Government Act 1974 to represent the councils affected. The Committee would become the responsible authority for the combined area in matters of the district scheme. A member of the Committee held office at the pleasure of the council he or she represented. An organisation or person could apply for a consent to use land for a purpose not permitted under an existing District Scheme. Where the application related to use of the land for any purpose which was inconsistent with the identified purpose in the District Scheme, a planning committee or the responsible territorial authority could consent to the use subject to conditions. Such "conditional use consent" could only be granted after consideration of the suitability of the site and the likely effect of the proposed use on the existing and foreseeable future amenities of the neighbourhood and the health, safety, convenience and general welfare (economic and cultural) of the people of the district.

The procedure for deliberation by a territorial authority required that an application for consent be advertised publicly, indicating the nature of the application and the place at which the submissions or objections could be deposited. It has been argued that a significant implication of the Town and Country Planning Act 1977 was the greater opportunity it provided for a wider class of people to participate in the planning process through the procedures of objection and appeal. Previously, these rights had only been granted to occupiers and owners of property affected by a proposal. Under the 1977 Act which came into effect before

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15Town and Country planning Act 1977, s.40(1).
16ibid., s.40(2).
17ibid.
18ibid. s.72(2).
19Under s.2 of the Act any body or person "affected" and any body or person representing some relevant aspect of the public interest had rights of objection and appeal. For a comparison of the Town and Country Planning 1977 with previous Acts see: D.A.R. Williams, Environmental Law (Wellington: Butterworth, 1980) ss.1001–1009.
20ibid.
the Remarkables skifield planning application was heard by the relevant territorial authority, objections to an application were to be made in writing to the local territorial authority. Objectors had the right to be heard in person or represented by counsel and could call evidence in support of their contention. The territorial authority could hear submissions and objections, summon witnesses and hear evidence on oath.21

2.5 The Planning Tribunal

Following notification of the decision of a territorial authority, an applicant or objector could lodge an appeal with the New Zealand Planning Tribunal within one month of the notification of that decision.22 Relevant to the Remarkables Skifield case was the power the Tribunal had to order any decision to grant a conditional use to be modified, deleted or confirmed and, to impose any conditions or restrictions in respect of the decision as it saw fit.23 In its deliberations the Tribunal had the powers of a district court. It could summon witnesses, hear evidence and award costs. It could receive evidence and call expert witnesses which might then be cross examined by all parties.24

2.6 The Catchment Board

Applications for a right to discharge waste into natural water were to be made to the appropriate Catchment Board. Catchment Boards were constituted under the Soil Conservation and Rivers Control Act 1941 and the Water and Soil Conservation Act 1967.25 A Board was responsible for the management of all natural water within its region, including ensuring the maintenance of water quality standards. Subject to restrictions, the Board could grant or decline an application. It was required that an application for a water right be advertised by the Board, stating

21 Town and Country Planning Act 1977, Part III and IV. For rights of objection see: s.66.
22 Town and Country Planning Act 1977, s.69.
23 ibid. s.150.
24 ibid. Part VIII passim ss.128–164.
the nature of the application, the water resource affected and the last day (not less than twenty eight days) before which objections might be received.26

The intention of the Water and Soil Conservation Act was to provide “a very broad right of objection to any application for a water right”27 Where requested by persons making objections or relating to a matter of public interest, the Board would normally allow a hearing to take place.28 Under the Water and Soil Conservation Act a hearing could be conducted by the Board or a Standing Tribunal especially constituted to hear evidence and make recommendations back to the Board.29 A Catchment Board could constitute a Tribunal on its own initiative or on a request of the applicant. A Tribunal was to consist of not more than five members chosen for their knowledge and experience in the matters in issue.30 Objectors could be heard or be represented by counsel. The parties had a right to call evidence (but not necessarily a right to cross examination of other witnesses), and the Board or Standing Tribunal could summon witnesses and hear their evidence on oath.31 Within twenty eight days of the public notification of a decision by the Board, the applicant, objectors, and any other person “who may be affected” could appeal to the Planning Tribunal against the decision.32

2.7 The Department of Lands and Survey

Also of relevance to the case study was the authority of the Land Settlement Board to recommend to the Minister of Lands that Crown land be set aside as a reserve. During the period of planning of the Remarkables skifield the Reserves Act (1977) was passed. Acting under that Act, the Minister could set apart Crown land to provide areas for outdoor recreation. In this process there was no legal requirement to publicly notify the intention to classify Crown

26 Water and Soil Conservation Act 1967, s.24.
27 For discussion of the rights of objection see: earlier pp.2–3. Any person had the opportunity to lodge an objection on the ground that the grant would prejudice his or her interests or the interests of the public generally. For a discussion of the intention of the Water and Soil Conservation Act as regards to standing see: D.A.R. Williams, Environmental Law s.1003 note(1).
28 Water and Soil Conservation Act 1967, s.24
29 Water and Soil Conservation Act 1967, s.16.
30 ibid.
32 ibid., s.20(6).
CHAPTER 2. PUBLIC DECISION MAKING: land as a reserve or the intention to grant a lease over a proposed reserve.\(^{33}\) However, once an area of land was classified as a reserve the Reserves Act did provide formal opportunities for public participation in the preparation of a management plan. The purpose of a management plan was to set out provisions for the use, enjoyment, maintenance, protection, preservation and development (where appropriate) of the reserve.\(^{34}\) The management plan was prepared by the Department of Lands and Survey. There were two opportunities for submissions from the public in the course of:

(i) preparing the draft management plan; and

(ii) reviewing the draft prior to its reference to the Minister of Lands for approval.

When preparing a management plan, the following steps were required under the Reserves Act 1977:

(1) that the administrative body responsible give public notice of its intention to prepare a plan and notice of the office to which written suggestions could be deposited within a specified time.

(2) a management plan was to be prepared in draft form after “full consideration of any public suggestions received.”\(^{35}\)

(3) when the draft was completed a second public notice was to be published stating that a draft plan was available and that interested persons could make submissions to the appropriate administering body by a specified date (not less than two months after the publication of the notice). At that stage the administering body was also required to give written notice to those who have previously made comments, that a draft management plan had been prepared.

(4) before the management plan was recommended to the Minister for his approval, any persons who made submissions or who requested a hearing were to be

\(^{33}\)Department of Lands and Survey, *File No. 8/16/114*. Correspondence: Head Office to Commissioner of Crown Lands (Otago), 3 June 1980, confirmed the absence of a legal requirement to publicly notify intentions to classify a reserve or to grant a lease. (Held in D.O.C., Regional Office, Dunedin).

\(^{34}\)Reserves Act 1977, s.41(3).

\(^{35}\)ibid.
given "a reasonable opportunity of appearing before the administering body or a committee or person nominated by the body."

(5) a summary statement of submissions and the extent to which they were accepted or disallowed was to be supplied to the Minister with the submitted management plan.36

2.8 Summary

The policy intent of the three statutes: The Town and Country Planning Act 1977, the Water and Soil Conservation Act 1967 and the Reserves Act 1977 together with the Environmental Protection and Enhancement Procedures (1973) was to provide wider opportunities for participation by the public in decision making. The Land Act 1948 also provided a limited opportunity for public participation.37 I will now examine how these opportunities were implemented in the planning process for a skifield on the Remarkables Mountain Range.

36 Ibid.
37 See p11 footnote 5.
Chapter 3

The Lease Question

3.1 Introduction

The planning history of the Remarkables Skifield development can be divided chronologically into two periods. The first, from 1973 to 1978, was a period of initial application by the Mount Cook Company for a lease to develop a skifield on Crown land. The second period, beginning in December 1978, was a period of hearings before the Lake County Council for planning consent for the skifield and subsequent appeals before the Planning Tribunal. These hearings culminated in 1980 in a decision by the Planning Tribunal to uphold the Lake County Council’s consent. This chapter provides a review of the first period, from the application by the Mount Cook Company for a lease from the Land Settlement Board to the agreement, in principle, by the Board to skifield development. There were three points at which non governmental organisations and individuals other than the Mount Cook Company had opportunities to make submissions; to a Study Team, on the Team’s report and on the EIR.

3.2 The Initial Lease Application and the Land Settlement Board Investigation

In October 1973 the Mount Cook Company applied to the Commissioner of Crown Lands (Otago) for a lease to occupy an area of Crown land on the Remarkables Range known as Double Cone run, to develop a skifield. (Appendix A.) The Double Cone Run was on land
classified as pastoral, to be let for pastoral purposes only. The skifield was to be sited in the Rastus Burn Basin of the Remarkables Range. The Company had obtained the agreement of the runholder of Double Cone for the release of land from pastoral lease. However, the Commissioner of Crown Lands said he would not forward the Mount Cook Company's lease application to the Land Settlement Board until the Company provided him with an aerial photograph indicating the specific location of skifield, chair lift lines and access road, together with an artist's impression of the road in profile.

