

BEFORE THE MACKENZIE DISTRICT COUNCIL

IN THE MATTER OF THE RESOURCE MANAGEMENT ACT 1991

AND

**IN THE MATTER OF PLAN CHANGE 13 TO THE OPERATIVE DISTRICT
PLAN**

**EVIDENCE OF CAREY VIVIAN (PLANNER) PART C
RHOBOROUGH DOWNS**

INTRODUCTION

- 1 My name is Carey Vivian. I hold the qualification of Bachelor of Resource and Environmental Planning (Hons) from Massey University. I am a member of the New Zealand Planning Institute. I am a director of Vivian+Espie Limited (VEL), a resource management and landscape planning consultancy based in Queenstown. I have been practicing as a resource manager in for fourteen years, having held positions with the Queenstown Lakes District Council (QLDC), CivicCorp (regulatory contractor to the QLDC), Clark Fortune McDonald and Associates (CFMA) and Woodlot Properties Limited. Whilst working for the QLDC I was heavily involved in the final resolution of appeals before the Environment Court on the rural development and subdivision standards. This process resulted in the identification of a tri-partite distinction in landscape categories and a discretionary activity regime for all rural development and subdivision.

- 2 I have read the Code of Conduct for Expert Witnesses that took effect on 31 March 2005, and agree to comply with it. This evidence is within my area of expertise and I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in herein.

Summary of Evidence

- 3 Further to the brief of evidence labelled Part A that I have presented in relation to the grounds for the withdrawal of PC13, this evidence will address the site specific relief sought in the submission by Rhoborough Downs. I note that the site specific relief sought by Rhoborough Downs is sought in the alternative to the primary relief that PC13 be withdrawn on the basis that the section 32 analysis is inadequate.

- 4 For completeness, I reiterate the conclusions reached in my earlier brief regarding the inadequacy of the section 32 analysis, specifically:
 - The section 32 analysis misinterprets the Densem landscape assessment which finds that the Basin is an outstanding working landscape not an outstanding natural landscape;
 - The landscape assessment fails to independently assess the landscapes of the Basin according to widely accepted criteria, or in a manner that meets standard tests of reliability, validity and sensitivity; inconsistency with the manner in which landscape values are recognised and managed within a district characterised by pastoral farming;
 - PC13 seeks to preserve a status quo that is characterised by unsustainable landscape management and farming practises.

- The identification of areas suitable for cluster development should be based on a transparent and technically robust methodology that responds to landscape characteristics and values at a finer grain of analysis than is evident in Map 8 of Mr Densem's report.
 - Policies for approved building nodes should permit greater flexibility in the identification and planning of nodes, according to the characteristics of the landscape and the values associated with particular areas.
 - The failure to adequately take account of the effect of the tenure review process in relation to land ownership, alternative landscape protection measures and the economic implications for affected landowners.
 - The failure to quantify and consider the economic realities of rural land use activities and the extent to which flexibility in planning provisions is needed to allow for future development and diversification of rural land holdings.
 - The failure to ensure that the protection of outstanding natural landscapes required by section 6(b) of the Act remains subordinate to the overall purpose of the sustainable management of natural and physical resources.
- 5 If the Council does not decide to withdraw or reject PC13 and continues to pursue the plan change in some form (which may include a variation), then Rhoborough Downs seeks as an alternative, in addition to the site specific nodal or Sub-Zone relief request as detailed in Dr Steven's evidence. I have read and agree with the conclusions reached in Dr Steven's evidence. The remainder of my evidence addresses the wider issues of Rhoborough Downs submission, and Ms Harte's recommendations, in relation to:
- Objective 3A and associated policies;
 - Farm Buildings;
 - The Number of Building Platforms;
 - Extending Nodes;
 - Subdivision.

OBJECTIVE 3A & POLICY 3G

Rhoborough Downs Submission Point 10/3

- 6 This submission point is considered under section 36.4 of the Ms Harte's report in relation to Objective 3A. Objective 3A reads:

"To protect and sustain the outstanding natural landscapes and features of the district for present and future generations."

