



TO THE MAYOR AND COUNCILLORS OF THE MACKENZIE DISTRICT COUNCIL

Membership of the Planning and Regulation Committee:

Cr Murray Cox (Chairman)
Claire Barlow (Mayor)
Cr Noel Jackson
Cr Evan Williams
Cr Russell Armstrong
Cr James Leslie
Cr Graham Smith

Notice is given of the Meeting of the Planning and Regulation Committee to be held on Tuesday 4 February, 2014, following the completion of the Asset and Services Committee meeting.

VENUE: Council Chambers, Fairlie.

BUSINESS: As per agenda attached

WAYNE BARNETT
CHIEF EXECUTIVE OFFICER



PLANNING AND REGULATION COMMITTEE

Agenda for Tuesday 4 February 2014

APOLOGIES

DECLARATIONS OF INTEREST

MINUTES:

Confirm and adopt as the correct record the minutes of the Planning Meeting held on Tuesday September 3, 2013, including such parts as were taken with the public excluded.

REPORTS:

1. Planning and Regulation Manager's Activity Report.
2. Plan Change 13 – 8th decision of the Environment Court.
3. District Plan Review Timetable.
4. Standing Report – Verbal report from the Upper Waitaki Water Zone Committee representative, Cr Cox, on meetings and activities.
5. Standing report – Verbal report from the the Orari-Opihi-Pareora Water Zone Committee representative, Cr Williams, on meetings and activities.

PUBLIC EXCLUDED:

Resolve that the public, be excluded from the following part of the proceedings of this meeting namely:

1. Previous minutes of the Planning Committee Meeting held on Tuesday, September 3, 2013.

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
Previous minutes of the Planning Committee September 3, 2013	Maintaining Legal Privilege	48(1)(a)(i)

This resolution is made in reliance on Section 48(1)(a)(i) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public are as follows: *Previous minutes of the Planning Committee under section 7(2)(g).*

RESOLUTION TO RESUME OPEN MEETING

MACKENZIE DISTRICT COUNCIL

MINUTES OF A MEETING OF THE PLANNING COMMITTEE HELD IN THE COUNCIL CHAMBERS, FAIRLIE, ON TUESDAY 3 SEPTEMBER 2013 AT 10:22AM

PRESENT:

John Bishop (Chairman)
Claire Barlow (Mayor)
Crs Graham Smith
Annette Money
Graeme Page
Peter Maxwell
Evan Williams from 11:32am

IN ATTENDANCE:

Wayne Barnett (Chief Executive Officer)
Nathan Hole (Manager – Planning and Regulations)
Toni Morrison (Senior Planner) left at 11:10am
Karina Morrow (Senior Planner) left at 11:10am
Keri-Ann Little (Committee Clerk)

I APOLOGY

Resolved that an apology for lateness be received from Cr Williams.

Annette Money/ Graham Smith

II DECLARATIONS OF INTEREST:

There were no Declarations of Interest.

III MINUTES:

Resolved that the Minutes of the meeting of the Planning Committee held on Tuesday 30 July 2013 to be confirmed and adopted as the correct record of the meeting.

Annette Money/Graham Smith

Matters Arising From the Previous Minutes:

Cr Money asked for a progress update on residential 3 and 4 building setbacks.

Mr Hole said he has received an application and granted resource consent for the property in question.

IV AGENDA ITEMS:

The Mayor asked why agenda item Pukaki Airport Hanger is in Public excluded.

Mr Hole said it is in public excluded to maintain legal privilege because an assessment has been completed. The Chairman added that the Pukaki Airport Board is not currently aware of this issue.

V REPORTS:

1. RESOURCE MANAGEMENT ACT REFORMS 2013:

Resolved: that the report be received.

Claire Barlow/ Graham Smith

Toni Morrison, Senior Planner spoke to her report assisted by a PowerPoint presentation.

2. RESOURCE MANAGEMENT ACT IMPLEMENTATION PROPOSAL NATIONAL MONITORING SYSTEM:

Resolved: that the report be received.

Annette Money/ Graham Smith

This report from Ms Morrison is for Elected Members information only. Ms Morrison spoke to her report.

3. SALE AND SUPPLY OF ALCOHOL:

This report from Mr Hole was to inform the Committee regarding establishment of membership of the District Licensing Committee (DLC) under the Sale and Supply of Liquor Act 2012.

Resolved: that the report be received.

Graeme Page/ Annette Money

Resolved: The Committee appoints representatives, The Mayor and Councillor Smith to attend Timaru District Council's Resource Planning and Regulation Committee 17 September to provide input into the makeup of Mackenzie District's DLC.

Annette Money/ John Bishop

The 17 September is a Council meeting day in Twizel. Mr Hole will look into this further.

VI PUBLIC EXCLUDED:

Resolved that the public be excluded from the following part of the proceedings of this meeting namely:

1. Pukaki Airport Hanger
2. Dog Incident

Reason for passing General subject of each matter to be considered	Ground(s) under this resolution in relation to each matter	Section 48(1) for the passing of this resolution
Pukaki Airport Hanger	Maintaining Legal Privilege	48(1)(a)(i)
Dog Incident	Maintaining Legal Privilege	48(1)(a)(i)

This resolution is made in reliance on Section 48(1)(a)(i) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public are as follows: *Pukaki Airport Hanger* Section 7(2)(g) and *Dog Incident* Section 7(2)(g).

Annette Money/ Claire Barlow

The Planning Committee continued in open meeting.

