

(5a)

BEFORE THE MACKENZIE DISTRICT COUNCIL

Under The Resource Management Act 1991
In the matter of a plan change under section 73 of the Resource Management Act

MACKENZIE DISTRICT COUNCIL

Applicant

**LEGAL SUBMISSIONS ON BEHALF OF GLENROCK STATION LIMITED ON PLAN
CHANGE 13 OF THE MACKENZIE DISTRICT COUNCIL PLAN**

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Background

1. This hearing relates to Plan Change 13 of the Mackenzie District Plan (“the Plan”) pursuant to the provisions of the Resource Management Act 1991 (“the Act”) to have certain amendments and additions made to the policies, objectives and rules of the Mackenzie District Plan.

Evidence

2. Evidence from the landowner will be presented by Ann Scanlan on behalf of Glenrock Station. Fabricio Botto, a representative of the owners of Glenrock Station Limited is also in attendance.

Plan Change 13 - Amendments

3. In summary, Glenrock Station supports the following amendments to the plan:

Section 7

Rural Issue 7 – Landscape Values

4. Glenrock seeks deletion of the last sentence of the paragraph: *“Another issue associated with retaining values of the basin is the extent to which additional irrigation will ‘green’ the basin and change land use patterns”*.
5. Glenrock generally supports the addition of Issue 7 as the subdivision of farm land potentially threatens the viability of farming. However, Glenrock is concerned with the comment that additional irrigation will “green” the basin being seen as an adverse effect on landscape values.

Policy 3B – Economy, environment and community

6. Policy 3B is supported. It is important that the plan recognises that the economic development of the area is also important. The farms in the Basin must not only be maintained but must also be developed to ensure the area will prosper.

Rural objectives and policies

Policy 3D – Adverse impacts of buildings and earthworks.

7. Glenrock seeks deletion of the 4th bullet point of the explanation and reasons to Policy 3D:

“Some structures associated with more intensive farming such as large irrigators or industrial style buildings, when placed in the foreground of views can reduce the scenic values and sense of openness valued within the basin”.

8. In order to ensure that farms can continue to develop it must be recognised that irrigators may become an element of views in the basin. This is not necessarily an adverse effect on the environment but could be viewed as part of the visual character of the basin.

Policy 3G – Approved building Nodes

9. Glenrock seeks an amendment of Policy 3G to provide that the issues listed are for consideration upon an application for an “approved building node” but not standards which need to be satisfied.
10. The first issue under Policy 3G should be amended to recognise that the visual effect of the application should be considered but any buildings or structures need not be visually inconspicuous.
11. Glenrock submits that Policies 3G and 3H are overly restrictive.
12. The policy provides that new building nodes will only be granted where the Council is satisfied that the matters listed in Policy 3G are met. The matters listed should be considered but requiring them all to be satisfied will in effect defeat the purpose of identifying areas where new nodes can be considered. Each application should be considered in the context of the specific circumstances surrounding it.
13. The notion that buildings need to be visually inconspicuous is contrary to the identification of landscape sub-areas in which a number of new nodes can be accommodated. Clusters of buildings form part of the environment and by limiting the number of new nodes landscape values will be protected.
14. The idea that new buildings can only be developed where they are visually inconspicuous is very restrictive. This approach does not appear to recognise

that people are part of the environment. It will be sufficient to find a site which satisfies all the requirements set by the plan.

Policy 3H – Extensions to existing identified nodes

15. Glenrock requests that Policy 3H be amended to provide that the issues listed in Policy 3G excluding items 8 and 13 will be matters for consideration only upon an application to extend an existing node.

Policy 3J – Remote Farm Buildings

16. It is noted that the Officers Report recommends the deletion of Policy 3J. Glenrock supports the deletion.
17. However, if the deletion of this Policy is not accepted by the Council, Glenrock requests a schedule listing an approved range of colours and materials be included in the Plan.
18. The Council maintaining control of the design of remote farm buildings is overly restrictive. These buildings are constructed for a farm purpose and past practice has shown they are constructed out of tough materials to endure the weather without constant maintenance. If the Council is concerned that remote buildings may be painted colours which would have an adverse visual effect, a range of approved colours and materials could be included in the plan to avoid the cost of a resource consent application.