- 7 In addressing this objective Ms Harte states:

"Objective 3A has been written to apply to all outstanding natural landscapes within the District, not just those within the Mackenzie Basin. So should other landscapes qualify for this status they would fall within that objective. The actual controls proposed in the Plan Change in most cases are limited to the Mackenzie Basin as it is considered that this basin is most at risk from sporadic development. In addition the Council has commenced a landscape and ecological assessment of East Mackenzie, which has been on hold for some time.

That assessment will identify the outstanding natural landscapes and areas of ecological significance. When that is completed the rules applying in the Basin are likely to be extended to apply to these areas."

- 8 Ms Harte recommends that submission point 10/3 be declined, however through other submissions recommends that the Objective be amended as follows:

"To protect and sustain the outstanding natural landscapes and features of the District from inappropriate subdivision, use and development for the benefit of present and future generations."

- 9 In my opinion Objective 3A is worded strongly in favour of preservation. A more useful objective, in my opinion, is one which permits subdivision, use and development provided adverse effects are avoided, remedied or mitigated. For example, the principal landscape objective in the Queenstown-Lakes plan reads:

"Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values."

- 10 What is "inappropriate subdivision, use and development" in the context of this Objective logically flows from the accompanying policies.

- 11 The key policy under Objective 3A with respect to the Mackenzie Basin Sub-Zone is Policy 3G. This policy sets the policy direction for the approval of Building Nodes and the extension of Identified Building Nodes in the future. Policy 3G is important as the subdivision rules creating Approved Nodes or

extending Identified Nodes rely on it for assessment. My primary concern with Policy 3G is that it has been written as an assessment matter, or a set of ideals, and gives little policy direction towards achieving Objective 3A (as it should).

12 I consider Policy 3G should be rewritten to be more effects based, giving a policy direction as to what the Council considers is "appropriate" development in the Mackenzie Basin. Policy 3G as contained in Ms Harte's report is written, in my opinion, in the negative rather than the positive as policy should. I believe the Policy 3G can be very easily turned around to be more encouraging and positive. I recommend Policy 3G be divided into a number of policies and reworded as follows:

"3G(i) To avoid, remedy or mitigate the adverse landscape effects of approving Building Nodes or extensions to Identified Building Nodes by ensuring any building platforms and associated activities:

- (1) Are sensitively located within the Nodes (including extensions) so as to not detract from landscape values of the wider Mackenzie basin.
- (2) Utilise existing or proposed vegetation and topography to absorb future development visible from public places.
- (3) Result in low-key rural character in terms of location, layout, and development, with particular regard to fencing, roading, construction style, materials and detailing.
- (4) Do not break any ridgeline or prominent slope when viewed from a public place.
- (5) Do not adversely affect the visual coherence of any change point of the topography, such as a slope, stream course or forest edge.
- (6) Do not result in any future building being highly visible from public places and roads.
- (7) Do not adversely affect the natural character of any lake edge. *Note all buildings are required to be a minimum of 100m from lakes under Rural zone rule 3.1.1.f.*
- (8) Do not create cumulative adverse visual effects in terms of proximity to existing approved or identified Nodes.
- (9) Do not adversely affect any Scenic Viewing Area, or a Site of Natural Significance or any alpine values (above 900 metres).
- (10) Result in earthworks, hard surfaces and roads (other than the access roads) which are minimized as much as practicable and designed, constructed and rehabilitated to avoid or mitigate more than minor adverse visual or environmental impacts. (Not relevant to extension of Identified Building Node).
- (11) Represent the comprehensive development of the node.
- (12) Mitigate, as much as possible, and adverse effects of light spill on the night sky.
- (13) Do not result in a level of domestication that is likely to have an adverse cumulative effect on landscape and visual amenity values and the rural character of the landscape.
- (14) Can be serviced self-sufficiently with respect to water, sewage treatment and stormwater services in perpetuity.
- (15) Do not create reverse sensitivity issues between farm and non-farm buildings.