CONFIRMATION OF RESOLUTION TAKEN WITH THE PUBLIC EXCLUDED

Resolved that the following resolution taken with the Public Excluded be confirmed:

Dog Incident:

Resolved:

1. that the Committee declares the dog menacing pursuant to section 33A of the Dog Control Act 1996, and does not require the dog to be neutered.
2. that the Committee issues an infringement notice under section 53 of the Act for failing to keep the dog under control.

Claire Barlow/Annette Money

**THERE BEING NO FURTHER BUSINESS THE
CHAIRMAN DECLARED THE MEETING CLOSED AT 11:55 AM**

CHAIRMAN: _____

DATE: _____

MACKENZIE DISTRICT COUNCIL

REPORT TO: PLANNING AND REGULATIONS COMMITTEE

SUBJECT: PLANNING AND REGULATIONS MANAGER'S ACTIVITY
REPORT

MEETING DATE: 4 FEBRUARY 2014

REF: PAD 4/1

FROM: NATHAN HOLE, MANAGER – PLANNING & REGULATIONS

PURPOSE OF REPORT:

To provide the Committee with an activity report for planning and regulations for the period 1 December to 24 January.

STAFF RECOMMENDATIONS:

1. That the report be received.

WAYNE BARNETT
CHIEF EXECUTIVE OFFICER

ATTACHMENTS:

N/A

BACKGROUND:

To provide the Committee with information regarding the number of resource consents, building consents and land information memorandums (LIMs) processed between meeting dates.

POLICY STATUS:

N/A

SIGNIFICANCE OF DECISION:

No decision required.

ISSUES & OPTIONS:

N/A

CONSIDERATIONS:

For the period 1 December 2013 – 24 January 2014:

Resource Consents	
Applications Received	Applications Granted
4	10
Building Consents	
Applications Received	Applications Granted
25	27
LIMs processed	
29	

All resource consents were non-notified and were processed within the statutory timeframe of 20 working days.

Of the 10 resource consents granted 9 were land use, 1 was for a cross-lease subdivision in Fairlie.

The main resource consent of interest was a land use consent granted to H2 Explore Ltd to undertake commercial hovercraft tours on Lake Pukaki from Glentanner Station. This was a controlled activity application.

Building activity continues to be significant with the value of the consents received for building work for the above period being \$3.5M

The majority of the building work relates to residential buildings in Tekapo and Twizel, with some farm buildings. There was one application for a new dwelling on the outskirts of Fairlie.

LIM numbers are very high with summer being the period where LIM numbers are highest.

Rural Fire

There were been two call outs in the Mackenzie District during January. One at Lake Tekapo on Motuariki Island on 11 January which was reported nationally in the media, and a paddock fire at Mt Gerald Station on 21 January. The later was caused by a mower cutting a hay paddock.

MACKENZIE DISTRICT COUNCIL

REPORT TO: PLANNING AND REGULATIONS COMMITTEE

SUBJECT: PLAN CHANGE 13: 8TH DECISION OF THE ENVIRONMENT COURT

MEETING DATE: 4 FEBRUARY 2014

REF: REG 6/6/1

FROM: NATHAN HOLE, MANAGER - PLANNING & REGULATIONS

PURPOSE OF REPORT:

To update the Committee on the recently released 8th Decision of the Environment Court on Plan Change 13.

STAFF RECOMMENDATIONS:

1. That the report be received.

WAYNE BARNETT
CHIEF EXECUTIVE OFFICER

ATTACHMENTS:

8th Decision of the Environment Court dated 23 December 2013.

BACKGROUND:

Earlier Decisions

In 12 December 2013 in Tekapo a workshop was held with the Committee on the background to Plan Change 13, up to and including recent Environment and High Court proceedings.

A short summary of the 6th and 7th decisions released by the Environment Court in November was given at that workshop. In those decisions the Court made findings on which matters it could include in its consideration of Plan Change 13, and which matters were not 'on' the plan change and therefore would not be covered by it.

The Court confirmed that proposals for rules requiring management of wilding trees were 'off' the plan change, but that all other matters including controls on pastoral intensification were 'on' the plan change and therefore within the Court's jurisdiction to consider. Those decisions have been appealed by Federated Farmers to the High Court.

8th Decision – Objective 3B

On 23rd December the Court released its 8th decision. The 8th decision relates to settling one of two objectives for management of the outstanding landscape in the Mackenzie Basin.

District Plans contain Objectives, Policies and Methods for dealing with resource management issues identified in the Plan. Objectives encapsulate what is to be achieved, such as the desired end state in relation to a resource. Policies outline how each objective is to be achieved. Methods then follow, which are designed to implement the policies. Methods most often include rules.

In this most recent decision, the Court amends the District Plan by deleting the initial objective from the Council Commissioners' decision and substituting the following:

Objective 3B- Activities in Mackenzie Basin's outstanding natural landscape

(1) Subject to (2)(a), to protect and enhance the outstanding natural landscape of the Mackenzie Basin subzone in particular the following characteristics and/or values:

- (a) the openness and vastness of the landscape;*
- (b) the tussock grasslands;*
- (c) the lack of houses and other structures;*
- (d) residential development limited to small areas in clusters;*
- (e) the form of the mountains; hills and moraines, encircling and/or located in, the Mackenzie Basin;*
- (f) undeveloped lakesides and State Highway 8 roadside;*

(2) To maintain and develop structures and works for the Waitaki Power Scheme:

- (a) within the existing footprints of the Tekapo-Pukaki and Ohau Canal Corridor, the Tekapo, Pukaki and Ohau Rivers, along the existing transmission lines, and in the Crown-owned land containing Lakes*

Tekapo, Pukaki, Ruataniwha and Ohau and subject only (in respect of landscape values) to the objectives, policies and methods of implementation within Chapter 15 (Utilities) except for management of exotic tree species in respect of which all objective (1) and all implementing policies and methods in this section apply;

- (b) *elsewhere within the Mackenzie Basin subzone so as to achieve objective (1) above.*

The 8th decision therefore finalises the objective which applies to certain activities in the Mackenzie Basin subzone.