Meanwhile in 1974 the Company had employed consulting engineers to prepare an Environmental Impact Report to accompany its application to the Land Settlement Board for a skifield lease. The preparation of the EIR provided the first opportunity for public participation in the case. Submissions were privately solicited by the Mount Cook Company. The selection of the participants who were approached in confidence was at the discretion of the Company. The Mount Cook Company approached two runholders on land adjacent to the proposed skifield site. The Company also approached thirteen individuals and organisations selected for “expert views, advice, opinions or agreement to the proposal”. Those contacted were: two professionals with expertise in environmental impact assessment, seven interest groups, (including two ski clubs, a tramping club and four environmental interest groups) a Quango (the Nature Conservation Council), and three government authorities. In summarising the content of these invited submissions, the Commissioner of Crown Lands noted that: “the enthusiasm [for the skifield proposal] came from those for whose benefit the field is proposed, others including the Otago Catchment Board and University of Otago (Botany) [were] less enthusiastic”.

The Company completed its EIR and sent it to the Commissioner of Crown Lands in September 1974. Although the Environmental Impact Report had not been forwarded to the

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2Ibid.


CHAPTER 3. THE LEASE QUESTION

Commission for the Environment and released for public comment at this stage, staff in the Dunedin Office of the Department of Lands and Survey felt that its preparation stimulated some public interest in the proposal and that the Department should begin deliberations on the application. The Otago Commissioner of Crown Lands commented that preparation of the report, accompanied “... by letters from various conservation organisations placed the Department under some pressure to process the Company’s application”. He therefore forwarded the application and EIR to the Land Settlement Board in November 1974. But the Commissioner did express his concern that the Company had promised to provide a photo of the Remarkables with the proposed skifield access road and chairlifts sketched on but this had not yet been produced. An internal Department of Lands and Survey report also expressed concern that many statements by the Company in the EIR “were not supported by any evidence”.

In November 1974, the Land Settlement Board met to consider the lease application by the Mount Cook Company. The Board recommended that the application be declined at that stage “to enable an investigation to be undertaken to assess the potential of the general area for future scenic, recreation and tourist use.” Members of the Board expressed concern that the environmental implications of the proposal should be investigated thoroughly “to ensure there was little criticism when any approval for establishment of a skifield was finally given”, and that it would be “wise of the Board to arrange for the investigation rather than the applicant, to ensure that all aspects were fully considered”. In December, 1974, following this recommendation, the Minister of Lands announced the establishment of a Study Team to undertake the investigation. The Team was to report to the Board on possible future use of all land in the Remarkables and Hector Mountains Region. The Study Team, convened by the Department of Lands and Survey, was composed of representatives of that Department as well as the Ministry

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6Department of Lands and Survey, File No.10/4/2798. Memo: Commissioner of Crown Lands (Otago) to Director General, 10 September, 1974. Held at the Department of Conservation, Regional Office, Dunedin.


9ibid.
of Recreation and Sport, the Tourist and Publicity Department and the Department of Botany, University of Otago.10

The Mount Cook Company responded through the media to the establishment of this Study Team. The Company expressed the hope that such a study would take no more than six months and in June 1975, the Assistant General Manager of the Company approached the Director General of Crown Lands in person to express the Company's anxiety that the Study Team report be expedited:11 the Mount Cook Company had prepared an Environmental Impact Report for the proposal and it had "lost valuable ground" in compiling the EIR when in retrospect it would appear "unnecessary because the Department of Lands and Survey was preparing its own report".12

The views of the Company were then communicated by the Director General to the Commissioner of Crown Lands (Otago) together with requests on behalf of himself and the Minister of Lands, for a report on the progress of the Study Team and the proposed date for a completion of the report.13 Three days later the Commissioner responded, advising the Director General that the proposed timetable for completion of the Study Team report was a period of one year from winter 1975 to November 1976 and that the Department should not "allow [itself] to be bulldozed into indecent haste" given that the Department had received "several letters" from interested parties in Queenstown who wished to express their views.14 The Commissioner also stated that the Study Team wished to contact groups and individuals for specialist advice and to discuss the "...whole situation with the respective run holders ...".15

The Study Team undertook field work in June 1975 to "establish a variety of attitudes to the future utilization of the Remarkables and Hector Mountains".16 The team solicited comments

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12Ibid.


15Ibid.

16Ibid.
CHAPTER 3. THE LEASE QUESTION

from the following groups and individuals: four interest groups (two environmental interest groups and two local tramping clubs), two residents who had expressed interest in the proposal, an environmental Quango (the Nature Conservation Council), the county clerks of the affected local councils, and the runholders occupying or adjacent to land affected by the proposal. (Appendix E.) The Study Team invited specialist studies from the Otago Catchment Board, the Department of Scientific and Industrial Research, the Ministry of Works and Development and Geography and Geology departments of the University of Otago.\(^17\)

The Study Team did not complete its report until March 1977. Even then however, successful representation to the Minister of Lands by the Mount Cook Company delayed public release of the Team’s report until June 1977.\(^18\) This allowed for the concurrent release of the Mount Cook Company’s Report on Investigations Following the Publishing of the Environmental Impact Audit.\(^19\) The public had the opportunity to comment on the completed Study Team report in June 1977. The Minister of Lands initially granted the public one month to make submissions on the report. But representations by the public to the Minister led to an extension of this period for a further month.\(^20\) These submissions were unpublished but were made to the Chairman of the Land Settlement Board.\(^21\) With respect to the Mount Cook Company proposal the Study Team report recommended that:

any commercial skifield development proposal in the alpine areas [of the Remarkables] will require further investigation and research, but the Team assesses that only the headwaters of the Doolans Creek is suitable for this purpose.\(^22\)

The Study Team also recommended the establishment of a scenic reserve to protect the Remarkables from future development.

\(^{17}\)Department of Lands and Survey, Rastus Burn Recreation Reserve Management Plan: Part II (Existing Uses) (Dunedin: Department of Lands and Survey, November, 1980).


\(^{19}\)ibid.

\(^{20}\)ibid.


3.3 Public Participation Under EP and EPs

While the Study Team was conducting its investigation, the Company had been updating its Environmental Impact Report which it forwarded it to the Commission for the Environment on the 16th of December, 1975. The Commission released the EIR on the 18th of December 1975. The publication of the EIR by the Commission for the Environment was the first official release of details of the project. But the Mount Cook Company had indicated three months earlier (in September 1975) that it no longer considered its EIR confidential. The Company had announced its intention to request an Environmental Impact Audit and had made details of the proposal available to the media. Indeed the Commission for the Environment commented in retrospect that it believed that the Mount Cook Company had requested an Audit at that time for two reasons. First, the Company hoped to speed up the deliberations of the Study Team investigating alternative uses of the Remarkables area. Second, the Commission presumed the Company hoped publication of an Audit would enable it to receive more favourable treatment from the Land Settlement Board when it next applied for a lease.

In the 1975 EIR the Company "expanded its area of interest" The Company indicated its intention "to extend skiing facilities into the Doolan's Stream area which is beyond the Rastus Burn Basin, as soon as practicable". The Company justified this expansion on the grounds that the Doolan's area was ideally suited for development and had the potential to cater for increased numbers of skiers. For updating the EIR the company had also approached a further eight individuals and organisations. These included three hotel firms, four companies with expertise in skifield construction and the Central Otago Power Board, all of whom supported the proposal.

23 Under the Environmental Protection and Enhancement Procedures (1973) an EIR would normally be forwarded to the appropriate Board and subsequently to the responsible Minister who would refer it to the Commission for the Environment, see p.12. The Company's decision to forward the report accompanied it request for an EIA.

24 Mountain Scene (Queenstown), 18 September, 1975.


28 ibid.
CHAPTER 3. THE LEASE QUESTION

The general public had two months from December 1975 to comment on the EIR. The Commission for the Environment received 66 submissions. The majority were from private individuals and local or regionally based groups. (51 of 66 submissions were received from private individuals and local groups). Only 47 submissions were published together with the Commission’s summary statement. (Appendix E.) The remainder were available on request from the Commission but were not included because of the “difficulty of reproduction”. The Commission for the Environment noted that the majority of submissions it received (particularly from local residents and holiday makers) had expressed opposition to any form of development: “many” of them, (including a petition of 300 signatures), requested a scenic reserve status for the Remarkables region to prevent any future development beyond existing use by independant trampers. There was a second major group of objectors. These objectors were critical of the content and nature of the EIR. Many of these objectors considered the Company’s EIR “misleading and lacking in basic information essential to an adequate appraisal of the environmental impacts of the proposal”. A small number of groups were prepared to tolerate a skifield if the ecological and visual impact of the road and skifield was strictly controlled and no ski tows or buildings were visible on the ridge. A small number of individuals and groups advocated investigation of new skifield sites at Coronet Peak. Mountaineering clubs and other individual trampers and climbers submitted that the Doolan’s Basin and an alternative access route up the Doolan’s Valley should be developed rather than the Rastus Burn Basin site on the grounds that the Doolan’s Basin was a less environmentally sensitive area.

2942 submissions were from private individuals, three from local Queenstown-based groups, a further 6 with a membership restricted to individuals in the Southland/Otago region. The remainder were nationally co-ordinated groups and Government Departments. New Zealand Commission for the Environment. Environmental Impact Report for the Proposed Remarkables Skifield: Submissions (Wellington: Commission for the Environment, 1976). (See Appendix E.)