- 3G(ii) To mitigate any adverse effect of nodal development on water bodies, Sites of Natural Significance identified in the District Plan, wahi tapu, archaeological values and historic heritage.
- 3G(iii) To encourage roads be sited as far as practicable to follow landscape "changes" such as gullies and changes of slope, to avoid crossing landscape "surfaces", to be unobtrusive and designed to retain a "farm" character.
- 3G(iv) To encourage planting of local native plant species and/or non-wilding prone exotic plant species.
- 3G(v) To avoid reverse sensitivity effects of nodal development on rural activities or activities such as airports, power generation, or transmission infrastructure, the state highway or the Tekapo Military Training Area.
- 3G(vi) To ensure that nodes are of a size sufficient to allow clustering of buildings and avoidance of dispersed development.
- 3G(vii) The establishment of the node and its use avoids, remedies or mitigates any adverse effects of natural hazards and/or pest plants."

13 In my opinion the above amendments are strong enough to encourage appropriate development, and give the Council plenty of scope to refuse consent to inappropriate development. In terms of content they are on par with the Queenstown-Lakes landscape objective and policies and in combination with a discretionary regime for subdivision (as I detail below) are robust and defensible. I also consider that they are encouraging to landowners because they are not termed in the negative.

FARM BUILDINGS

Rhoborough Downs Submission Point 10/9 and 10/11

14 Rhoborough Downs submitted that the operational needs of a farm should determine the location of farm buildings – whether they are "remote" or not.

15 PC13 introduces two definitions as follows:

"Farm building or farm accessory building means a building the use of which is incidental to the use of the site for a farming activity (refer definition).

Remote farm accessory building means a farm accessory building, which because of its function or access requirements requires a location remote from the principal homestead and farm buildings."

16 Ms Harte discusses the status of these farm buildings as follows:

"Farm buildings within both existing and future nodes will be in locations where they are screened by trees and part of a cluster of buildings. They therefore are likely to have limited impact on landscape values. Buildings outside the nodes have the potential to have greater

impacts and so the Council is justified in placing a level of control over these buildings. The level of control proposed in the Plan is the lowest possible without making them permitted activities. Controlled activities must be granted consent and do not need to be notified.

While the number of new farm buildings in recent years has been small there is potential for land intensification to result in larger buildings in more conspicuous sites away from the homestead. It is considered that these buildings should be assessed as to the visual impact on the landscape. While this can be seen as bothersome the process of a landowner having to consider the location and appearance of a proposed building, and the assessment of this by Council and professionals, usually results in buildings which are visually less obvious and which are a better fit in the landscape.

While the resource consent process can be time-consuming and has costs, the fact that remote farm buildings are controlled activities means that in most cases the application will not be notified and so the process is simpler and less controversial as third parties will not be involved. The alternative to a controlled activity would be a series of standards relating to matters such as set back which will not provide the flexibility required and will not deal with matters over which some judgment needs to be exercised such as external appearance. I however acknowledge that there is potential for a combined approach with buildings under a certain size (say 75m²) located back from roads by say 100m and conforming with a colour palette, being permitted."

- 17 In my opinion there is significant amount of uncertainty in the adoption of these definitions and rules. The definitions are uncertain due to the words "remote from the principal homestead". It is impossible from the definition to determine whether or not the Council will consider your farm building to comply with this definition. For example, does locating a Woolshed 300 meters from the homestead for access reasons qualify as a "remote" farm building or a farm building? The difference is significant – a controlled activity compared to a non-complying activity.
- 18 These definitions are confused even further by Ms Harte's recommendation in relation to Rhoborough Downs submission. Ms Harte recommends that their submission be accepted in part by introducing a further category of farm building - being "small scale farm buildings". Ms Harte recommends that these buildings be retained as permitted activities however does not appear to follow through with this recommendation into the definitions or rules section of the Rural Zone.
- 19 Ms Harte's concern appears to be that potential land intensification may result in larger buildings in more conspicuous sites away from the homestead. Instead of determining the status of the activity on the proposed location of the farm building it may be more reliable to differentiate on the size and density of the farm buildings across the property.
- 20 For example, provided the cumulative density of farm buildings does not exceed 1 farm building per 200 hectares of land within the property then the farm building anywhere on the property could be a controlled activity limited to external appearance and the location of the building within 300 meters radius of the proposed site (to take account of operational needs and visual effects). Additionally a farm

building exceeding 1000 m² in footprint could be a restricted discretionary activity limited to external appearance and location of the building within 500 meters radius of the proposed site (to take account of operational needs and visual effects). A regime such as this, in my opinion, is better than that proposed as it is easily measurable and understandable.