Policy 30 – Views from roads

19. The explanation to Policy 30 needs to be amended to recognise that irrigators and wrapped feed may be part of any rural view and this does not need to be avoided.
20. Policy 30 fails to recognise that structures are part of a working landscape and the view is not adversely affected by an irrigator or polythene wrapped feed. The vastness of the landscape means that structures or shelter belts are absorbed into any view without affecting the dominant naturalness of the landscape. The climate is extremely harsh and placement of feed and service buildings is an integral part of managing operations during snow storms and other harsh conditions.

Appendix S – Identified building nodes

21. Glenrock seeks the inclusion of the Holbrook existing node of development be included in Appendix S.
22. The Holbrook Station existing node of development has not been identified in Appendix S. Attached is an aerial photo image marked “A” showing the existing node of development at Holbrook Station.
23. The existing Holbrook Station node of development includes:
 - A substantial woolshed;
 - Sheep yards;
 - Cattle yards;
 - A substantial homestead; and
 - A cottage;
 - Three outbuildings;
 - A hay barn;
 - Holding paddocks; and
 - A storage pond.
24. The node is surrounded by trees which shield it from view. Only a fleeting view of the main homestead can be achieved from a car passing along State Highway

Appendix R – Capacity for new nodes

25. A new landscape sub area to the south of State Highway 8 needs to be included as shown on the attached Plan marked “B”. The ability to establish a new node in connection with Holbrook Station is required. This area will include the existing Holbrook node and provide capacity for an additional building node to be developed.
26. Further development in this area is appropriate given the existing development which includes the existing Holbrook and Sawdon nodes of development, buildings opposite the existing Holbrook area, and the proposed location of a new node to the north of State Highway 8.

Rural Zone Rules

Rule 3.2.2 – Remote farm accessory buildings in the Mackenzie Basin Subzone

27. Glenrock seeks provision for remote farm accessory buildings to be a permitted activity subject to compliance with listed standards including colour and materials.
28. Remote farm accessory buildings should be provided for as a permitted activity. Guidelines for colours and materials which ensure the external appearance of any remote building can be absorbed into the landscape should be included in the plan. This would enable farm accessory buildings which are an essential aspect of any farming activity in the Mackenzie Basin to be erected without the cost of a resource consent application while still providing a mechanism to control the external appearance of the buildings.

Rule 15.1 – Discretionary activities

29. Glenrock (as submitted above) seeks an amendment to Policy 3G to provide that the issues listed are for consideration upon an application for an “approved building node” but not standards which need to be satisfied. The first issue under Policy 3G should be amended to recognise that the visual effect of the application should be considered but any buildings or structures need not be visually inconspicuous.
30. The requirements contained in Policy 3G should be matters which consideration is given to but each requirement should not have to be achieved. Regard should be had to the matters listed but the discretion to enable each application to be considered should be maintained to allow land owners flexibility.
31. The inability to meet one of the requirements listed in Policy 3G makes an application a non-complying activity which is inappropriate. The Plan Change recognises that an additional node or nodes can be developed in this area. It is contrary to the purpose of identifying these areas to then take such a prescriptive approach to establishing a node within them. Discretionary status allows the effects of any proposal to be addressed and if this is not possible the application can be declined.

Rule 15.2 – Non-complying activities

32. Glenrock seeks the deletion of Rule 15.2.1. The establishment of an approved building node or the extension of an identified building node should be provided for as a discretionary activity.
33. It is inappropriate to provide that any approved node or extension to an identified node is a non-complying activity if it cannot meet the standards in 15.1.1 and 15.1.2. The areas have been identified as being capable of absorbing a node or nodes and any application for such should be provided for as a discretionary activity.

