

BEFORE THE MACKENZIE DISTRICT COUNCIL

IN THE MATTER

of the Resource Management Act 1991

And

IN THE MATTER

of the Hearing of Submissions to Proposed
Plan Change 13

Evidence of Nicola Anne Scott, Planning Consultant
For Coldwater Developments Ltd

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Introduction

1. My name is Nicola Scott and I am employed as a Planning Consultant for the Wanaka Office of C. Hughes and Associates Ltd.
2. I have been asked by Coldwater Developments Ltd to present a submission on Plan Change 13 (PC13) on their behalf.
3. I propose today to present my written submission and then comment on the Council Officer's Report.

Qualifications and Experience

4. I have acquired twelve years of experience in the resource management field since graduating from Massey University in 1996 with a Bachelor of Science Degree.
5. I have been employed with C. Hughes & Associates Ltd for the past four years and I am also an independent planning consultant, trading as Nicola Scott Resource Management Services. My work in a Planning role in the Queenstown Lakes area covers the previous seven years. My experience in planning matters has involved work with the Council's of Central Otago, Mackenzie, Southland and Westland, plus the Otago and Auckland Regional Council's.
6. I am an Associate member of the New Zealand Planning Institute.

Summary of Evidence

7. The specific provisions of PC 13 that my submission opposes are:
 - (a) Section 7 – Rural Zone rules regarding generally limiting building and subdivision in the Mackenzie Basin Subzone to within existing or approved building nodes and
 - (b) Section 12 – Subdivision rules where lots in the Mackenzie Basin subzone under 200ha in area become a non-complying activity.
8. It is my opinion that the nodal concept is fundamentally flawed.
9. I believe Council's proposal for nodal development to be contrary to the Resource Management Act 1991.
10. It is my opinion that a discretionary status for subdivision and residential building to be a more appropriate control in the rural area.
11. I suggest that all proposed farm accessory buildings in the Mackenzie Basin subzone should be assessed as a controlled activity, outside of existing developed homestead areas.
12. I suggest that there is low level of public understanding of the Tenure Review process, and this is in part, driving Plan Change 13.

My Submission

13. While I agree that the extent and ease of controlled subdivision in the rural zone of the Mackenzie Basin subzone is currently too flexible, I consider that 'discretionary' status for subdivision and development rather than the proposed 'nodal' idea is more appropriate.
14. I do acknowledge, as stated in PC 13, that the typically 'nodal' type of development is traditional to the Mackenzie Basin and between nodes the vast majority of the landscape remains without scattered buildings and development. However, I do not agree that the proposed future control over development via new 'nodes' is the best method to deal with all future residential building and subdivision.
15. I also appreciate the distinctive nature of the Mackenzie Basin landscape and the intention of PC 13 to protect its special values. However, the topography of the landscape in many areas is such that appropriate subdivision and development can, and has occurred without creating adverse environmental effects. Sensitive developments and well planned designs utilising landscape plan proposals, topography, existing vegetation and building design controls can all mitigate against potential adverse effects. Further, there are various other tools available such as consent notices, land covenants and lease management agreements that could all serve to satisfy the District Plan objectives and policies.
16. Discretionary subdivision allows each site to be considered on its own merits and the ability for subdivision and development to be effectively absorbed into the landscape.

Nodal development and the Resource Management Act

17. I consider that the firm restriction via 'nodal' development is contrary to the purpose of the Resource Management Act 1991 (the Act). The purpose of the Act (Section 5) is to "promote the sustainable management of natural and physical resources". Section 5 goes further in stating that:
18. "*.....sustainable management* means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—
 - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.
19. To specifically restrict development to 'nodes' limits the ability for people to provide for their social and economic wellbeing, if their desire is for isolated farming blocks and the privacy this provides. While the protection of outstanding natural features and landscapes is a matter of national importance, Section 7 requires us to have particular regard to the efficient use and development of natural and physical resources. A minimum lot area requirement of 200ha is clearly not consistent with

this Section as it almost certainly would not promote a diversification in traditional farming practices. Smaller lot sizes and diversified farming use, while not traditional to the Mackenzie Basin, may provide a more efficient land use practice for future generations.