NUMBER OF BUILDING PLATFORMS PER NODE

Rhoborough Downs Submission Point 10/5

21 Rule 15.1.1 (as amended by the planners report) states:

"15.1.1 An Approved Building Node shall be established by way of a Discretionary Activity application subject to compliance with the following standards:

- Except for nodes that are to be occupied by a homestead, all Approved Building Nodes shall identify at least three but no more than 10 building platforms within the proposed Node. Each building platform is to have a minimum area of 70 m² and a maximum area of 100 m².
- All nodes shall have substantial perimeter planting unless they are sufficiently hidden so as to achieve significant screening from outside the node."

22 And Rule 15.2.1 states:

"Any Approved Building Node ... which does not meet the standards in 15.1.1 ... shall be a non-complying activity."

23 Rhoborough Downs submitted that the requirement for minimum and maximum number of building platforms should be removed.

24 Ms Harte, in her report, notes that there were many submissions received on this requirement. Ms Harte states that the minimum was to avoid individual houses being established throughout the Basin, in a manner out of keeping with the clustered approach of homesteads. Individual houses spread out have the problems both of visual impact and efficient servicing. This maximum limit is placed on nodes because the Council does not want large-scale residential development occurring outside of townships.

25 I disagree with Ms Harte that there is a need to have a minimum or maximum on the number of building platforms should the node concept be retained. I do not share her concern that without a minimum and a maximum number of building platforms per node there is the potential for that node to turn into a quasi-residential zones because the Council still retains discretion through Rule 15.1 to approve the number of building platforms in accordance with Rural Policy 3G. Under a discretionary regime I fail to see the need for minimum and maximum number of building platforms to be specified as under policy 3G the capacity of a node will be determined.

26 I also consider the second bullet point in this standard should be deleted to prevent landowners from undertaking perimeter planting to simply comply with this standard. The standard is subjective and open to wide interpretation (which of course makes it ultra vires). In my opinion the Council should reply on its discretion, in particular Policy 3G.

27 I also note with respect to the size of the building platform Ms Harte's recommended Rule 15.1.1 specifies a maximum of 100m². I think this is a mistake and should read 1000m². If it is not a mistake then I consider 100 m² is too restrictive for a residential unit and should be increased to at the most 1000 m², to include buildings and cartilage.

28 In my opinion Rule 15.1.1 should be amended as follows:

"15.1.1 An Approved Building Node shall be established by way of a Discretionary Activity application subject to compliance with the following standard:

- o Except for nodes that are to be occupied by a homestead, all Approved Building Nodes shall identify one or more building platform(s). Each building platform is to have a minimum area of 70 m² and a maximum area of 1000 m²."

29 I also note that Rule 15.2.1 specifies that non-compliance with the standards listed in Rule 15.1.1 shall result in the activity becoming a non-complying activity. I consider this rule should be retained under my amended 15.1.1 above so as to prevent the situation where an Approved Building Node is proposed to be established without any building platforms.

"(a) Any Approved Building Node which does not meet the standards in 15.1.1 shall be a non-complying activity."

30 Once a Node has been approved (or identified) Rule 3.3 and 3.4.1 come into play. Rule 3.3 relates to non-farm buildings in Identified Nodes or Approved Nodes:

"3.3. Restricted Discretionary Activities – Buildings

3.3.1 Non-farm buildings within Identified Building Nodes or Approved Building Nodes within the Mackenzie Basin Subzone which comply with the following standards:

3.3.1.a Height of Buildings

Maximum height shall be 8m

3.3.1.b Setback

- i Minimum setback of buildings from the inner boundary of perimeter planting of building nodes shall be 20m
- ii Minimum setback of buildings from state highways shall be 50m
- iii Minimum setback of buildings from other roads shall be 20m