The policies and methods (including rules) that will flow from and implement that objective are yet to be confirmed, and depending on the outcome of the High Court appeal, will be worked through by the Council in a process to be confirmed by the Court. An additional objective covering farming, pastoral intensification, irrigation, and structures will also be required to be worked through at this later stage, should the High Court appeals be unsuccessful.

As noted, both the 6th and 7th decisions have been appealed to the High Court. The period for lodging appeals on the most recent decision has not yet passed at the time of writing. Given the close relationship between the 6th, 7th and 8th decisions, it is likely that this 8th decision will also be appealed and/or included in the proceedings before the High Court.

POLICY STATUS:

N/A

SIGNIFICANCE OF DECISION:

No decision is required.

ISSUES & OPTIONS:

N/A

CONSIDERATIONS:

Legal

N/A

Financial

N/A

Other

N/A

ASSESSMENT OF OPTIONS:

N/A

CONCLUSION:

The Environment Court's three most recent decisions on Plan Change 13 make findings on the scope and content of plan provisions for the Mackenzie Basin. Two of these have been appealed to the High Court, and it is likely the latest will be appealed also. The next step for the Council will be to prepare for the High Court proceedings once a date has been set. This will be known later in the year.

BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 304

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14(1) of the First
Schedule to the Act

BETWEEN FEDERATED FARMERS OF NEW
ZEALAND (INC) MACKENZIE
BRANCH
(ENV-2009-CHC-193)

MOUNT GERALD STATION LIMITED
(ENV-2009-CHC-181)

MACKENZIE PROPERTIES LIMITED
(ENV-2009-CHC-183)

MERIDIAN ENERGY LIMITED
(ENV-2009-CHC-184)

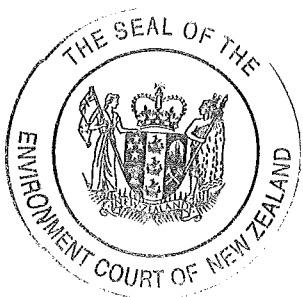
THE WOLDS STATION LIMITED
(ENV-2009-CHC-187)

FOUNTAINBLUE LIMITED & OTHERS
(ENV-2009-CHC-190)

R, R AND S PRESTON AND
RHOBOROUGH DOWNS LIMITED
(ENV-2009-CHC-191)

HALDON STATION
(ENV-2009-CHC-192)

Appellants



AND

MACKENZIE DISTRICT COUNCIL

Respondent

Court: Environment Judge J R Jackson
(sitting alone under section 279(1)(c) RMA)

Hearing: In Chambers at Christchurch (Final submissions received
16 December 2013)

Submissions received from: J Derry for Federated Farmers of New Zealand (Inc)
Mackenzie Branch
J W Maassen for Meridian Energy Limited

Date of Decision: 23 December 2013

Date of Issue: 23 December 2013

EIGHTH DECISION (re Landscape Objectives)

8A: Under section 290(2) of the Resource Management Act 1991 the Environment Court cancels the decision of the Mackenzie District Council's Commissioners dated 18 August 2009 in respect of Objective 3A and Objective 3B in Plan Change 13(C) as attached to the Commissioners' Decision.

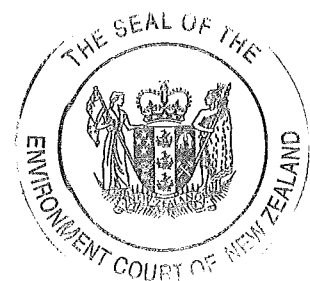
8B: Under sections 279(1)(e) and 290(1) of the Act the Environment Court amends Objective 3A by deleting the first six words of the Objective (numbered 3C in the Mackenzie District Council Commissioners' decision) and reinstating the words in the operative district plan so that the Objective commences (renumbered):

"3A Landscape Values

Protection of the outstanding landscape values ..."

8C: Under section 290(1) of the Act the Environment Court amends the district plan by:

- (1) Deleting Objectives 3A and 3B in the Commissioners' version of PC13;
and
- (2) substituting the following Objective 3B in the district plan:



Objective 3B — Activities in Mackenzie Basin's outstanding natural landscape

- (1) Subject to (2)(a), to protect and enhance the outstanding natural landscape of the Mackenzie Basin subzone in particular the following characteristics and/or values:
 - (a) the openness and vastness of the landscape;
 - (b) the tussock grasslands;
 - (c) the lack of houses and other structure;
 - (d) residential development limited to small areas in clusters;
 - (e) the form of the mountains, hills and moraines, encircling and/or located in, the Mackenzie Basin;
 - (f) undeveloped lakesides and State Highway 8 roadside;
- (2) To maintain and develop structures and works for the Waitaki Power Scheme:
 - (a) within the existing footprints of the Tekapo-Pukaki and Ohau Canal Corridor, the Tekapo, Pukaki and Ohau Rivers, along the existing transmission lines, and in the Crown-owned land containing Lakes Tekapo, Pukaki, Ruataniwha and Ohau and subject only (in respect of landscape values) to the objectives, policies and methods of implementation within Chapter 15 (Utilities) except for management of exotic tree species in respect of which all objective (1) and all implementing policies and methods in this section apply;
 - (b) elsewhere within the Mackenzie Basin subzone so as to achieve objective (1) above.