30ibid.


32ibid. p.8.


34ibid.
The Commission concluded that the EIR did not adequately identify the environmental consequences of the Company’s proposal. It concluded that the Company “...clearly expected the Audit process to identify those environmental issues which warranted further investigation”. The Commission recommended to the Land Settlement Board that the proposal should not proceed in the form described in the Environmental Impact Report because important aspects of the proposal required “further investigation of possible alternatives and the detailed planning of appropriate environmental safeguards.” The Commission also recommended that when the proposal came before the Land Settlement Board the Board should consider the need for tourist facilities, the suitability of the proposed Rastus Burn site, and the viability of other sites or access alternatives on the Remarkables Range, together with water, soil and recreation requirements in the area.

In response to the EIA the Mount Cook Company commissioned a *Commentary on the Environmental Impact Audit*, published in October 1976 and in June 1977 the Company published a further *Report on Investigations Following the Publishing of the Environmental Impact Audit*. The former report responded to submissions contained in the Audit; the later report contained additional material documenting the potential impact of the proposal (in particular an access road on the northern face of the Remarkables). Unlike the EIR, these reports were submitted to the Land Settlement Board without public comment or an Audit by the Commission for the Environment.

### 3.4 Land Settlement Board Deliberations

On receipt of the Environmental Impact Audit and with the Study Report completed and published, the Board in accordance with its decision in 1974, was willing to consider a second application by the Mount Cook Company. The Land Settlement Board met in September 1977.

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37*ibid.*
CHAPTER 3. THE LEASE QUESTION

The Board "took into account" in its deliberations, the Department of Lands and Survey Study Team Report, the submissions on the report received from the public, the EIR and Audit for the proposal, the Commentary on the Environmental Audit and the Report on the Investigations following the Publishing of the Environmental Impact Audit. The consideration given by the Board to each submission cannot be established. Nor can the comparative weight given to each report submitted to the Board be established from the minutes of the Board meetings. Submissions received by the Board on the Study Team Report were not published. But, the minutes of the Board meetings indicate that the weighting given to the submissions was made on a qualitative, impressionistic basis. For example, the Chairman of the Board summarised submissions he received commenting that "some" expressed the view that Queenstown had "already been damaged environmentally and by having the Rastus Burn Skifield, any more damage would be confined to the Queenstown Basin".

Under the Land Act 1948 the surrender of pastoral land to the Crown required the agreement of all affected lease holders. By April 1977 all had agreed to release their land in exchange for the summer grazing rights over the proposed reserve land. The Board then resolved to: "agree in principle to a skifield being being developed in the Rastus Burn and to a road being constructed up the Kawarau [Northern] face, subject to conditions to be imposed at a later meeting of the Board". Under the Land Act 1948 five groups "serving environmental interests" immediately lodged applications for a rehearing. But the Board declined the application for a rehearing, resolving in November 1977 that justice had been done given that:

the environmental procedures that had been followed [provided] opportunity for interested parties to express their views ... a final decision had yet to be made by

41Department of Lands and Survey, Rastus Burn Recreation Reserve Management Plan: Part II (Existing Uses) (Dunedin: Department of Lands and Survey, 1980).
CHAPTER 3. THE LEASE QUESTION

the Board [and] that further opportunity [would] be available for interested parties
to express their views under Town and Country Planning procedures.\(^{44}\)

The Board then issued a temporary licence to enable the Mount Cook Company to carry out
investigations into the establishment of a skifield (provided the Company took reasonable steps
to: obtain Town and Country Planning approvals and, to supply information about roading and
revegetation). On the 21st of December 1977, the Land Settlement Board met again.\(^{45}\) This
time the Board considered the tenure and conditions for allocation of a lease to the Mount Cook
Company which would allow the Company to proceed with the next stage of the planning
process: obtaining approval under the Town and Country Planning Act 1977. The Board
resolved under the Land Act 1948 to recommend to the Minister of Lands that an area of
the Remarkables Range known as the Double Cone Run be surrendered from pastoral lease.
The Board stated it intended to recommend to the Minister that the land be surrendered and
subsequently classified as a recreation reserve.\(^{46}\)

The Board justified its proposal to reserve land before issuing a full lease on the grounds
that this course of action followed an earlier precedent set with the Mount Cook Company at
Coronet Peak. The justification was considered to be even greater for the Rastus Burn Basin
site than for the Coronet Peak skifield, because of the environmental sensitivity of the area.
Members of the Board felt that a lease on reserve land would allow tighter control by the Crown
of development than would be possible under the ordinary lease agreement over Crown land.\(^{47}\)

3.5 Summary

The administrative process for granting a lease for developing the Rastus Burn skifield pro-
vided two differing types of opportunity for public participation; First, were privately solicited
comments. Second, were publicly invited submissions. In the following chapter I will exam-

\(^{44}\)ibid. and Department of Lands and Survey, File No. 8/9/458. Land Settlement Board Application for Rehear-
ing, 21 November, 1977. Held at the Department of Conservation, Regional Office, Dunedin.

\(^{45}\)Department of Lands and Survey, File No. 10/4/2798. Minutes of Meeting of Land Settlement Board, 21
November, 1977. Held at the Department of Conservation, Regional Office, Dunedin.

\(^{46}\)Department of Lands and Survey, File No. 10/4/2798. Minutes of Meeting of Land Settlement Board, 21
December, 1977. Held at the Department of Conservation, Regional Office, Dunedin.

\(^{47}\)ibid.
CHAPTER 3. THE LEASE QUESTION

Chapter 4

The Planning Process

Following the acceptance, in principle, by the Lard Settlement Board of the Mount Cook Company’s application for a lease, the Company now required planning permission for its proposal to construct the Remarkables skifield. There were four opportunities for public participation in the planning process. Three were formal statutory opportunities provided under the Town and Country Planning Act 1977 and the Water and Soil Conservation Act 1967. The fourth was an opportunity provided under the Reserves Act 1977.

4.1 Participation and the Town and Country Planning Act 1977

4.1.1 The Lake County Council

Under the Queenstown-Wakatipu Combined District Scheme the Remarkables Range was zoned “rural”. The predominant use of the area was identified in the Scheme as farming “of any kind”, parks and scenic reserves or buildings accessory to either of these purposes. Licensed hotels, camping grounds and halls, buildings or land for indoor or outdoor recreation were deemed to be ‘conditional uses’ requiring planning permission. A joint planning committee (representing the Queenstown Borough, Lake County and Arrowtown Borough) had been established under the Town and Country Planning Act 1977 to review the Combined

1 Queenstown-Wakatipu Combined District Scheme 1970, Ordinance II Clause 2(i) (b) (iv).
2 ibid. See earlier p.18
Queenstown-Wakatipu District Scheme. The Mount Cook Company made its planning application in October 1978. The *Otago Daily Times* expected that the application would be one of the first to be heard by the new planning committee. Some representatives of the Queenstown Borough Council on this committee were opposed to the skifield. The Mount Cook Company’s application was sent to the Lake County Council rather than the joint committee (as could have been done under the Act) and in the event the joint committee did not begin to hear planning applications until 1980 immediately after the completion of the hearing by the Lake County Council of the Remarkables Case.

The Company’s application was for:

...consent to establish, develop and operate ski areas and tourist facilities including the installation and erection of lifts, buildings, parking areas and ammenities for use in connection therewith and also the construction of a road for the purpose of giving access to and from the area off the State Highway No.6...

Fifty two notices of objection were received by the Planning Committee of the Lake County Council. There were thirteen requests to be represented at the hearing to present oral evidence. The objections could not be found for analysis but the nature of the oral submissions was recorded in the minutes of the meeting of the Lake County Council Planning Committee and newspaper accounts of the time. These included: two proforma objections from the Ministry of Works and Development (MOWD) and the Otago Catchment Board. Neither agency objected to the skifield *per se*. The MOWD objected on the grounds that the Mount Cook Company had provided insufficient information in its application for the Lake County Council to make an informed decision.

