

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of an appeal pursuant to clause
14(1) of the First Schedule to the
Resource Management Act 1991

BETWEEN **RHOBOROUGH** **DOWNNS**
LIMITED

ROBERT PRESTON

ROBERTA PRESTON

SARAH PRESTON

Appellants

AND **MACKENZIE** **DISTRICT**
COUNCIL

Respondent

NOTICE OF APPEAL

ANDERSON LLOYD
LAWYERS
CHRISTCHURCH

Solicitor: J M Crawford / G J Cleary

Level 10 Clarendon Tower,
Cnr Oxford Tce & Worcester St,
PO Box 13831,
CHRISTCHURCH 8141
Tel 03 379 0037
Fax 03 379 0039

TO: The Registrar
Environment Court
Christchurch

1. Rhoborough Downs Limited, Robert Preston, Roberta Preston and Sarah Preston (**the Rhoborough Group**) appeal the decision of the McKenzie District Council on the following matter:
 - a. Plan Change 13 to the Mackenzie District Plan (**the Plan Change**).
2. The Rhoborough Group made submissions and further submissions on the Plan Change.
3. The decision was made by a panel of commissioners appointed by the McKenzie District. The decision is dated 18 August 2009.
4. The Rhoborough Group received notice of the decision on 10 September 2009.
5. The Rhoborough Group appeals the decision in its entirety, but in particular the following:
 - a. The amendments to Objective 3A and associated policies and methods of implementation;
 - b. The removal of provision for Identified Building Nodes within the Plan Change, notwithstanding the weight of expert evidence in support of this concept;
 - c. Blanket discretionary activity status for all buildings other than farm buildings outside of existing farm bass areas;
 - d. The inclusion of inappropriate assessment criteria associated with discretionary activities, in particular those set out in Clause 16.2.I & 16.2.M on pages 41-42 of the decision;
 - e. Non-complying activity status for all buildings or extensions to buildings within the Lakeside Protection Areas;

- f. The failure to recommend special provisions for areas of land owned by Rhoborough Downs Limited (Loch Logan & Lake Wardell), notwithstanding an acceptance by the Commissioners that some sort of housing development would be appropriate in these and other areas;
 - g. The deletion of an "*Area for lifestyle subdivisions (no nodes)*" from land owned by, amongst others, Rhoborough Downs Limited – *Attachment 3 – Appendix R: Capacity for New Nodes*.
6. The reasons for the appeal are as follows:
- a. There were two hearings held for the Plan Change which dealt with separate matters relating to land owned by the Rhoborough Group. The Rhoborough Group were not notified of the second hearing on 03 October 2008 which related to part of their land in proximity to Twizel Township and which had been identified as an "*Area for Lifestyle Subdivision*". Failure to advise the Rhoborough Group of this subsequent hearing and to allow them the opportunity to be heard has resulted in a significant breach of natural justice;
 - b. The Plan Change is not the most appropriate means of achieving the purpose of the Act. It does not provide for the economic and social wellbeing and reasonably foreseeable needs of either the Rhoborough Group or the wider Mackenzie farming community. As repeatedly set out in undisputed evidence before the Commissioners, these social and economic needs include a need to diversify their current land operations beyond simply pastoral or agricultural use;
 - c. The provisions of the Plan Change do not represent the optimal planning solution in terms of the sustainable management of the McKenzie Basin and its resident community;

- d. The Plan Change incorporates an excessive degree of regulation which is inherently inefficient and ineffective, and which is unsupported by the Commissioner's findings of fact;
- e. While the primary purpose of the Plan Change was intended to be the protection of s 6 (b) landscapes in the McKenzie Basin, critically the underpinning landscape analysis prepared by the Respondent was both perfunctory and inadequate. It failed to distinguish between outstanding landscapes and lesser landscapes in the District Plan. This in turn led to a failure to include appropriate objectives, policies, explanations and reasons and methods which would provide all landowners and users of the District Plan with some certainty of outcome and avoid the need for inappropriate and unnecessary regulation;
- f. The provisions of the Plan Change are unnecessarily directive in respect of farming and non- farming development and are unsupported by the Commissioners findings of fact that not all landscapes within the McKenzie Basin are outstanding and that there are substantial areas within the Basin which can absorb further development;
- g. The removal of Identified Building Nodes from the methods of implementation of the Plan Change as notified has resulted in the policy and assessment framework for "non-farming" development becoming unnecessarily and inappropriately biased towards provision of this form of development either in Tekapo or Twizel or within "existing farm bases";
- h. The Plan Change fails to acknowledge the need for landowners outside of Twizel and Tekapo to be able to provide for their social and economic wellbeing;
- i. The objectives, policies and assessment matters fail to recognise the potential of development to add visual interest to the landscape. The Plan Change incorrectly assumes that all subjective responses to development in the landscape are

negative and that, as a consequence, development should be invisible;