20. Rural diversification is identified in the District Plan as a part of Issue 4 – Protecting Rural Amenity (Section 7 – Rural Zone). A number of objectives and policies have already been put in place (Objective 6 and Policies 6A – 6D) in order that rural amenity can be maintained whilst providing necessary environmental protection.
21. Discretionary subdivision and development maintains Council's ability to meet the provisions of Sections 6 and 7 of the Act, specifically the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.

Flaws in the nodal concept

22. It is my opinion that the nodal concept is flawed in that assigning a particular number of nodes to each property group on a district wide basis, by its very nature does not take into account site specific factors, such as location, topography, soil types, or vegetation.
23. I believe the nodal proposal is unworkable by assigning numbers of nodes to particular property groups with multiple owners. As an example, if one owner was to develop all three available nodes in a region before other owners lodged application for development on their own properties, then the Council is likely to determine that a development threshold has been reached. Cumulative adverse effects will be assessed and one owner's rights to potential development may be precluded by their neighbour.
24. The proposed 'pre-approval' of numbers of nodes within a particular region could serve to affect the rights for neighbouring landowners to be considered as adversely affected parties which is contrary to the Act. I consider that this could result in conflict between neighbours, and could encourage premature development just to fulfil the quota.
25. It is also my opinion that nodal living would not be particularly desirable and that to many people it would only combine the disadvantages of living in the country with those of living in town - proximity to neighbours and small allotment sizes, combined with an increased distance to amenities and generally lower standard rural services (such as roading, water supply and effluent disposal).
26. I have serious reservations about the small areas of the nodes being proposed, and consider that 5-10 dwellings contained within 5-10 hectares, surrounded by 20000ha of high country station, may be suited to a commune type environment, but probably would not be a desirable option for main stream New Zealander's to take up.
27. The current Rural zone Issue 4 of the District Plan identifies Protecting Rural Amenity, namely values of privacy, outlook, spaciousness, ease of access and quietness. The proposed 'nodal' development concept would not promote these values in the way that discretionary subdivision and development could.

28. The nodal concept is overly restrictive in relation to construction of farm accessory buildings outside of building nodes. I believe that proposed farm accessory buildings in the Mackenzie Basin subzone should be assessed as a controlled activity, outside of existing developed homestead areas.
29. For this to work, these existing developed homestead areas would either require defining or identifying within the District Plan. Within the existing developed homestead areas the status quo of the original District Plan would remain, that is, construction of residential and farm accessory buildings would be permitted activities.
30. This should cover all farm accessory buildings without having to prove a remote location is required for function or access. Council's retention over control of certain factors could enable mitigation of size, location and external appearance, providing a straightforward and certain process for applicants and preservation of landscape values at the same time.

Discretionary status for subdivision and residential building is a more appropriate control

31. It is my opinion that the range of landscape variables in the rural zone are too great to allow controlled subdivision (other than boundary adjustments), as currently occurs with the District Plan. Therefore the Proposed PC 13: Rule 4A, which allows for Restricted Discretionary Activity subdivision in the Mackenzie Basin Subzone, is appropriate. However, the minimum lot size of 200ha for this discretionary status to be achieved is not considered a practical approach.
32. I hold a firm opinion that lot sizes should be determined by the proposed land use and the surrounding topography, not by an arbitrary area and lines on a plan. I do not believe that all land in the rural zone must have an economic use. This is just not practical with poor soil types, and adverse climactic conditions, however all land can be useful in some way, particularly with the ready availability of broadband communication. The key is to ensure minimal adverse effects on the greater environment, particularly adverse visual effects on the landscape.
33. In my experience arbitrary area rules can result in subdivisions that are extremely unsympathetic to the landscape. I believe discretionary subdivision allows Council to control development on a case by case basis. Providing clear assessment matters are in place, these should be able to give some certainty to land owners, and serve almost as a checklist when applications are made.
34. I believe that few people can perceive the difference between 180ha and 200ha. There will be applications made where sensible and practical lot design follows topography, shelterbelts or existing fencelines and these parcels may well be less than 200ha. Certainly Section 104D would hopefully assess that the effects of the activity were minor, but such an application would begin to erode the integrity of the plan. In my opinion a better alternative is to make subdivision discretionary, and assess each application on its merits.
35. An example of this situation is clearly shown in Coldwater Developments recently approved subdivision RM080031 at Lilybank Road, Tekapo. This involved subdivision whereby a 166ha lot was formed, due to an existing extensive hedgerow as the dividing boundary and under PC13, a non-complying status was applied. To suggest that moving the proposed lot boundary to a less suitable location just to