3.3.1.c Reflectivity

The maximum reflectivity index of the exterior of any buildings shall be 30%

3.3.1.d Building Separation

- i Non-farm buildings, other than homesteads and workers accommodation, shall be a minimum of 100m from any farm buildings other than homesteads.
 - ii Non-farm buildings shall be a minimum of 20m from any other non-farm building
- 3.3.1.e **Number of non-farm buildings**
The maximum number of non-farm buildings (excluding accessory buildings) within any building node shall be 10
- 3.3.1.f **Building Size**
The maximum footprint (ground floor area) of any single non-farm building and associated accessory buildings shall be 400m². This limitation does not apply to homesteads.
- 3.3.1.g **Riparian Areas**
Refer Rule 3.1.1f
- 3.3.1.h **Flight Protection Areas**
Refer Rule 3.1.1n
- 3.3.1.i **Sites of Natural Significance, Scenic Viewing and High Altitude Areas**
Refer Rule 3.1.1.e
- Matters Subject to Council's Discretion**
- o External design and appearance of buildings
 - o Visual impact of area attached to building (curtilage)
 - o Visual impact of associated earthworks, hard surfacing and access
 - o Landscaping and planting
 - o Servicing of the site (stormwater, water supply, power and telecommunications)
 - o Impact on indigenous biodiversity.
 - o Effects on water quality arising from run-off during construction.
 - o Effectiveness of ongoing stormwater management of the site."

31 And Rule 3.4.1 (b) list the following as a discretionary activity:

- "(b) Non-farm buildings within Identified Building Nodes or Approved Building Nodes which do not meet any of the standards in 3.3.1."

32 Bearing in mind the Council has already assessed the absorption capacity of an Identified Node and an Approved Building Node has already been through a discretionary (or more appropriately a restricted discretionary consent including the identification of building platforms) I fail to see the need for an applicant to go through a further discretionary activity resource consent to build within the node.

33 I consider the Plan should, at this point, differentiate between Identified Building Nodes and Approved Building Nodes – given the later has already undergone a rigorous discretionary activity assessment including the identification of building platforms, screen planting and likely design controls on future buildings.

34 In my opinion to build within an Identified Building Nodes a controlled activity consent should be required with respect to external appearance, structure planting (if necessary) and servicing. To build within an Approved Building Platform, within an approved building platform, should be a permitted activity. Outside of an approved building platform should be a discretionary activity. To achieve this I recommend the rule be amended as follows:

3.3. Non-Farm Buildings

- (a) Non-farm buildings within Identified Building Nodes within the Mackenzie Basin Subzone which comply with the following standards shall be a controlled activity in respect of:
 - o External appearance
 - o Structure planting (if necessary)
 - o Servicing.
- (b) Non-farm buildings within Approved Building Nodes within an approved building platform within the Mackenzie Basin Subzone which comply with standards 3.3.1(a), (c), (f), (g) to (i) below shall be a permitted activity.
- (c) Non-farm buildings within Approved Building Nodes not located within an approved building platforms within the Mackenzie Basin Subzone shall be a discretionary activity.
- (d) Non-farm buildings not located within an Identified or Approved Building Node shall be a discretionary activity.

Standards

3.3.1.a Height of Buildings

Maximum height shall be 8m

3.3.1.b Setback

- i Minimum setback of buildings from the inner boundary of perimeter planting of building nodes shall be 20m
- ii Minimum setback of buildings from state highways shall be 50m
- iii Minimum setback of buildings from other roads shall be 20m

3.3.1.c Reflectivity

The maximum reflectivity index of the exterior of any buildings shall be 30%

3.3.1.d Building Separation

- i Non-farm buildings, other than homesteads and workers accommodation, shall be a minimum of 100m from any farm buildings other than homesteads.
- ii Non-farm buildings shall be a minimum of 20m from any other non-farm building

3.3.1.f Building Size

The maximum footprint (ground floor area) of any single non-farm building and associated accessory buildings shall be 400m². This limitation does not apply to homesteads.

3.3.1.g Riparian Areas

Refer Rule 3.1.1f

3.3.1.h Flight Protection Areas

Refer Rule 3.1.1n

3.3.1.i Sites of Natural Significance, Scenic Viewing and High Altitude Areas

Refer Rule 3.1.1.e."

EXTENDING NODES

Submission Point 10/6

"15.1.2 An extension to an Identified Building Node shall be established by way of Discretionary Activity application subject to compliance with the following standard:

- o All extensions shall have substantial perimeter planting unless they are sufficiently hidden so as to achieve significant screening from public areas or public roads.
- o The total area of the Identified Building Node shall not be extended by more than 10%.