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5 Personal Communication from The Planning Officer, Queenstown-Lakes District Council, Ms S. Luoni, 23 December, 1987, containing a part copy of the Lake County Council file (unnumbered) for the Mount Cook Company application.
6 The Lake County Council Planning Department could not locate the notices of objection. Lake County Council, *Decision on Application by Mount Cook Group Ltd: Rastus Burn Skifield* 7 June, 1979, and see also *Evening Star* (Dunedin), 1 June, 1979; *Mountain Scene* (Queenstown), 26 April, 1979 and 17 May, 1979; *Otago Daily Times* (Dunedin), 20 April, 1979 and 21 April, 1979; *Southland Times* (Invercargill), 21 April, 1979.
7 Lake County Council, *Decision on Application*. p.3–4.
to be sent to objectors to the Environmental Impact Report, allowing enough time for them
to assess and comment on the proposals.\(^8\) The Otago Catchment Board objected claiming the
Company's application would damage native vegetation and did not provide adequate provi­sions for meeting the water and soil conservation requirements in the area.\(^9\) Both agencies
would tolerate a skifield development if conditions were imposed: to minimise overspill and
erosion from road and skifield construction, to minimise slope grooming, and rock removal,
to monitor and control effluent discharge, and to revegetate disturbed areas.\(^10\)

The other objections which were presented orally were made by local groups, runholders
and private individuals. There were five local groups. They were: The Remarkables Protection
Committee, the Remarkables Action Council, The Wakatipu Environmental Society, Ecology
Action Otago and the Southland Tramping Club. The Remarkables Protection Committee was
formed in 1976 to oppose the Remarkables Skifield proposal and to obtain the declaration of
the Remarkables Range as a scenic reserve.\(^11\) The Committee was a small group of permanent
residents and interested individuals. The spokesperson for the Committee was Mr D.G.Jardine,
a runholder on the Remarkables Range. The Committee objected on the grounds that there
was little in the proposal which could be beneficial to the district. The Committee was also
concerned that there was little evidence that existing fields did not cater for skier demand, and
that any subsequent costs for maintaining the access road (should the skifield fail) “could result
in substantial financial detriment to the district’s residents”.\(^12\)

The Remarkables Action Council was formed in 1977 “to represent coordinated opposition
to the Land Settlement Board decision and to support the Study Team recommendation”.\(^13\) The
Council included members of the Otago Tramping Club, the Otago section of the New Zealand
Alpine Club, the Otago University Tramping Club, Ecology Action (Otago), the University
Students Association and the New Zealand Values Party.\(^14\) The Remarkables Action Council
argued that the Doolans Basin of the Remarkables was a more suitable site for a skifield than the

\(^{8}\)ibid., and Otago Daily Times (Dunedin), 21 April, 1979.
\(^{9}\)Lake County Council, Decision on Application p.6.
\(^{10}\)Southland Times (Invercargill), 21 April, 1979.
\(^{11}\)Mountain Scene (Queenstown), 19 February, 1976.
\(^{12}\)Southland Times (Invercargill), 21 April, 1979.
\(^{13}\)Remarkables Action Council, The Future of the Remarkables Newsletter 22 November 1977. (Dunedin:
OUSA, 1977)
\(^{14}\)Mountain Scene (Queenstown), 5 November, 1977.
CHAPTER 4. THE PLANNING PROCESS

Rastus Burn basin and that access via the Doolans Creek Valley warranted further investigation because unlike the proposed road, it would not be visible from Queenstown or Arrowtown.\(^{15}\)

The other local groups which objected were already in existence before the application. These included Ecology Action Otago (EAO) which objected in its own right claiming the proposal was inconsistent with the findings of the Land Settlement Board Study Team and did not adequately consider the Doolan’s Basin as an alternative field. The EAO also wanted an alternative access road up the Doolans Creek Valley which would not be visible from Queenstown.\(^{16}\) The Wakatipu Environmental Society argued that the Rastus Burn Basin was not suitable as a skifield because of: a lack of reliable snow cover for skiing; the disturbance caused by removing boulders from ski slopes; difficult gradients and climatic conditions; and the harmful impacts a skifield would have on the existing ecology of the basin from snow grooming and on the northern face of the Remarkables from the proposed access road.\(^{17}\) The Southland Tramping Club argued the Company had not submitted enough information about its proposal.\(^{18}\) For example, the members of the club were concerned to find out how many summer and winter tourists might use the lookout/restaurant facility within the skifield.\(^{19}\)

This latter concern was also shared by two runholders on properties adjacent to the proposed site for the field: D.G. Jardine claimed that the skifield was inconsistent with existing conservational use of the land by pastoral farmers and that if the access road was to proceed there would be no way leaseholders would know when the public was on their land. This would increase the danger of tourists and skiers disturbing stock and lighting accidental fires.\(^{20}\) Mr and Mrs New claimed that insufficient information had been provided about the location of the access road and that there might have been other objectors if the affected properties had been appropriately cited.\(^{21}\) In addition to local groups and runholders, four individuals made oral objections: Cresswell, Mark, Prior and Smeaton each claimed that the proposal would damage the ecology of the Rastus Burn Basin and the northern face of the Remarkables.\(^{22}\)

\(^{15}\)Otago Daily Times 21 April, 1979, and see also Remarkables action Council, The Future of the Remarkables.

\(^{16}\)Southland Times (Invercargill), 21 April, 1979.

\(^{17}\)Otago Daily Times (Dunedin), 21 April, 1979.

\(^{18}\)Otago Daily Times (Dunedin), 21 April, 1979.

\(^{19}\)ibid.

\(^{20}\)Mountain Scene (Queenstown), 26 April, 1979.

\(^{21}\)Lake County Council, Decision on Application p.9.

\(^{22}\)Department of Lands and Survey, File No. 8/9/458. Correspondence: Professor A.F. Mark to Minister of
There was one other group active at the time of the planning hearing: The Remarkables Skifield Action Committee. This group was formed in 1975 from a public meeting of members of the Queenstown business community and residents. The group was anxious for the development to proceed after a poor ski season in 1975 and supported the application in the local newspaper. It hoped the Remarkables field would provide more reliable snow coverage and attract more skiers to the area for a longer period. However this group did not choose to make a submission or counter objection to the planning hearing.

The hearing before the Planning Committee of the Lake County Council took three days, from the 18th to the 20th of April, 1979. Evidence was heard before a committee of five councillors. In its deliberations the Planning Committee acknowledged the existence, but not the contents, of three prior reports: the Study Team Report, the EIR and the EIA. The Department of Lands and Survey and the Commission for the Environment did not present evidence or lodge objections at the hearing. When questioned by a member of the public about the absence of the Department of Lands and Survey, the Minister of Lands (Mr Venn Young) said that it was:

not considered appropriate to become involved in the [Lake County Council] hearing because the hearing had incorporated an objection by the Crown (as represented by the Ministry of Works and Development) against an application which had gained approval in principle from the Land Settlement Board.

The Board had been serviced by the Department of Lands and Survey. Mr Young therefore concluded that if members of the Lands and Survey Study Team, had been present they would have only supported and elaborated upon the Board’s decision.

In its final determination issued on the 7 June, 1979, the Planning Committee recommended that the Mount Cook Company’s application to develop a skifield be granted. The Mount Cook Company had argued that the views of objectors had already been taken into

Lands, 8 July, 1979. Held in Department of Conservation, Regional Office, Dunedin.
23Mountain Scene (Queenstown), 14 August, 1975.
24Lake County Council, Decision on Application p.4.
26ibid.
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account in planning the skifield. The Company had changed its access roading plans to a single lane road in more sensitive areas in response to previous submissions to the Commission for the Environment. The Planning Committee stated that the majority of all objections it received were directed against the whole principle of establishing a skifield. In particular objectors were concerned about the visual and environmental effect of the proposed access road and the impact of a skifield development on the ecology of both the Rastus Burn Basin and the site for the road. Detailed plans for the development were not made available to objectors prior to the planning hearings, despite the demand for this from the Ministry of Works and Development.

The Committee recommended that objections be disallowed except to the extent that the concerns expressed by objectors "were reflected in terms and conditions of the consent". These terms and conditions related to roading, sewerage disposal, building construction and parking. The Committee required that in the interests of safety the access road to the skifield would be "...two way and therefore all proposed one way sections must be eliminated". The development (cut, fill and gradient) of the Kawarau access road was to be monitored by the Lake County Council to ensure there was a minimal down slope movement of scree and boulders. Revegetation was to occur where possible. Controls were to be placed on sewage disposal, the location, appearance and height of skifield buildings, rock and soil disturbance and the location of ski tows. Environmental groups did not obtain a single lane road or an alternative to the Kawarau access road, controls were not placed on the depth of snow grooming, the use of vehicles on the Rastus Burn slope or the limit to the size of boulders removed from the field.

The Planning Committee argued that the proposed site was suitable for skifield development and that:

the effects on the existing and future amenities and health, safety, convenience, and the economic, cultural, social and general welfare of the people of the district

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27 Southland Times (Invercargill), 14 December, 1977.
28 Lake County Council, Decision on Application p.6.
29 Otago Daily Times (Dunedin), 21 April, 1979.
30 Lake County Council, Decision on Application p.9.
31 ibid. p.10.
are such as on balance to require consent to be given.\textsuperscript{33}

The Committee believed that another skifield and summer access to the lookout would spread the demand for tourist facilities more evenly through the region and therefore benefit the "public generally" and the district.\textsuperscript{34} The Committee was of the view that additional information provided prior to the hearing and the evidence presented had satisfied objections that inadequate information was provided by the Company\textsuperscript{35} The Committee also believed the imposition of a bond on the Company to ensure all the conditions were fulfilled, met the objectors fears that the cost of maintaining the access road might become the liability of the County in the event of failure of the skifield.\textsuperscript{36}

The Lake County Council adopted the Planning Committees recommendations on 7 June, 1979.