The Approach for Council

34. Section 73(1) of the Act outlines that a District Plan may be changed by territorial authorities in the manner set out in Schedule 1.
35. Section 74 of the Act outlines the matters to be considered by Council when making a decision under section 73. A territorial authority shall prepare any changes to a District Plan in accordance with its functions under section 31, the provisions of Part 2, its duties under section 32 and any regulations.
36. Under Section 32, to achieve the purposes of the Act, the Council is required to consider the alternatives, benefits and costs of a plan change before making a decision. Under section 32(1)(c) the Council is required to carry out an evaluation of the plan change requested.
37. Section 32(2) requires the Council to make a decision under Clause 10 or Clause 29(4) of Schedule 1 to the Act.
38. Section 32(3) outlines that the decision maker must undertake any evaluation examining:
 - 38.1 The extent to which each objective is the most appropriate way to achieve the purpose of the Act; and
 - 38.2 Whether having regard to the efficiency and effectiveness the policies, rules or other methods are most appropriate for achieving the objectives.
39. Section 75 makes it clear that there must be a hierarchical structure in relationship between the elements of a District Plan's objectives, policies and

rules. This section is reiterated by requirement under section 32(3) with the Council to evaluate the plan change first in regard to the extent to which objectives best achieve the purpose of the Act and then whether the policies, rules or other methods best achieve the objective of the plan.

40. Under Section 76 the Council may, for the purpose of carrying out its functions under the Act and achieving the objectives and policies of the plan, include rules in a District Plan.

41. The approach required under the legislation has been outlined in many cases but is best summarised by the recent decision of the Environment Court *Sloan v Christchurch City Council* (Environment Court, C03-2008). The Court states at paragraph [25]:

“The starting point for consideration of the approach to be adopted was agreed by all parties as being the Environment Court decision *Eldamos Investments Limited v Gisborne District Council* [1972] NZLR 698. The principles can be summarised as:

(1) The Court does not start with any particular presumption as to the appropriate zone rule, policy or objective (*Eldamos* para [123]; *Wellington Club v Carson* [1972] NZLR 698(SC) Act page 702, line 54 to page 703, line 13]

(2) The Court is seeking to obtain the optimum planning solution within the scope of the appeal it has before it, based on the evaluation of the totality of the evidence given in the hearing, without imposing a burden of proof on any other party (*Eldamos* at para [129]);

(3) In considering whether a policy, rule or method achieves the purpose of the Act, the purpose is generally found in the objectives and policies of a plan. There are exceptions where the objectives and policies are also challenged (which is no longer the case here) and also where the objectives and policies of a planning instrument fall far short of achieving the purpose of the Act. Again that was not argued in this case. Nevertheless, there are provisions in all plans which do not always fit neatly together and we should regard the policies and objectives of a plan through the filter of Part 2 of the RMA where necessary;

(4) a policy, rule or other method in a plan is to be evaluated by whether:

- (i) it is the most appropriate way to achieve the policies and objectives of the plan (Section 32(3)(b)). To this we would add that in the case such as this it is the more appropriate or better way. I cannot exclude that there may be further ways which are more appropriate but not within the scope of the particular appeal we are hearing;
- (ii) it assists the Territorial Authority to carry out its function in order to achieve the purpose of the Act (section 72);
- (iii) it is in accordance with the provisions of Part 2 (Section 74(1));
- (iv) If a rule, it achieves the objective and policies of the plan (Section 76(1)(b)).”

2.

- 42. Part II matters in this particular case have perhaps more significant importance, given the harsh nature of the landscape and environment which the rules seek to protect. These landscapes do not manage themselves. Farmers views on management of the landscape will assume critical importance in determining the better or most appropriate outcome for the plan.
- 43. The case of *Bilmag Holdings Limited v Waipa District Council* (EnvC, A072/2008 at para 58) also outlines when assessing whether the plan change is the most appropriate way of achieving the objectives, it is the objectives as a “whole” against which the proposal is to be measured.
- 44. The changes to the plan should therefore to be evaluated by whether they:
 - 44.1 are the most appropriate or best way to achieve the policies and objectives of the Plan (Section 32(3)(b));
 - 44.2 assists the Territorial Authority to carry out its functions and work to achieve the purpose of the Act (Section 72);
 - 44.3 are in accordance with the provisions of Part 2 of the Act (Section 71(1); and
 - 44.4 if a rule, it achieves the objectives and policies of the Plan (Section 76(1)(b)).