8D: In the event of any inconsistency between the Sixth Decision and Orders 8A to 8C above, the latter prevail.

REASONS**Introduction**

[1] This decision relates to the objectives about the landscape of the Mackenzie District and arises on the appeals to the Environment Court about Plan Change 13 ("PC13") to the Mackenzie District Plan. The two objectives in contention were renumbered 3A and 3B respectively in the First (Interim) Decision¹, and I will consider them in turn.

Objective 3A

[2] Order A in the First (Interim) Decision stated²:

A: In respect of the general rural zone landscape objective [Objective 3 in section 7 of the operative district plan]:

- (1) the Mackenzie District Council is to choose by Friday 30 March 2012 whether it wishes that objective to commence:

... Objective 3A Landscape Values
 "Protection of the outstanding landscape values ..."

¹ [2011] NZEnvC 387 at [136].

² [2011] NZEnvC 387.



or

“Objective 3A Landscape Values”

“Protection of the natural character of the landscape ...”

- (2) and, if the Council chooses the latter, it should lodge with the Registrar and serve on the parties an application under section 293 of the Act in respect of the change to the operative district plan; or
- (3) if the Council wishes Rural Objective 3A to remain the same (outside the Mackenzie Basin subzone) as it is in the operative district plan, then it should advise the Registrar and parties accordingly and that will be recorded in the Environment Court’s final decision.

[3] In the Sixth Decision³, delivered on 1 November 2013, the court reminded the Mackenzie District Council that it should make an election on which version of the objective it wished to apply to the rest of the district outside the Mackenzie Basin.

[4] By letter dated 29 November 2013 counsel, Mr Caldwell, confirmed that the council wishes to retain the wording in the operative district plan. An order will be made accordingly.

Objective 3B

The challenged objective

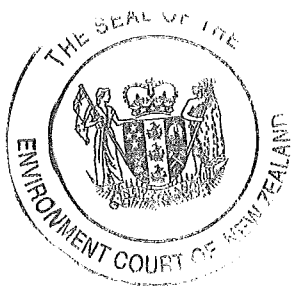
[5] This objective does not relate to the whole of the district but only to that part within the Mackenzie Basin. The renumbered objective for the Mackenzie Basin suggested by the court provisionally under section 290 of the RMA in the Sixth Decision was⁴:

Objective 3B — Activities in Mackenzie Basin’s outstanding natural landscape

- (1) Subject to (2)(a), to protect and enhance the outstanding natural landscape of the Mackenzie Basin subzone in particular the following characteristics and/or values:
 - (a) the openness and vastness of the landscape;
 - (b) the tussock grasslands;
 - (c) the lack of houses and other structures;
 - (d) residential development limited to small areas in clusters;
 - (e) the form of the mountains, hills and moraines, encircling and/or located in, the Mackenzie Basin;
 - (f) undeveloped lakesides and State Highway 8 roadside;
- (2) To maintain and develop structures and works for the Waitaki Power Scheme:
 - (a) within the existing footprints of the Tekapo-Pukaki and Ohau Canal Corridor, the Tekapo, Pukaki and Ohau Rivers, along the existing transmission lines, and in the Crown-owned land containing Lakes Tekapo, Pukaki, Ruataniwha and Ohau and subject only (in respect of landscape values) to the objectives, policies and methods of implementation within Chapter 15 (Utilities) except for management of exotic tree species in respect of which all objective (1) and all implementing policies and methods in this section apply;

³ [2013] NZEnvC 257.

⁴ Appendix 1 to [2013] NZEnvC 257.



- (b) elsewhere within the Mackenzie Basin subzone so as to achieve objective (1) above.
- (3) Subject to objective (1) above and to rural objectives 1, 2 and 4:
 - (a) to enable pastoral farming while limiting buildings, fencing and shelterbelts;
 - (b) to enable pastoral intensification including cultivation and/or direct drilling and high intensity (irrigated) farming in appropriate areas south and east of State Highway 8 except adjacent to, and in the foreground of views from, State Highways and tourist roads;
 - (c) to enable rural residential subdivision, cluster housing and farm buildings preferably around existing homesteads (where they are outside hazard areas) or in the areas of low visual vulnerability shown on map Z⁵ in the district plan.

[6] In the Sixth Decision, the court gave its preliminary views as to the application of section 290 to Objective 3B. The court reserved leave⁶ for submissions on the application of section 290 of the Act. Section 290 of the RMA states:

290 Powers of Environment Court in regard to appeals and inquiries

- (1) The Environment Court has the same power, duty, and discretion in respect of a decision appealed against, or to which an inquiry relates, as the person against whose decision the appeal or inquiry is brought.
- (2) The Environment Court may confirm, amend, or cancel a decision to which an appeal relates.
- (3) The Environment Court may recommend the confirmation, amendment, or cancellation of a decision to which an inquiry relates.
- (4) Nothing in this section affects any specific power or duty the Environment Court has under this Act or under any other Act or regulation.