\subsection*{4.1.2 The Planning Tribunal}

The Remarkables Protection Committee immediately lodged an appeal against the Lake County decision in July 1979. The appellant (the Remarkables Protection Committee) sought the setting aside of the respondent’s (the Lake County Council) consent to the skifield development. The Wakatipu Environmental Society also expressed a desire to lodge an appeal against the Lake County decision but stated that it was prevented from doing so by anticipation of the costs inherent in the appeal process. The Wakatipu Society was “seriously concerned” about the decision by the Lake County Council to grant approval to the Mount Cook Company to develop a skifield but it would “not lodge an appeal unless the members direct[ed] the committee to do so”.\textsuperscript{37} The Society’s chairperson cited the “high cost of retaining legal counsel” as the reason for its decision. At the time the Otago Daily Times commented that:

\textsuperscript{33}ibid. p.9.

\textsuperscript{34}ibid.


\textsuperscript{36}ibid.

\textsuperscript{37}Otago Daily Times (Dunedin), 17 June, 1979.
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The question of legal costs having to be borne by individuals who object to Town
And Country planning applications has been a sore point for some time with en-
vironmental groups who see large companies being able to absorb legal costs in
their normal company operations.38

The Remarkables Protection Committee’s appeal resulted in three hearings before the Plan-
ingen Tribunal (Number Three Division) in 1979 and 1980. At the first hearing on 17 October,
1979, the Mount Cook Company challenged the status of environmental groups on the grounds
that the Protection Committee had no standing under the provisions of the Act. The Commit-
tee was neither a “body” or “person” within the meaning of the Act and did not represent
some relevant aspect of the public interest.39 The Chairman of the Planning Tribunal ruled
however that in comparison with the previous Town and Country Planning Act 1953 the 1977
Act was clearly intended to provide a “wider right” objection given the introduction of the
words “representing some relevant aspect of the public interest”. For an objector to claim to
represent public interest the objector “must show some link between its action in lodging the
objection and the wider interest it claimed to represent”.40 The chairman concluded that the
Remarkables Protection Committee had qualified itself in this way and that the arguments that
the Committee was not “any body or person” could not be sustained.41

Prior to this hearing the Otago Catchment Board had lodged an objection in July 1979. It
claimed that the Mount Cook Company had failed to provide an adequate management plan for
the future use of the skifield.42 But the appeal by the Catchment Board had been withdrawn
after a meeting held at the request of the Mount Cook Company. The Company asked for
the meeting to discuss the points of concern that had been raised by the Catchment Board.
Afterwards the Company expressed its confidence that the Otago Catchment Board “would not
now appeal”.43 The Board also met subsequently with the staff of the Department of Lands and
Survey. The Department assured the Board that its concerns about fire prevention, revegetation

39 Lake County Council, Decision on Application p.4.
40 Ministry of Works and Development, Town and Country Planning Division, Digest of Planning Tribunal De-
41 ibid.
43 Otago Daily Times (Dunedin), 18 September, 1979.
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and protection of the water courses would be included in a new lease to be drawn up by the Department to govern the development. 44 The Catchment Board’s concerns were satisfied. The Board stated that it had not been aware that the site of the proposed skifield had been surrendered from pastoral lease “and that if it had been aware of this it would have been less concerned about lodging an appeal” because most of its objections related to the proposed use of the land if it was still to be held on a pastoral lease. 45

The second hearing of the Planning Tribunal was that of the substantive appeal. It was conducted over a period of three weeks from the 23rd October 1979. The Remarkables Protection Committee claimed that the respondent’s decision had not satisfied its objections. 46 The Remarkables Protection Committee produced new evidence which disputed the estimated costs of constructing and maintaining the access road and the ability of the Company to minimise detrimental impact. 47 The appellant also disputed the quantity of skiable snow expected in the Remarkables and the inability to expand existing skifields at Coronet Peak. The applicant (the Mount Cook Company) called three technical witnesses (a soil scientist, a geologist and an engineer) in rebuttal. In the course of the hearing the Tribunal determined that the “crucial issue” for consideration was:

to decide whether a hitherto relatively untouched area should be subjected to a measure of development which will irreversibly change its character, in order to provide additional facilities for skiers and sightseers in a district where tourism is one of the most important characteristics. 48

The Environmental Audit containing public submissions was not admitted as evidence by the Planning Tribunal. Nor was the Commission for the Environment present at the hearing. 49 After the hearing the Commission concluded that the information available in the audit “may not have been considered or, even, taken into account” by the Tribunal. 50 Furthermore

44ibid.
45ibid.
47ibid.
50ibid.
it would not appear that the Lands and Survey Study Team Report and submissions were taken into account by the Tribunal in coming to its decision. 51

In April 1980 the Planning Tribunal in a majority decision, disallowed the appeal. In the absence of any evidence that the applicant would not adhere to the conditions imposed, the Chairman dismissed the appeal and granted the necessary planning consent (subject to the Lake County Council’s original conditions). 52 One member of the Tribunal dissented. That member, Mr Calvert, was not satisfied that the applicant had carried out sufficient investigation into the possible expansion of Coronet Peak as an alternative to the proposal. Mr Calvert concluded that “on balance I am not convinced that the quantity and quality of snow likely to be experienced in the Rastus Burn Basin is sufficient to warrant the defacing of a scenic landscape ... of national significance”. 53

The Tribunal met for a third time in June 1980 to rule on the costs of the Appeal. The Remarkables Protection Committee contested the respondent’s application for costs with respect to the Planning Tribunal hearing on the grounds that it was “representing a relevant aspect of the public interest” and should not then be required to pay costs “when the subject matter of the application giving rise to the appeal is a commercial enterprise”. 54

The Tribunal found that the appellant (Remarkables Protection Committee) should pay the respondent (Lake County Council) $3500 towards expenses, and witness costs. In addition the Tribunal found that the Mount Cook Company’s claim of $31,689.43 against the Remarkables Protection Committee, was excessive, but it awarded costs of $2500 against the Protection Committee, stating that the Protection Committee by providing new evidence, caused the Mount Cook Company additional expense in calling expert witnesses in rebuttal. 55 Because the Remarkables Protection Committee was not an incorporated society, costs were awarded

51 Ministry of Works and Development, Town and Country planning Division’s publication Digest of Planning Tribunal Decisions No.6. made no reference to the Study Team Report or the EIR and subsequent publications of the Company. This digest is not a complete record but it supports the views of the Commission for the Environment and objectors to the skifield that the Tribunal had not taken account of prior reports. Otago Daily Times(Dunedin), 21 April 1979, National Business Review(Auckland) 7 July 1980 New Zealand Commission for the Environment, Environmental Audits and Appraisals. p.135.

52 Ministry of Works and Development. Digest of Planning Tribunal decisions No.6.

53 ibid.


individually against the members. In justification of its decision the Chairman of the Planning Tribunal noted that the Tribunal was empowered to hear new evidence (that had not been given before the earlier Lake County Council hearing) but that the proposal by the Mount Cook Company had been “known in the district for a number of years” and there had been “ample time to prepare evidence before the appeal ...”.

Therefore the Chairman concluded that the Remarkables Protection Committee could not rely on its appeal rights to expand its case. The Tribunal was a rehearing not a new hearing.

The counsel for the Remarkables Protection Committee commented in the media that:

the whole effect is such as to leave one with the impression that the Tribunal is attempting to discourage appeals.

Counsel argued that the imposition of costs was a “very serious impediment to the private individual who has a genuine town planning interest to preserve”. A member of the Committee, Dr. Ian Prior, described the award of costs as a “punitive view” which “overlooked” the costs already spent by the Committee in presenting its case “as well as the many hours spent in voluntary work”.

4.2 Epilogue to the Tribunal Decision

Although the Remarkables Protection Committee had lost, they could still seek to have influence on the conditions under which the skifield would operate. The proposal required a water right and the Land Settlement Board had still to issue a permanent lease.

In May 1980, the Mount Cook Company applied to the Otago Catchment Board for permission to discharge treated sewerage effluent into the Rastus Burn. The Otago Catchment Board exercised its discretionary power to hear evidence before a special Tribunal. As with the earlier planning hearings, objections were made by local groups. The Company’s application attracted two objections; from the Remarkables Protection Committee and the Wakatipu

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56 ibid.
57 ibid.
60 ibid.
61 ibid.
Environmental Society. Both groups were represented by runholder Mr D.G. Jardine. They requested a full investigation of future requirements of water in the area before effluent rights were granted arguing that the Rastus Burn was the only economical and drinkable gravity supply of water in the area. The Board subsequently granted the Company the right to discharge effluent at a controlled rate but expressed concern that the proposals put forward by the Company were only of a preliminary nature. The Board ruled that specific standards governing the quality, rate and monitoring of discharge should be imposed to ensure that any future use of Rastus Burn waters was "not unduly prejudiced if the application was granted".

Before issuing a permanent lease the Land Settlement Board had recommended in October, 1979, that 700 hectares of the Rastus Burn basin on the Remarkables be set aside as a recreation reserve. The Director General of Lands endorsed the proposal. The Minister of Lands had not been prepared to make a final decision on the reservation of the land until the Planning Tribunal decision was available. However the Director General of Lands did express his appreciation of the Mount Cook Company's "desire to proceed at an early date". He told staff of the Department of Lands and Survey that he hoped matters could proceed quickly once the Tribunal's decision was received.