45. We submit that there is a further difficulty for the Council to consider in this plan change. If, overall, the plan change must result in a better outcome, it must be considered whose perspective that outcome should reflect. Is this outcome for the benefit of the environment as a whole, tourists on transit via the State Highway, the local farmers and residents of the community or the rate payers of the district in general. Clearly a broad overall judgment is required. But the views expressed by transient or non resident submitters or consultants must in my view be downplayed if the outcome will not produce a more appropriate outcome for those people and communities constantly living with the impact of the plan change.
46. If the impact of the change is to “squeeze” farmers so as to restrict them to their existing farming practices and require them to enter into frequent consent processes, then in my submission the outcome is unlikely to be better for the territorial authority – particularly so given their day to day role in developing the properties we are discussion today.
47. Perhaps the better outcome is to recognise that farmers have had consideration to the aesthetics of the built structures, the appropriate colour palate, and materials and its overall effect on the environment and will continue to do so in the future.
48. If this plan change places too much emphasis on visual amenity and preservation of open space there is a real danger that the farming community could simply become the guardians of the district with their role simply preserving the Mackenzie basin for the benefit of others. Guardianship, without financial sustainability of the properties, is unlikely to lead to a better outcome as a whole.
49. Farming has always been an integral part of the district and any change must have farmers wellbeing in mind to ensure the wellbeing of the community and to encourage the district to prosper.

Outstanding Natural Landscape

50. When looking at the landscape all of the elements currently on the landscape must be considered, including current farming and residential activities.
51. The factors that form landscape has been canvassed in the Environment Court in *Briggs and Ors v Christchurch City Council (C45/2008)*. Here (at para 102) the

Court refers to references in *Landscape Planning Guide – For Peri-urban and Rural Areas* by R Peart. This book identifies a range of factors referred to as being:

- natural science factors – geological, topographical, ecological and dynamic components of the landscape;
- its aesthetic values, including the memorability and naturalness;
- its expressiveness (legibility), how obviously the landscape demonstrates the formative processes leading to it;
- transient values: Occasional presence of wildlife; or its values at certain times of the day or of the year;
- whether the values are shared and recognised;
- its value to tangata whenua;
- its historical association.

52. The guide goes on to say:

“This landscape assessment reflects this wide ranging understanding of landscape and as such it incorporates input from specialists in geology, geomorphology, archeologically, Tanga Te whenua and agriculture as well as specialist landscape assessors. Landowner, stakeholder and general public input will also play a significant role.”

53. These factors incorporate more than outstanding natural features and landscapes. There are different values to many people who share this landscape. For the farmer there is the ability to be able to farm their land as they see fit including irrigating and developing certain parts of their property to enhance the overall productiveness (in the widest sense) of these properties.

54. **Aesthetic Appeal**

55. Glenrock accepts that there needs to be nodes of building development. Without development nodes there is a real danger that the district could develop in an ‘ad hoc’ way that could be detrimental to the district and could result in issues of precedent.

56. However, nodes of building development should not be so strict so as not to allow buildings such as sheds and hay barns or other buildings essential to farming sustainability and development. Any plan change made could not go so far as to prevent a building that is not residential or commercial from being erected where the effects on the environment would be less than minor. For example, the erection of a shearing shed out of a building development node amongst the large landscape of the Mackenzie basin could not be said to be against the objectives and policies of the plan as a result of the plan change.

Dated 5th September 2008

E J Chapman
Solicitor for Glenrock Station Limited