[7] The appellant in one proceeding, Federated Farmers of NZ (Inc) Mackenzie Branch⁷, has brief submissions⁸ on some issues relevant to the exercise of section 290 and advised⁹ the court it is content for the issues to be resolved on the papers.

[8] There has been a response from one other party. Meridian Energy Ltd¹⁰ ("Meridian") supports¹¹ the court's analysis in the Sixth Decision. There was no response from the council. No party sought to respond to any other's submissions.

[9] To the extent that it is necessary to refer to different versions of PC13, I will use the same convention used in the previous decisions, viz:

- PC13(N) is PC13 as notified,
- PC13(C) is the Commissioners' Decision version;

⁵ The court stated in a footnote that it anticipated an improved version of Map 3 in the First (Interim) Decision could be inserted in the district plan.

⁶ [2013] NZEnvC 257 at Order 6E.

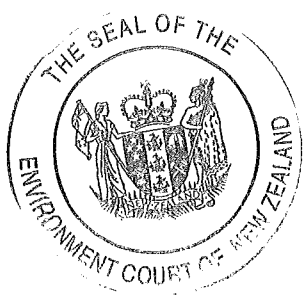
⁷ ENV-2009-CHC-193.

⁸ Submissions dated 22 November 2013 and 11 December 2013.

⁹ Memorandum dated 27 November 2013.

¹⁰ Appellant in ENV-2009-CHC-184.

¹¹ Submissions dated 16 December 2013.



and add:

- PC13(1) for the Court's interim version; and
- PC13(6) for the version in the Sixth Decision.

Does the objective go beyond the scope of the appeal?

[10] Interpreting the court's leave rather broadly, Ms Derry submitted¹² for the Mackenzie Branch that "Section 290(1) must not obscure the fact that a case is about an appeal against a decision already made, and is limited by the scope of the appeal". She relied on the decision of the Supreme Court in *Waitakere City Council v Estate Homes Ltd*¹³. There the Supreme Court wrote:

[27] ... Under s 290(1), the Environment Court has "the same power, duty, and discretion" in dealing with the appeal as the consent authority. Under s 290(2) it may confirm, amend or cancel the decision to which the appeal relates.

[28] These statutory provisions confer an appellate jurisdiction that is not uncommon in relation to administrative appeals in specialist jurisdictions. As Mr Neutze submitted, they contemplate that the hearing of the appellant tribunal will be "de novo", meaning that it will involve a fresh consideration of the matter that was before the body whose decision is the subject of appeal, with the parties having the right to a full new hearing of evidence. When the legislation provides for a de novo hearing it is the duty of the Environment Court to determine for itself, independently, the matter that was before the body appealed from insofar as it is in issue on appeal. The parties may, however, to the extent that it practicable, instead confine the appellate hearing to specific issues raised by the appeal.

The Environment Court is of course bound by that high authority. However, I note that the proceeding under appeal in *Waitakere City Council v Estate Homes Ltd* related to an application for a resource consent. It follows that the Supreme Court's final qualifying words about parties limiting the scope of hearing "... to the extent it is practicable" becomes quite important when the appeal concerns a plan change at a high level in a district plan (e.g. where objectives relating to a matter of national importance are involved). It may be impracticable to confine the scope of a hearing as the parties wish. That is the case here. The court outlined the wide range of (potentially mutually inconsistent) relief sought by various appeals in the Sixth Decision.

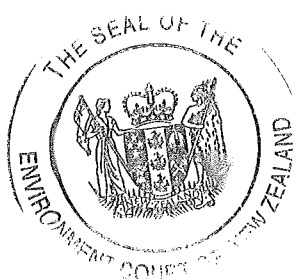
[11] In the Sixth Decision the court considered the challenges to the landscape objectives proposed by the court. I set out¹⁴ there the relevant submissions and appeals and concluded that rather than "abandoning" or cancelling the plan change as sought, the court should amend it to recognise the outstanding natural landscape(s) as sought by several appellants. It is disappointing that Ms Derry did not attempt in either of her submissions to say why the court's analysis and conclusions¹⁵ might not be correct.

¹² Submissions 11 December 2013 para 6.

¹³ *Waitakere City Council v Estate Homes Ltd* [2007] NZRMA 137, (2006) 13 ELRNZ 33.

¹⁴ [2013] NZEnvC 257 at [10] to [21].

¹⁵ [2013] NZEnvC 257 at [65] to [69].



[12] If I understand the submissions from the Mackenzie Branch correctly, it is concerned that the Objective 3B does not adopt the relief sought in an appeal. The answer is that the court does not have to adopt the wording of any one appeal. Subject to consideration under section 293 (and I come to that shortly) the court should replace the wording appealed with what it considers is the “most appropriate way to achieve the purpose of th[e] Act”¹⁶.

[13] The most useful guidance to the court’s powers on section 290 in a plan (change) context comes from the Full Court in *Countdown Properties (Northlands) Ltd v Dunedin City Council*¹⁷:

Councils customarily face multiple submissions, often conflicting, often prepared by persons without professional help. We agree with the Tribunal that councils need scope to deal with the realities of the situation. To take a legalistic view that a council can only accept or reject the relief sought in any given submission is unreal. As was the case here, many submissions traversed a wide variety of topics: many of these topics were addressed at the hearing and all fell for consideration by the council in its decision.

Because the court has the same powers as the council¹⁸, I hold that the same practical approach must be taken by the Environment Court in an appeal when deciding what objective is most appropriate. That seems to be consistent with the Supreme Court’s reference — in the *Estate Homes* case — to what is “practicable”.