meet a 200ha minimum, and avoid non-complying status, in such circumstances is a totally illogical approach. Consent was granted to this subdivision, however a rigorous application and assessment was required, at considerable cost and time delay to our client, in order to satisfy the non-complying status.

36. The new policies and objectives for Section 7 (Rural) proposed with PC 13 are generally to be commended and will certainly offer greater protection of the outstanding natural landscape than the District Plan currently provides. However, I consider the majority of these can still be incorporated into the District Plan without the need for the 'nodal' concept, but rather in terms of discretionary activities.
37. I note new proposed Policy 3B – Economy, Environment and Community states: “To encourage a healthy productive economy, environment, and community within, and maintain the identity of, the Mackenzie Country.” The Explanations and Reasons go further to state that: “It is not considered reasonable or appropriate in achieving the Resource Management Act’s purpose to prevent all further development in the Basin or regard the current environment as a museum piece. Sustainable management requires a balance to be found that provides for the social, economic and cultural well-being of the community, while sustaining natural and physical resources and safeguarding the environment from adverse effects.”
38. It is my opinion that the proposed rules that have been developed for PC 13 in relation to 'nodes' and minimum lot sizes in the rural area do not adequately address the intention of the above policy.

Public understanding of the Tenure Review process

39. I am concerned that PC 13 has been brought about in part due to the freeholding of high country property through the Tenure Review Process (refer Section 32 Report for Proposed PC 13). While it is accepted there is more freehold land likely to be available, I believe that the public are unaware of the extensive processes that have occurred to create the freehold land. Tenure Review is a very thorough and intensive process which typically takes 5 – 10 years of discussion and negotiation with the Crown. There is also a significant consultation process followed, which seeks and recognises input from Fish & Game, iwi, the general public and the Department of Conservation.
40. Tenure review enables land with significant inherent values to be protected through a range of measures, and in many cases improves public access to the High Country. Huge areas of land have already been vested in the Conservation Estate - for example at the head of Lake Tekapo.
41. I am concerned that there is a general feeling that the public should be permitted greater control over what individual rural land owners may do on their land, particularly in terms of limiting parcel sizes, restricting alternative land uses, controlling the placement of farm buildings and enforcing pre-determined numbers of nodes over vast tracts of land. I believe this is unacceptable, and is eroding landowners' basic rights.
42. This flow on effect from Tenure Review to the formulation of PC13 is significantly altering the development rights previously provided for landowners. Landowners expectations of the result of free-holding of pastoral land are now limited to the

extent in some cases that provision for future generations and debt reduction may no longer be possible.