- j. The decision fails to provide adequate reasons for the amendments to the objectives and policies. This is particularly inappropriate when changes have been made to a number of objectives and policies including, for example, Objective 3A, Policy 3A and Policy 3B without any apparent jurisdiction.

7. The Rhoborough Group seek the following relief:

- a. The Plan Change be declined in its entirety; or
- b. That, as a preliminary step, the McKenzie District Council undertakes a full and comprehensive landscape analysis which identifies, and distinguishes between :
 - i. Outstanding Natural landscapes in the McKenzie Basin;
 - ii. Other rural landscapes (or similar) in the McKenzie Basin; and
 - iii. Areas within the McKenzie Basin which can absorb further "non- farming" development; and
- c. That the McKenzie District Council undertake appropriate analysis of the social and economic circumstances of landowners within the McKenzie Basin; and
- d. As a consequence of the above analysis, that the objectives and policies and methods of implementation be amended to incorporate appropriate provisions which manage development within the various areas identified in 7.(b)(i) – (iii) above. In respect of areas identified as capable of absorbing development (7.b.(iii)), an optimal planning solution could be include the re-instatement of the "identified building nodes" concept (or similar) supported by appropriate amendments to the objectives, policies and methods of implementation. Methods of implementation could include providing for non-

farming development within these Identified Building Nodes as either a permitted, controlled or restricted discretionary activity subject to appropriate performance standards and assessment criteria; and

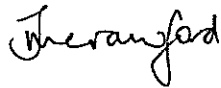
- e. Specifically, with reference to land owned by the Rhoborough Group, the delineation of the following areas (as set out in **Attachment B** to this appeal) in the McKenzie District Plan as Identified Building Nodes or similar:
 - i. Loch Logan;
 - ii. Lake Wardell; and
 - iii. The Lake Pukaki Block.

 - f. Appropriate demarcation and extension of the Existing Farm Base Area on land owned by the Rhoborough Group and identified in **Attachment C**;

 - g. The reinstatement of those areas identified in Appendix R to the Plan Change as "*Areas suitable for lifestyle subdivisions (no nodes)*"; and

 - h. Any such other consequential or alternative amendments to the provisions of the Plan Change that addresses the relief sought by the Rhoborough Group.
8. The following documents are **attached** to this notice of appeal:
- a. A copy of the submissions and further submissions filed by Rhoborough Downs Limited, Robert Preston, Roberta Preston and Sarah Preston (**Attachment A**);
 - b. A map identifying Lake Wardell, Loch Logan and the Lake Pukaki Block (**Attachment B**);
 - c. A map identifying the Existing Farm Base Area on Rhoborough Downs Station (**Attachment C**); and
 - d. A list of names and addresses of persons to be served with this notice (**Attachment D**).

DATED this 22nd day of October 2009



.....
By their solicitors and duly authorised agents
Anderson Lloyd
per: J M Crawford / G J Cleary

Address for service of appellant:

Rhoborough Downs Limited
c/- Anderson Lloyd
Barristers and Solicitors
PO Box 13831
Christchurch
Phone: 03 379 0037
Fax: 03 379 0039
Contact person: Lisa Smith

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

If you wish to be a party to the appeal, you must lodge a notice in form 33 with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

If you have any questions about this Appeal, contact the Environment Court Unit of the Department for Courts in Wellington.

Contact Details of Environment Court for Lodging Documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

The Christchurch Address of the Environment Court is:

83 Armagh Street
Christchurch

Its postal address is:
P O Box 2069
Christchurch

And its telephone and facsimile numbers are:
Telephone: (03) 962 4170
Facsimile: (03) 962 4171