Objective 3B(1)

[14] Ms Derry’s submissions suggest that the Mackenzie Branch does not like the fleshing out of the objective — in particular she refers to the insertion of the words “tussock grasslands” in Objective 3B(1). The court explained¹⁹ the rationale for going beyond bland generalisations in its First (Interim) Decision and then — attempting to maintain the Mackenzie District Council’s “ownership” of the wording rather than substituting the court’s words — it referred²⁰ to the attributes of the Mackenzie Basin identified by PC13 as notified, specifically:

- its unspoiled openness and vastness²¹;
- the sense of naturalness²² given by the golden-brown vegetation;
- the sense of landform continuity²³;
- relative lack²⁴ of trees, especially windbreaks and plantations;
- lack of structures with unobtrusive development and isolated contained settlement²⁵;
- the high apparent naturalness and spectacular nature of the views from State Highway 8²⁶.

¹⁶ Section 32(3)(a) RMA.

¹⁷ *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1993] NZRMA 145 at 165.

¹⁸ Section 290(1) RMA.

¹⁹ [2011] NZEnvC 387 at [145].

²⁰ [2011] NZEnvC 387 at [146].

²¹ PC13(N) p 4 [as given in Environment Court document 6 Annexure B].

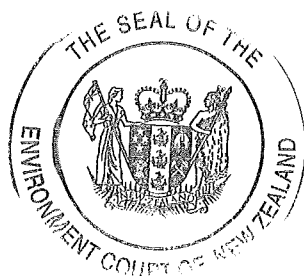
²² PC13(N) p 4 [as given in Environment Court document 6 Annexure B].

²³ PC13(N) p 4 [as given in Environment Court document 6 Annexure B].

²⁴ PC13(N) p 4 [as given in Environment Court document 6 Annexure B].

²⁵ Issue 7 – Landscape Values [District Plan p 7-10].

²⁶ Issue 7 – Landscape Values [District Plan p 7-10].



Most of those matters came through in proposed Objective 3B(1). The exceptions being that the lack of trees is not covered in the objective, and the sense of naturalness given by the golden-brown vegetation was proposed by the court to be changed to “tussock grasslands” — the latter being the phrase objected to by the Mackenzie Branch.

[15] The reason for the court’s change of wording is that part of the “naturalness” given by the golden-brown vegetation is rather artificial: a considerable proportion of the grasslands is constituted by exotic grasses not by native species. The court was attempting to confine the importance of the golden-brown vegetation identified by the council to the native species because that would impose lesser obligations on landowners when it comes to achieving the objective. I still consider that change is appropriate.

[16] The “lack of trees” was not covered in the objective because the court considered that PC13 had not sufficiently raised that very important issue. Indeed both the Canterbury Regional Council and the Mackenzie District Council seem to have largely placed the issue of wilding spread in the “too hard” basket as the court discussed in the First Decision.

Objective 3B(2)

[17] In the First Decision the court continued²⁷:

The objective should also recognise that within the outstanding natural landscape there are smaller areas which have either already been compromised as to some values and/or are important for others (farming/carbon sequestration) or which (in the case of the Waitaki Power Scheme) are so important to New Zealand that they need to be managed differently. They are:

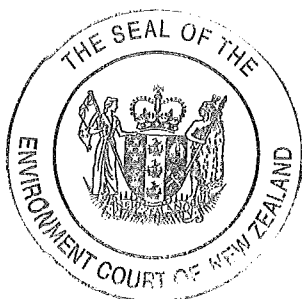
- the Waitaki Power Scheme in its canal and transmission line corridors and around the margins of Lakes Tekapo, Pukaki, Ruataniwha and Ohau²⁸;
- some pastoral farm areas;
- the potential for carbon capture forestry from (principally) wilding exotic conifers;
- some production forestry;
- the potential for carbon capture forestry from (principally) wilding exotic conifers;
- some production forestry;
- rural residential subdivision and cluster housing (preferably around existing homesteads and/or in areas with high capacity to absorb development);
- (potentially) some areas of high intensity (irrigated) farming.

It is for those reasons that the Objective 3B(1) was added to by 3B(2) which recognises the national importance of the Waitaki Power Scheme as described in the evidence of Meridian’s witnesses²⁹. I do not understand there to be any challenge to Objective 3B(2).

²⁷ [2011] NZEnvC 387 at [147].

²⁸ To the limited extent the latter two lakes’ margins are within the district.

²⁹ e.g. K A Smales, evidence-in-chief [Environment Court document 10].



Objective 3B(3)

[18] The other matters referred to in the previous paragraph were the subject of proposed subordinate Objective 3B(3). The court made no orders in the Sixth Decision under section 290 in relation to proposed Objective 3B(3) in PC13(1) but stated that it would consider whether to exercise its section 293 powers later.

[19] I have no cause to change the court's reasoning in the Sixth Decision that Objective 3B(1) and (2) are within the Court's jurisdiction as coming fairly and reasonably within the submissions and appeals. I now turn to the other questions which, on my understanding, the Mackenzie Branch has raised.

Should the objectives and policies be resolved as a package?

[20] Ms Derry submitted that³⁰:

Objective 3B(1) forms part of a package of provisions, and those provisions should be considered together in a comprehensive way. Where those provisions include matters requiring consideration under section 293 (i.e. pastoral intensification) then Objectives forming part of that package of provisions should not be confirmed separately under section 290. Rather, provisions under section[s] 290 and 293 should be considered concurrently, and section 290 should not be used for broadening jurisdiction under section 293.