There was no legal requirement to notify the public of the intention to create a reserve or to grant a lease or to have a management plan for a proposed reserve approved before issuing a lease. The Commissioner of Crown Lands (Otago) therefore privately expressed surprise to Head Office in April 1980 when he was informed that the Minister intended to announce the reservation of the Rastus Burn and to issue a management plan for the Remarkables Recreation reserve, as a public document. The Commissioner expressed his own concern and the concern

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63 _Ibid._
64 See earlier, p28 notes 45 and 46
67 _Ibid._, annotated memo to the above correspondence.
of his staff that advertising a management plan would “only open up again the whole debate of use of the area”.69 But the Minister of Lands concluded that the issue of a lease would pre-empt future options for development of the Remarkables and that it was therefore “only appropriate” that public input be facilitated before legally binding conditions were entered into with the Company.70 However the Minister requested that the draft management plan be discussed with the Company before it was released for public comment, to determine whether any of the policies would “present undue hardship” to the Company or perhaps be “unworkable in practice”. At the time the Director General argued that:

once the policies have been through the public participation procedures we will then be virtually bound to adopt these in the provisions of the lease. It will therefore be helpful to sound out the Company before the Minister is asked to approve in principle the policies enunciated in the management plan.71

Only limited information could be found for this study about the negotiations between Mount Cook and the Department of Lands and Survey because no minutes were kept of the meeting. However prior to their meeting an internal memorandum indicated that the Department anticipated “howls of protest” [from the Remarkables Protection Committee and University of Otago Botany Department] and similar groups “if it gave the Mount Cook Company exclusive use of the reserve”.72 Other information about the meeting between the Company and the Management Plan Committee is revealed in an internal report prepared by the Convenor of the committee. He noted that the Mount Cook Company “could not accept” a 50 centimetre limitation to the depth of the snow grooming and that it was an “administrative decision” after consultation with the Company to change the wording to remove the limitation to the grooming depth. The Convenor concluded that there “should be a gentlemen’s agreement that the policy in fact means 50 centimetres despite the administrative decision”.73


71ibid.


73Department of Lands and survey, Rastus Burn Draft Management Plan: Comments on Submissions, 11
After the Department's consultations with the Company were completed the Minister of Lands approved the recreation reserve and released the draft management plan for the area in July, 1980. In his press release the Minister commented that the decision to establish a skifield had been made and that "submissions should be confined to matters of reserve management policy". The management plan was designed to minimise impact of development on the reserve and was "not intended as a further vehicle" to discuss the overall question of the utilisation of the Rastus Burn as a commercial skifield, a question which had already been the subject of "lengthy public debate".

The Department of Lands and Survey received fifteen submissions from the public on its completed management plan. (Appendix G.) Five were received from governmental agencies. Of the remaining ten, three were received from individuals, four from environmental groups and three from mountaineering clubs. The Department summarised the content of these submissions in an internal memorandum. The Department stated that reaction to the draft was "generally favourable". The objectors advocated conditions to limit: the depth of grooming of the slope, the size of the boulders that could be removed and the development of the tracks. The Department could not agree to the demands to limit grooming because of its earlier understanding with the Company, but did agree to modify the Management Plan so that the Company was required to maintain disturbed areas. The Convenor could not agree to limiting boulder size; he advocated employing landscape architects to determine the size of boulders that could be removed. He felt that despite public submissions against forming tracks, they would be necessary to service the ski field given that the decision had already been made for a skifield to proceed. The Minister of Lands subsequently approved the Management Plan on the 16th of October 1980 and issued a long term lease to the Mount Cook Company over buildings and skifield facilities with easements to enable the Company to charge a fee for facilities developed by it.

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95ibid.
97ibid.
4.3 Summary

There were four distinct opportunities for participation by non governmental organisations and individuals in the process of planning for the Remarkables Skifield. These opportunities included the opportunities: to lodge objections and to appeal under the Town and Country Planning Act; to object under the Water and Soil Conservation Act 1977; and to comment on the Management Plan for the Remarkables area for recreation purposes under the Reserves Act 1977. In the following chapter I will critically evaluate the effect that these opportunities for public participation had on the planning process in the Remarkables case.
Chapter 5

An Evaluation of the Remarkables Case Study

5.1 Introduction

In this chapter I argue that the ability to influence decision makers is distributed disproportionately. The Mount Cook Company, in consultation with government agencies, anticipated public influence and worked out its own conditions to control development of the Remarkables Skifield. A reactive and incremental decision making process was weighted against groups with environmental interests who also sought to gain access to influence public decision makers. I justify this conclusion through an analysis of the interests involved in the case, their levels of participation, the issues they identified and the alternatives that could have been achieved but were not.

The key decision making bodies in the case were the Land Settlement Board as the administrative authority for Crown land, the Lake County Council as the planning authority and the Planning Tribunal as the appeal authority. The interests involved in the case can be broadly grouped into four categories. First were the developers and those associated with them (including Queenstown business interests, tourism operators and skiers) who derived benefit from the proposal. Second, were individuals whose economic wellbeing was directly impinged upon by the proposal (lease holders and runholders on the Remarkables Range). Third, were 'environmental' interests concerned with the visual or ecological effects of the development. Apart from a national student association and mountaineering club, the groups within this category
were organised at the local level (for example tramping clubs and local environmental pro­tection societies). Fourth, were participants with an obligation to present national interests. These included central and local governmental agencies. The principal organisations in this category were the Department of Lands and Survey, the Ministry of Works and Development, the Commission for the Environment and the Catchment Board (Otago).

A variety of issues were identified by these interests. They were questions of economic ad­vantage or disadvantage and the community benefit or disbenefit associated with the skifield. Economic advantages were obviously perceived by the Company but Queenstown business and tourist operators also anticipated spin off effects from greater numbers of skiers visiting Queenstown. The issue of economic disadvantage was identified by runholders in the sur­rounding areas who argued that unrestricted access would cause hardship by increasing the dangers of disturbance to stock and the risk of accidental or unauthorised fires lit by the public in the summer months. The issue of community benefit from the development of another skifield in a region where tourism was the major industry was identified by Queenstown business interests and New Zealand ski clubs. Issues of community disbenefit were identified by environmental interests as ecological and visual damage to the Remarkables.

Parties to the case participated at different levels. The first level, that of latent influence, is difficult to identify. Tourists and skiers participated at this level. The Company and decision making bodies indicated they were aware of a need for regional development and that there was some demand for more skiing opportunities. The anticipated reaction of environmental interests at a local and national level also had a latent effect. This was indicated when the Company anticipated the need to seek the opinion of some environmental groups before preparing its Environmental Impact Report and when staff the Department of Lands and Survey anticipated the reaction of environmental groups while preparing the Management Plan for the Remarkables Recreation Reserve. At an active level, were parties obligated to represent national interests, runholders, groups representing environmental interests and the developer.

1 Otago Daily Times (Dunedin), 21 April, 1979, and Mountain Scene (Queenstown), 26 April, 1979.
2 Mountain Scene (Queenstown), 17 August, 1975.
3 Mountain Scene (Queenstown), 19 February, 1976.
5 See earlier, p.43
CHAPTER 5. AN EVALUATION OF THE REMARKABLES CASE STUDY

These groups concentrated most of their effort on submissions and appeal procedures. Only one group, the Remarkables Skifield Action Committee expressed their views solely through the media rather than tying its actions to the planning process.6

From analysis of interests, issues and group activities, a variety of alternative outcomes which could have been achieved can be identified. The first was that there be no change. A majority of submissions received by the Commission for the Environment from local residents, individuals and regular holiday makers familiar with Queenstown, were not prepared to accept any further development of the Remarkables beyond existing use.7 They wished to see the Range protected as a scenic reserve. The second alternative was that change occur but at a different site, for example at Doolan’s Basin.8

The third alternative was that of controlled change. Some environmental interests and governmental agencies stated they would accept a skifield on the Remarkables if the impact of road access and grooming of the field was subject to controls to minimise the visual and environmental effects of the skifield and access road.9 Fourth, was the option of unrestricted change. This was the option of speeding the development “at any cost” as advocated by Queenstown business interests and tourist operators represented in the Remarkables Skifield Action Committee.10

Given the impossibility of compromise between the alternatives of no change and that of unrestricted change, some interests would inevitably ‘lose’. In the Remarkables case those that ‘lost’ were the environmental interests and the runholders of surrounding areas who advocated no change or development of alternative proposals. But the extent of that defeat is moderated. Environmental interests achieved some victory through both latent and active participation. In the absence of an anticipated environmentalist reaction, the Company might have

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6The Remarkables Skifield Action Committee supported the proposal. Opponents were the Remarkables Protection Committee and the Remarkables Action Council. See earlier, pp.31-33.


8Ibid. This option was principally advocated by tramping clubs.

9Otago Daily Times (Dunedin), 21 April, 1979, and see also Commission for the Environment, Remarkables Skifield Environmental Impact Audit: Submissions and The Lake County Council, Decision on Application by the Mount Cook Group Ltd. passim, pp.1-11.