The Officer's Report

43. The Officer's report refers to the discretionary approach proposed by some submitters and that some of these are based on experience in the Queenstown area. I have no doubt that this is the case and is part of the basis of my own submission. However, the discretionary approach is not always based on specific identification of outstanding natural landscape and features as the Officer's report suggests.
44. An example of this is the Central Otago District Plan. A Rural Study is currently being undertaken involving further Landscape Guidelines and there are minimal provisions in this District Plan in regards to the Outstanding Natural Landscapes. However, to date, sensitive developments have been achieved within a discretionary regime, without pre-determined specific landscape lines. Non-complying status for rural subdivision in this District is based on a significantly smaller minimum land area.
45. The discretionary approach utilised in the Queenstown Lakes District relies heavily on the expert assessment of Landscape Architects for individual applications. This provides both site specific and development specific assessment of the landscape, rather than a much broader scale consideration as has occurred with the landscape assessment behind PC 13.
46. The Officer's Report states, in relation to submissions supporting a discretionary approach, that: *"The situation in Mackenzie differs from the above and the Council and its advisors were very keen to have a system of control that provided a high level of certainty as to where and in what form residential subdivision and development would occur. This would enable the landscape and servicing implications of development to be predictable and acceptable. Discretionary activity status with no direction on these matters means that every application is looked at anew, making decision making difficult and the outcomes unpredictable."*
47. This basis of 'control', 'certainty', and 'predictability' under which PC13 has been formed is too constrained to be in accordance with the Act, in particular Sections 5 and 7. The unnecessarily restrictive nature of the 'nodal' concept limits the ability for people to provide for their social and economic wellbeing, and allows limited scope for the efficient use and development of natural and physical resources. This has already been discussed in points 17 -19 above.
48. In relation to the fairness of assigning pre-determined numbers of nodes to properties I note the Officer's Report comments that: *"With regard to the associated issue of people missing out because others have established nodes and thereby taken up the permitted capacity for the landscape subarea, there is no real answer to this."* This clearly does not address the submissions made in regards to this 'pre-approval' of numbers of nodes. This affects the rights for neighbouring landowners to be considered as adversely affected parties and could encourage premature development just to fulfil the quota.
49. The report discusses submissions on subdivision control as follows: *"The Council are aware that most subdivision is done for the purpose of building a house and it is*

that process of residential subdivision and building, which the Plan Change is particularly aimed at. If subdivision and houses can occur without being managed there is a real potential for poorly sited and inefficiently serviced subdivisions to establish, such as can occur under the District Plan at the moment."

50. While I agree with the latter comment regarding the current situation with the District Plan, as stated previously, the topography of the landscape in many areas is such that appropriate 'discretionary' subdivision and development can, and has occurred without creating adverse environmental effects. Sensitive developments and well planned designs utilising various available development 'tools' can achieve compliance with the District Plan objectives and policies. Further, I disagree that most subdivision is done for the purpose of building a house, as there are a myriad of reasons for subdivision.
51. Sporadic residential development and incremental change occurring without limits are both identified as being of concern to Council. However, well designed developments coupled with lease management agreements could achieve the same objective as a 'building node' without the tight clustered constraints that the nodal concept promotes.
52. The report goes further in this matter with: *"However the Council is aware that there are times when subdivision is needed for other purposes such as estate planning or forestry investment blocks. To make provision for this the Plan Change sets a 200ha minimum lot size as a discretionary activity. 200ha was chosen as a minimum because it was considered still likely that such a subdivision might be of a size suitable for purposes other than residential use."*
53. The explanation of this minimum lot size appears random at best and is considered to have no practical basis in terms of efficient farming practice. Again I reiterate that arbitrary area rules can result in subdivisions that are extremely unsympathetic to the landscape and do not encourage subdivision patterns to blend with the contours and features of the land.

Conclusions

54. I seek that building and subdivision in the Mackenzie Basin subzone not be limited to existing or approved building nodes.
55. I seek that all proposed residential buildings in the Mackenzie Basin subzone are assessed as a discretionary activity, outside of existing developed homestead areas.
56. For this to work, these 'existing developed homestead areas' would either require defining or identifying within the District Plan.
57. I seek that proposed farm accessory buildings in the Mackenzie Basin subzone are assessed as a controlled activity, outside of existing developed homestead areas. This should cover all farm accessory buildings without having to prove a remote location is required for function or access.
58. I seek that there be no minimum lot size and all subdivision is treated as a discretionary activity. Boundary adjustment subdivision however, should be assessed as a controlled activity.

59. This discretionary status for development, as sought, must be accompanied by detailed assessment matters to give applicants and Council some certainty and provide a clear direction for development proposals.
60. Overall, as these above points are unable to be accommodated within the existing framework of PC13, as the Plan Change is based on the 'nodal' concept, I consider that PC13 should be withdrawn.

Nicola Scott
Dated: 5 September 2008