Ms Derry cited no authority for those propositions. I accept (tentatively) that the court should consider all the powers and discretions at its disposal before making orders about proposed plans or changes. In other words, the court should consider whether to give directions under section 293 as an alternative to making orders under section 290 of the RMA. In the Sixth Decision the court described the section 293 powers as complementary to those in section 290 RMA.

[21] Beyond that I consider counsel's submission is fundamentally wrong. District plans under the RMA are hierarchical documents. They must³¹ state objectives, policies and any rules, and may³² state other matters. The policies are to implement³³ the objectives, and the rules are to implement³⁴ the policies. It is impossible to implement an objective or to give effect to a purpose or desired outcome unless one knows what the objective or purpose is. Logically the objectives must be settled before the policies to implement them are resolved.

[22] That approach is reinforced by section 32 of the RMA in all its recent incarnations. Section 32 requires³⁵ that the objectives must (now) be evaluated as to

³⁰ Mackenzie Branch submissions 11 December 2013 para 7.

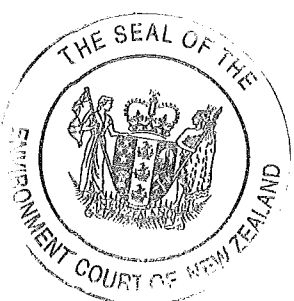
³¹ Section 75(1) RMA.

³² Section 75(2) RMA.

³³ Section 75(1)(b) RMA.

³⁴ Section 75(1)(c) RMA.

³⁵ Section 32(1)(a) RMA.



whether they are the most appropriate way to achieve the purpose of the RMA. The other provisions³⁶ must then be examined³⁷ to ascertain whether they are the most appropriate way to achieve the objectives. It is impossible to ascertain whether a particular policy is the most appropriate way to achieve objective(s) unless one knows what the objectives are.

[23] Ms Derry's submission was that if policies or rules require consideration under section 293, then the objective(s) they implement must also be considered under section 293. That is working from back to front. The first issue is to resolve the objectives on the evidence and to apply all the relevant considerations³⁸ without regard to what the implementing policies and methods might be. That is the approach adopted by the court in the First (Interim) Decision and consistently since. It is the approach that has been followed by the court for many years. In *The Warehouse Limited v Dunedin City Council*³⁹ the court wrote "The tail should not wag the dog: objectives and policies drive methods of implementation; not the other way around". The same principle applies as between objectives and policies.

[24] Because objectives need to be resolved before policies (which in turn must be resolved before methods) it follows that the court must usually make its decision under section 290 (after considering whether to exercise a section 293 discretion) in relation to the objectives in issue without having regard to whether it might later need to exercise its section 293 discretion in respect of implementing policies.

Should the Commissioners' Decision on the landscape objective be cancelled or amended?

[25] The passage in the Sixth Decision which appears to trouble the Mackenzie Branch⁴⁰ is:

[85] As to objective 3A and policy 3B in PC13(C) an appropriate possible order in view of the interim judgments in the First (Interim) Decision at paragraph [144] *et ff* would be that the Commissioners' Decision in respect of those two provisions should be cancelled. That is for two reasons: first, by not making any findings on that issue the Commissioners' Decision failed in its duty to recognise any outstanding natural landscapes in the basin, and secondly, the environment Court found that as a matter of fact and degree a large identified part of the Mackenzie Basin subzone is an outstanding natural landscape⁴¹.

[86] However, it seems the most appropriate order to make (within jurisdiction) in relation to a landscape objective for the Mackenzie Basin would be, at a minimum, to amend the Commissioners' Decision by substituting objective 3B(1) and (2) as set out in the First (Interim) Decision (and quoted above⁴²). That determination under section 290(2) of the

³⁶ Section 32(6) RMA.

³⁷ Section 32(1)(b) RMA.

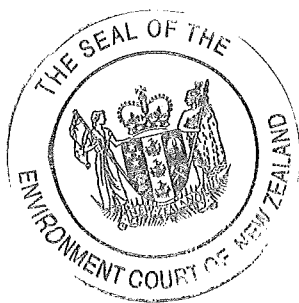
³⁸ Listed primarily in section 74 RMA.

³⁹ *The Warehouse Ltd v Dunedin City Council* Decision C101/2001.

⁴⁰ [2013] NZEnvC 259 at [85] and [86].

⁴¹ Under section 6(b) RMA.

⁴² At para 57 (the original is at [2011] NZEnvC 387 at [151]).



Act is provisional — the court proposes to amend the Commissioners’ decision on the landscape objective but will hear the parties on that.

Consequently, the court proposed to cancel the Commissioners’ Decision on the objectives for PC13 but left open the question “what orders should be made to amend the objectives in PC13?”.

[26] Ms Derry submitted there was a “potential difficulty in cancelling the decision and then purporting to amend it”. The answer is that the court cancels the local authority’s decision and simultaneously amends, not the decision, but the proposed plan or change referred to the court. That arises out of the fact — as pointed out in the Sixth Decision (and above) — that the court has the section 290(2) RMA power to “confirm, amend or cancel a decision” in addition to the section 290(1) powers.