10This position was advocated by the Remarkables Action Committee Mountain Scene (Queenstown), 17 August, 1975. See earlier p.35.
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proceeded unchecked except by its own calculation of economic benefits derived from a relatively stable access road and attractive skifield. Controls were placed on the development by the Lake County Council. These were intended to minimise environmental degradation from development of the access road and the location of the ski tows. However, beyond a latent effect, environmentalists achieved little. The proposal was largely unchanged from the original application and the individual members of the protest group, the Remarkables Protection Committee were left with a large order for court costs. No alternative proposals were investigated. Nor were limitations placed on snow grooming and boulder removal.

A moderately pluralist model allows for influence in decision making to vary according to intensity and degree of affected interest. On balance, it could be argued that the consideration of skiers, tourists and the community benefit derived from the skifield outweighed the interests of local environmental groups. An outcome is not in itself evidence of failure if public participation is an instrument to achieve political equality. But public participation is a flawed instrument if the degree of influence of all participants is not in proportion to their intensity of interest but is a consequence of the decision making process itself or of privileged access to decision makers obtained by some participants on criteria other than intensity.

5.2 An Analysis of Decision Making in the Remarkables Case

It is contended here that in the case of the Remarkables Skifield the decision making process was weighted against environmental interests. First, groups with environmental interests were placed in a reactive position. The principal opponents of the scheme were local groups (The Remarkables Protection Committee and Remarkables Action Council ) only formed in response to the proposal. At the point of their reaction the Mount Cook Company had an information advantage. After privately seeking opinions the Company set the agenda for discussion with its proposals. Financial resources helped the Company maintain its advantage. Because it could buy technical expertise the Company’s ability to find and to release information so exceeded that of other participants that it at least partially controlled the information.

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11 The possibility of proportionate equality within the wider political system is discussed in R.G. Mulgan “Who should have how much to say about what?” Some problems in Pluralist Democracy. “Political Science 36 No.2, 1984. pp. 112-124.

12 See earlier p.33.
on which decisions would be made. For example, in 1975 the Company released information prior to the official publication of the Environmental Audit. But environmental interests expressed concern that they still lacked enough information for all assessment of the potential environmental impact of the proposal. The Mount Cook Company subsequently provided supplementary information in its EIR (1977) but that information was only supplied at the time of the hearing before the Planning Committee. There was no time for these reports to be referred back to objectors despite demands by the Ministry of Works and Development that more detailed information should be provided by the Company and be made available with time allowed for consideration by the public.

New groups representing environmental interests lacked financial resources to provide detailed information to public servants. Members of the Land Settlement Board expressed concern that they had not received adequate information about the possibility of constructing an alternative access road up the Doolan’s Creek Valley. In the absence of this information it would appear difficult for the Board to give due weight to that proposal despite the number of submissions the Board received from the public advocating that alternative.

The second factor required for effective participation is the motivation of a full range of interests to redress an uneven cost/benefit balance. In the Remarkables case groups representing wider, general interests faced higher costs of participation in relative terms than the developer. Objectors needed much greater motivation to participate in this case than the Company given the greater relative cost and ultimately less tangible benefits they could achieve. Financial considerations prevented the Wakatipu Environmental Society from maintaining its participation in costly legal hearings. The Remarkables Protection Committee did expend its resources to oppose the skifield. But the unique scenic value of the Remarkables was recognised to have a national significance and at a national level, a benefit is gained when a variety of interests are represented in decision making. Therefore a wider population than those in the immediate locality could have contributed more to a decision that affected the future development of this

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14 Lake County Council, *Decision on Application* p.2. The Company prepared two supplementary reports which were admitted as evidence by the Planning Committee and Land Settlement Board. See earlier pp.27 and 35.
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mountain range.

The need to redress the uneven cost/benefit balance in decision making has been discussed by both Richard Mulgan and Aynsley Kellow. Mulgan commented on the need for “some notion of a moral obligation or duty to contribute to a common objective”.16 This obligation would overcome the difficulty of motivating common interests. Kellow has argued that each affected person needs to feel obligated to participate rather than rationalising that he or she can benefit from a “free ride”17 Regardless of the outcome, if this did not occur local groups who perceive themselves to be tangibly affected, will continue to expend their resources to achieve benefits that a larger group will share. At the extreme, Mulgan asserts that in the absence of a moral obligation or duty to contribute to a common objective, no one will participate. The advantages of concerted action will be lost because in rational terms, the chance of any particular individual’s contribution affecting the outcome is “minute” and the benefit likely to be gained by participating “will be much less than the additional cost of such participation”.18

The Remarkables case also demonstrates another dimension of the cost/benefit imbalance which should be redressed. Under the Environmental Protection and Enhancement Procedures (1973), the applicant passed the costs of identifying the full range of potentially harmful environmental impacts, downstream to the wider community. The fact that the Company’s initial EIR provided little detailed information placed the onus on the Commission for the Environment and groups with environmental interests to identify major impacts and propose solutions. This potential for externalising research costs in decision making suggests to the author that there is a need for a liability clause to be included within the EP and EPs to ensure that a developer presents sufficient information to support its initial application.

A third factor, the incremental nature of the decision making process, advantaged the Company’s ability to influence decision makers at the expense of other interests. Decisions were made by a number of authorities, this disjointed process advantaged developers in several ways. It restricted the scope of discussion. Broad issues were reduced to successive questions relevant to the responsibilities of the numerous authorities involved. In this environment, issues

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were reduced to questions of whether to have a skifield or not, and if so, under what conditions. Decision making by public servants and quasi judicial authorities masked the political nature of the discussion which concerned the allocation of values and resources in society. Environmental groups expressed anxiety that they could not raise wider issues. This was not simply because they lacked the information about the skifield development but because there was little opportunity to debate, for example, the overall question of the future development of the Remarkables for tourism. The Land Settlement Board Study Team report had provided a wider opportunity for comment on a variety of matters, but in the disjointed decision making process this report was not subsequently accepted as evidence by the Lake County Council Planning Committee or the Planning Tribunal.

Each decision was built on a previous one rather than decision making becoming a continual process of balancing divergent interests. Once a decision had been made about granting a lease for the site, the agenda for debate at the next stage concentrated on planning permission for that particular site. An appeal for a rehearing before the Land Settlement Board was not granted because the Board had anticipated subsequent opportunities for interested parties to express their views under the Town and Country Planning Act 1977. However the evidence that had been presented to the Board was not reheard under that Act as neither the Planning Committee or the Planning Tribunal accepted the evidence of the EIR or Study Team Report. The general public was disadvantaged in this process. A Queenstown planning consultant indicated the public was confused about when and where to object or apply for a rehearing. Only the company participated at each stage in the decision making process. If a new group, unfamiliar with the planning process missed the appropriate opportunity to object their right of appeal was not assured at later stages.

The Commission for the Environment and the Land Settlement Board Study Team did not have input into the Lake County Council or Planning Tribunal Hearings. There was no opportunity for new groups to contribute at the initial stages of decision making because they were formed later in response to the proposal. In part however they represented the views of individuals who would have participated at the initial stages had they been given the opportunity at the time of the Company's proposal and the drafting of the study report. In both cases however only a few established interests were approached for comment on the draft

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EIR and Study Team report. Individuals were also disadvantaged at this stage. The Company only approached a small number of individuals for comment, in comparison with the large proportion of submissions received later from individuals who replied to the open invitation for comment on the completed Environmental Impact Report.\textsuperscript{20}

A fourth factor preventing effective participation was inadequate transparency and accountability in decision making. In chapter two it was argued that to be effective, participation has to be regulated according to the principle of proportionate equality which requires that individuals be treated differently from one another depending on the degree of immediacy of their interests.\textsuperscript{21} However, as shown in the Remarkables case this requires that the decision making process be transparent.

Any decision making process is complex and subject to a number of inputs, not only from groups within a domestic public but, for example, from a variety of government departments or other nation states. In the Remarkables case we cannot be sure that each input was always duly considered and balanced against all other inputs at each stage of the planning process. In particular, deliberations by the Land Settlement Board and subsequent Department of Lands and Survey negotiations with the Mount Cook Company were not open to the public. The process of determining which interests were affected and allocating degrees of influence accordingly, appears to have been made subjectively on the basis of the impressions of members of the Board or Department staff. In the case of the Land Settlement Board, membership of that organisation was itself intended to establish a measure of participation. Its composition provided for the representation of certain interest groups such as Federated Farmers. It therefore also seems important that the influence these members had in any decision is open to public scrutiny.

The Company was able to use direct personal contacts with the Minister and Director General of Lands and with the staff in the Dunedin office of the Department of Lands and Survey and the Otago Catchment Board. As a result of these meetings the Minister of Lands acted on behalf of the Company on three occasions. The Minister advocated completion of the Land

\textsuperscript{20}See Appendices C. and D.