All applications for an extension of an Identified Building Node shall be accompanied by detailed information and assessment of all requirements for these nodes contained in Rural Policy 3G."

36 And Rule 15.2.1 states:

"Any ... extension to an Identified Building Node which does not meet the standards in ... 15.1.2 shall be a non-complying activity."

37 Rhoborough Downs submitted that the 10% extension limit should be increased or removed.

38 Ms Harte states that most of the nodes identified in Appendix S are quite generous rather than closely following the outer boundary of existing buildings. Frequently they are based on features further out such as streams, shelterbelts and fences. Ms Harte therefore consider that the 10% limitation will in most cases provide for additional residential development at the scale anticipated for nodes.

39 On that basis Ms Harte recommends Rhoborough's submission be declined.

40 I agree that the provision of being able to extend a Identified Building Node as a discretionary activity is positive. However I consider the 10% extension is rather arbitrary and could lead to multiple applications over time rather than a comprehensive one at the beginning. By this I mean a owner of a node may apply for a 10% extension as a discretionary activity and get it approved. Two years later they may apply for another 10% extension as a discretionary activity. And so on.

41 In my opinion the 10% extension should be increased up to 40% of the original size of the node, with discretion restricted to those matters in Policy 3G. This allows a landowner to extend the node in one or more applications over time as a restricted discretionary activity, but once the node exceeds 40% of its original size then a non-complying activity is required.

42 As such I recommend that Rule 15.1.2 be amended as follows:

"15.1.2 An extension to an Identified Building Node shall be established by way of Restricted Discretionary Activity application(s) subject to compliance with the following standard:

- o The total area of the Identified Building Node shall not be extended by more than 40% of its original size.

All applications for an extension of an Identified Building Node shall be restricted to the matters detailed in Rural Policy 3G."

43 And amend Rule 15.2.1 as follows:

- "(c) Any extension to an Identified Building Node which does not meet the standards in 15.2.1 shall be a non-complying activity."

44 I note my comments with respect to a standard requiring perimeter planting above. For the same reasons I consider they should be deleted from this Rule.

SUBDIVISION

Rhoborough Downs Submission Point 10/4

45 Rule 4A Restricted Discretionary Activities – Subdivision in the Mackenzie Basin Subzone states:

- "4A.a Any subdivision, of or within
 - o an Identified Building Node,
 - o an approved extension to an Identified Building Node; or
 - o an Approved Building Node

shall be a **Restricted Discretionary Activity** with the Council's discretion limited to the following matters:

- o All the matters listed in rule 3 above.
- o The matters referred to in Rural Objective 3A and Policies 3A to 3T relating to the Mackenzie Basin Subzone.

4a Any subdivision outside the Mackenzie Basin which complies with all the Primary Subdivision Standards but does not comply with any one or more Secondary Subdivision Standards shall be a **Discretionary Activity**, in respect of the applicable matter.

4.e Any subdivision in the Mackenzie Basin Subzone outside an Identified Building Node or Approved Building Node which creates new allotments with a minimum areas of 200ha."

46 Rule 5 – Non-complying Activities – Subdivision states:

- "5.a Any subdivision outside the Mackenzie Basin Subzone which does not comply with one or more Primary Subdivision Standards shall be a **Non-complying Activity**.
- 5.b Any subdivision within the Mackenzie Basin Subzone which is not listed as a Permitted, Controlled, Restricted Discretionary or Discretionary Activity."

47 Rhoborough Downs submitted the minimum subdivision lot of 200 hectares should be removed. The use of topography, natural visual breaks in the landscape, location and the like should determine the

scale of each particular subdivision of land. Such a large specific minimum as that which is proposed will create artificiality in the landscape, an outcome the Council states it is seeking to avoid.

48 Ms Harte states that 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. To avoid this, the Plan Change controls both subdivision and residential buildings and encourages its location within nodes.

49 Ms Harte continues 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 (I note that this is unsupported in terms of expert agricultural economist opinion to justify this minimum area). Policy 3L(a) sets out the matters that would be taken into account in considering such a subdivision, including impacts on landscape values and character of the immediate and wider area and the sustainability of existing and likely future productive use of farm holdings. For the reasons set out above Ms Harte considers that the rule should be retained.

50 Ms Harte accordingly recommends Rhoborough's submission be declined.

51 I also note Ms Harte discusses the merits of a discretionary activity regime for subdivision, with no minimum lot size, in the introduction to her report. Ms Harte assesses such a regime that is in place in Queenstown-Lakes District. Ms Harte states when comparing the Mackenzie Basin to the discretionary (no minimum) in Queenstown the following:

"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. While building node development is discretionary, the assessment matters to be addressed are extensive and the concept of clustered development clear with the intention that decision-making is hopefully easier and less contentious for all parties. Added to this is the use of carrying capacity that removes many of the difficult and contentious matters which arise where each development causes decisions makers to look at the issues of adverse cumulative effects afresh, with the potential for serious argument. For these reasons it is considered that the nodal approach with strong policy and carrying capacity assessment is preferable to a more broad brush policy approach proposed by a number of submitters."

52 I was employed by the Queenstown Lakes District Council for many years working on resolving issues relating to rural subdivision. I presented evidence to the Environment Court on many occasions in the development of the no-minimum discretionary regime. Through my evidence I favored a non-complying minimum lot size approach like Ms Harte. I shared Ms Harte's concerns that a discretionary activity regime did not provide any certainty to decision makers and would make decision making very difficult.

53 However I have now been practicing as a planning consultant under the no-minimum discretionary regime for several years. My attitude to this approach has now changed. A discretionary no-minimum regime is, in my opinion, the best subdivision regime when dealing with subjective matters such as landscape assessment and the positioning of building platforms in sensitive locations. A discretionary no-minimum regime prevents arbitrary boundaries in the landscape, allows the comprehensive assessment of a property and affords the ability to impose future consent notices. The effect of rural subdivision on landscape and visual amenity values in Queenstown under a discretionary no-minimum regime is a vast improvement on the previous minimum lot size regime. Often subdivision applications are declined at Council or Environment Court level. The disadvantage of the discretionary no-minimum regime is there is no certainty given to landowners that they can as-of-right undertake a subdivision. In the circumstances of the MacKenzie Basin, I consider there is an opportunity to provide for greater certainty to landowners whose properties have been identified as containing Landscape Sub-areas that are capable of absorbing development, although I agree with Dr Steven that the identification of these areas must be done with greater rigour.

54 As such, I consider Rule 4A Restricted Discretionary Activities – Subdivision in the Mackenzie Basin Subzone should be amended as follows:

- “4A.a Any subdivision, of or within
- an Identified Building Node,
 - an approved extension to an Identified Building Node; or
 - an Approved Building Node

shall be a **Restricted Discretionary Activity** with the Council's discretion limited to the following matters:

- All the matters listed in rule 3 above.
- The matters referred to in Rural Objective 3A and Policies 3A to 3T relating to the Mackenzie Basin Subzone.

4a Any subdivision outside the Mackenzie Basin which complies with all the Primary Subdivision Standards but does not comply with any one or more Secondary Subdivision Standards shall be a **Discretionary Activity**, in respect of the applicable matter.

4.e Any subdivision in the Mackenzie Basin Subzone outside an Identified Building Node or Approved Building Node shall be a **Discretionary Activity**.”

CONCLUSION

- 55 In conclusion, this evidence has been prepared on behalf of Rhoborough Downs as an alternative to their primary relief that PC13 be withdrawn or rejected on the basis that Section 32 evaluation is inadequate.
- 56 I consider PC13 has created an enormously complicated regime for subdivision and development within the Mackenzie Basin. The rules relating to nodes are, in my opinion, prescriptive and have no effects based justification.
- 57 Through this evidence I have suggested several changes to the key objectives, policies and rules. In doing so I have tried to assist the Council in coming to a more workable solution. Amendments to Plan Change 13 on the back of submissions are however necessarily limited and, in my opinion, a publicly notified variation supported by a rigorous landscape analysis would be the most appropriate means of addressing the shortcomings in Plan Change 13.

Carey Vivian

Vivian & Espie Ltd