\textsuperscript{21}see earlier p. 8.
Settlement Board Study Team Report; and the delay of the release of that Report. This allowed for the concurrent release of the Company's Report on Investigations Following the Publishing of The Environmental Impact Audit. The Minister also acted to request a private meeting between the Company and staff preparing the management plan. The Minister did act on a later occasion on behalf of other interests, to extend the period that submissions on the Study Team Report would be accepted. But a review of the Department of Lands and Survey files indicates that the majority of all personal contacts made in this case were between staff and the representatives of the Mount Cook Company. The Company was able to discuss the conditions governing the development with the Department of Lands and Survey, after the Minister of Lands actively intervened to request a private meeting between the Company and the Department. The Company had also requested, and been granted, a meeting with the Catchment Board to negotiate conditions affecting soil and water conservation values.

It is neither possible nor desirable to generalise from the results of one case study. However the Remarkables case study lends support to Mulgan's argument that less affluent groups, newly established or potential groups and groups representing general or fragmented interests will be disadvantaged in decision making. Regardless of the outcome of the case, I have argued that the ability to influence decision makers in the planning process was distributed disproportionately. The reactive and incremental nature of decision making disadvantaged newly formed, less affluent groups representing environmental interests.

Appendix A

Application by the Mount Cook Company for a Lease, (1973).

Commissioner of Crown Lands,
Department of Lands and Survey
District Office
P.O. Box 896
17-10-1973
DUNEDIN.

Dear Sir,

re: DOUBLE CONE : REMARKABLES SKI FIELD

We wish to apply for a lease to occupy an area of the Double Cone Run to develop a ski field.

As you are now aware, we have applied for permission to install a second chairlift at Coronet Peak. We anticipate that with the additional patronage forecasts, based on previous experience, that our facilities will be fully utilized within four years.

Therefore, we wish to proceed with initial work that will enable us to evaluate, plan and install a chairlift on the Remarkables to provide additional capacity for skiing in the Queenstown area after Coronet Peak has been fully developed.

1The original letter could not be reproduced because of annotations to the original copy held on file no. 8/9/459 in the Department of Conservation, Regional Office, Dunedin.
We support this application with our Feasibility Study, letter of approval from the runholder, and copy of the Annual Report and Accounts of The Mount Cook & Southern Lakes Tourist Co. Ltd. for 1973 to satisfy you that we are financially able to carry out the project.

May we point out that we consider that in order to develop this area it is essential that we secure a lease of an area that will become the base of the operations, as well as “line” leases of the three proposed chairlifts as explained on “sketch” attached.

We trust that you will not hesitate to advise us if you require any further information.

Yours faithfully,

R.R. FORWARD

ASST. GENERAL MANAGER : LAND
Appendix B

List of Submissions Solicited by the Mount Cook Company (1974).

The following groups and individuals were approached privately in 1974 by the Mount Cook Company for comments in the process of preparing the Environmental Impact Report. (Source: Frederick Sheppard and Associates, Environmental Impact report for Remarkables Skifield (Christchurch: The Mount Cook and Southern Lakes Tourist Company Limited, 1975)).

1. Commissioner of Crown Lands (Otago)
2. Lake County Council
3. Borough of Queenstown
4. Otago Catchment Board
5. The Federated Mountain Clubs of New Zealand (Inc.).
7. Wakatipu Environmental Society
8. Associate Professor A.F. Mark, Botany Department, University of Otago
9. Royal Forest and Bird Protection Society of New Zealand Inc.
11. Ron Sargeant, New Zealand Ski Team Coach
12. New Zealand Historic Places Trust
13. The New Zealand Ski Association Inc.
14. Mr L. Heron
15. Mr Kennedy, Cone Peak Station
16. Professor G.A. Knox, Professor of Zoology and Director Environmental Defence Society, Canterbury University, Christchurch
Appendix C

List of Submissions Solicited by the Mount Cook Company (1975).

The following groups and individuals were privately approached by the Mount Cook Company in 1975 for comments in the process of updating its EIR. (Source: Frederick Sheppard and Associates, *Environmental Impact report for Remarkables Skifield* (Christchurch: The Mount Cook and Southern Lakes Tourist Company Limited, 1975)).

1. Central Otago Power Board
2. The Late A.A. Hood, Registered Surveyor
3. Frederick Sheppard and Partners, Consulting Engineers
4. Commission for the Environment
5. Mr T. Ibbetson, B.Arch(Hons), A.N.Z.I.A., A.R.I.B.A.
6. C.W.F. Hamilton and Co. Ltd., Christchurch
7. Vacation Hotels Limited, Auckland
8. Trans Hotel (NZ) Limited, Christchurch
9. Travelodge (NZ) Limited, Auckland
Appendix D

List of Submissions Solicited by the Study Team (1975).

The following groups and individuals were approached privately by the Department of Lands and Survey Study Team for comment on the *Remarkables and Hector Mountains: Otago, New Zealand: A Management Study*. (Source: Department of Lands and Survey, *File No. 8/9/458*. Correspondence: Commissioner of Crown Lands (Otago) to Director General (Lands), 19 June, 1975. Held at Department of Conservation, Regional Office, Dunedin.)

1. The Secretary, Wakatipu Environmental Society
2. Mrs J.S. Jardine, Remarkables Station
3. Mrs A.M. Miller, Queenstown
4. The Secretary, Royal Forest and Bird Protection Society (Otago Branch)
5. The Secretary, Nature Conservation Council, Wellington
6. The President, Otago Tramping and Mountaineering Club
7. The Hon. Secretary, Southland Tramping Club (Inc.)
8. The County Clerk, County of Lake, Queenstown
9. The Town Clerk, Queenstown Borough Council, Queenstown
Appendix E

List of Submissions from Public Invitation, to the Commission for the Environment (1976).

The following groups and individuals responded to a public invitation to comment on the Remarkables Skifield Environmental Impact Report to the Commission for the Environment.

1. Ministry of Agriculture and Fisheries
2. New Zealand Forest Service
3. Department of Health
4. Department of Lands and Survey
5. Ministry of Works and Development
6. Department of Scientific and Industrial Research
7. Ministry of Transport
8. J.S.C. Begg and B.S. Jamieson
9. Boffa, Jackson and Associates
10. R.W. Brown
11. Clare J. Carr
12. R.E.M. Carr
13. P.D. Chapman
14. Christchurch Tramping Club
15. G.W. Davidson
16. Ecology Action (Christchurch and Otago)
17. Mr R. Fantl and I. and E.K. Prior
18. Federated Farmers (Otago Provincial District)
19. Federated Mountain Clubs of New Zealand
20. Mrs S. Forster
22. Mr and Mrs Goldsbrough
23. W. Harris
24. D.G. Jardine
25. J.G. Jardine
26. J.D. and B.G. Knowles
27. F. and E. Lewis
28. S.L. McCurdy
29. B.J. Mason
30. John Middleditch
31. Marygold Miller
32. H. Miller
33. Nature Conservation Council
34. New Zealand Deerstalkers Association (Otago Branch)
35. New Zealand Scenery Preservation Society
36. New Zealand University Students Association
37. Otago Catchment Board
38. Otago tramping and Mountaineering Club
39. Mrs A.M. Smeaton
40. A.A. Snelder
41. Remarkables Protection Committee
42. Southland Tramping Club
43. Mr and Mrs A.N. Snead
44. Mrs M.J. Templeton
45. Treble Cone (Wanaka) Ski Fields Ltd.
46. New Zealand Tourist and Publicity Department
47. Wakatipu Environmental Society

Nineteen people wrote letters to the Commission which were not included in the published list of submissions, however copies were available on request at the time of the Audit publication.
Appendix F

List of Submissions delivered under Oath before the Lake County Council Planning Committee (1979).

The following individuals delivered written submissions under oath to the Lake County Council Planning Committee. (Source: Ms Stella Luoni, Queenstown Lake District Council, personal communication, 23 December, 1987.)

1. Miss N.C. Watson (Ministry of Works and Development)
2. Mrs E. Entwhistle (Ecology Action Inc. Otago)
3. Mr J.W. Ramsay (Otago Catchment Board)
4. Mrs F.A. Lewis (Wakatipu Environmental Society)
5. D.G. Jardine (D.G. Jardine & Sons and the Remarkables Protection Committee)
6. R.D. George and K.D. Mason (Remarkables Action Council)
7. Mr J.P. White, Miss K. Marble and Mr R.L. McCurdy (Southland tramping Club)
8. Mr W.J. Dark
9. A.W. Ward
10. I.A. and E.K. Prior
11. E.N. and L.W. New
12. R. Cresswell
13. A. Smeaton
Appendix G

List of Submissions from Public Invitation to the Management Plan (1980).

A list of submissions received from the public by the Department of Lands and Survey on the Draft Management Plan for the Recreation Reserve. (Source: New Zealand. Department of Lands and Survey, File No. 8/16/114 Held in Department of Conservation, Regional Office, Dunedin.)

1. Dunedin City Council.
4. C. Sparrow.
5. Royal Forest and Bird Protection Society.
7. Wakatipu Environmental Society.
8. Remarkables Protection Committee.
10. A.F. Mark.
11. J.R. Chives.
12. Lake County Council.
13. Federated Mountain Clubs.
14. Otago Catchment Board.
FIGURE 1: Site of the Proposed Skifield.
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Primary

(a) Unpublished


(b) Published

(b:i) Official


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(b:ii) Unofficial


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