[27] The local authority’s powers are set out in the First Schedule to the RMA, most relevantly in this context, in clause 10. The court summarised those powers in the Sixth Decision as follows⁴³:

Clause 10 requires that the decisions of the local authority have three components: first an acceptance or rejection of any submission or group of submissions, second the reasons for that acceptance or rejection, and third the alterations/deletions/or additions it makes to the proposed plan or change including any consequential changes under clause 10(2), Schedule 1. It is also worth noting that the “consequential alterations” referred to in clause 10(2) are to the proposed plan or change being considered and they are consequential to “... any other relevant matters ... considered relating to matters raised in submissions”.

I note that Ms Derry does not submit that is incorrect. Thus the court potentially has a tripartite role — to confirm, amend, or cancel:

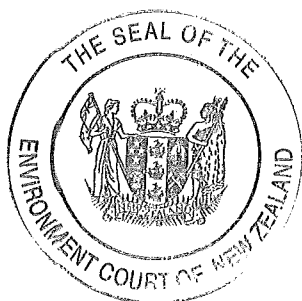
- (1) The council’s decision to accept or reject a submission;
- (2) The local authority’s reasons; and
- (3) The alterations it makes to the notified change/plan.

As I pointed out in the Sixth Decision, there is little point in amending (2): what is written is written. In relation to (1) and (3), the court has something similar to a traditional appellate role when there is an appeal on the merits. An appellate court in that situation usually has a two step duty: to allow (in full or in part) the appeal or to refuse it, and, if the appeal is allowed, to make substitute orders.

[28] Translated into the language of section 290(1), here the court has the same powers as the local authority. In particular it must have the powers to accept or reject the relief sought in an appeal (substituting “appeal” for “submission” in clause 10(1)) and to make consequential alterations under clause 10(2).

⁴³

[2013] NZEnvC 257 at [27].



[29] In relation to Objective 3B(1) and (2) the court explained what it was doing in paragraphs [65] to [68] of the Sixth decision and more particularly in paragraphs [80] to [86] — referring back to the extensive discussion in the First (Interim) Decision. I confirm that analysis.

Should section 293 be exercised first?

[30] As a preliminary point to this issue, I note Ms Derry’s submission that “the court has determined it will use section 293 to introduce a new Objective 3B(3) ...”. That is incorrect. In the Sixth Decision the court held that:

- Objective 3B(3)(a) and (c) were ‘on’ PC13⁴⁴;
- so is Objective 3B(3)(b)⁴⁵; but
- Objective 3B(3)(d) is not⁴⁶.

That was a jurisdictional decision. The court then went on to consider the merits.

[31] The court determined⁴⁷ that it should substitute Objective 3B(1) and (2) as set out in the First (Interim) Decision⁴⁸ (and quoted above), subject to hearing the parties further on section 290 if they sought that. The Mackenzie Branch sought leave and the exercise of the section 290 powers in relation to 3B(1) and (2) is the subject of this decision.

[32] However the court’s statement about Objective 3B(3)(a)-(c) in the Sixth Decision was simply⁴⁹:

As for Objective 3B(3)(a)-(c), whether the court can give directions about that and, if so, should exercise those powers will be the subject of a further decision.

So Objective 3B(3) will not be the subject of this decision.

[33] I now return to the question of how to exercise the powers in sections 290 to 293 of the RMA. Having read the perfunctory submissions on section 290 for the Mackenzie Branch, I consider there is nothing there that undermines the analysis of the court’s powers and duties in the Sixth Decision.

[34] I have considered whether the court should exercise its powers under section 293 to give directions to the council about Objective 3B(1) and (2). I see no necessity for that. Recognition and protection of the outstanding natural landscape(s) of the

⁴⁴ [2013] NZEnvC 257 at [72].

⁴⁵ [2013] NZEnvC 257 at [73] and [74].

⁴⁶ [2013] NZEnvC 257 at [76].

⁴⁷ [2013] NZEnvC 257 at [86].

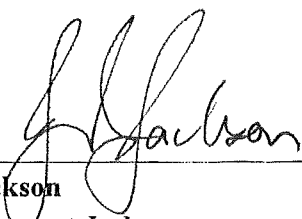
⁴⁸ [2011] NZEnvC 387 at [151].

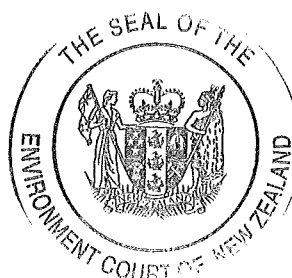
⁴⁹ [2013] NZEnvC 257 at [87].

Mackenzie Basin was what PC13(N) was about. As Mr Maassen submitted, Objective 3B(1) “reinstated the core premise of PC13(N)”. He also advised the court that the premise had been supported by many submitters⁵⁰.

[35] The court could order that Objective 3B(1) and (2) should be considered under section 293, but that would be to waste a huge amount of effort on the only substantive matter that was actually decided in the First Decision — that the greater part of the (upper⁵¹) Mackenzie Basin is an outstanding natural landscape which should be recognised and protected as a matter of national importance. If the issue was fairly and reasonably before the court and on the plan change — and I have held it was both — then there should be some finality to the litigation on this issue at least (subject to the qualifications in the Sixth Decision about variations).

[36] Exercising the court’s powers under section 290, I consider that the court should cancel the decision of the Mackenzie District Council’s Commissioners and should substitute Objective 3B(1) and (2) as set out above because they are the most appropriate objectives for achieving the purpose of the Act for the reasons stated in the First (Interim) Decision.


J R Jackson
Environment Judge



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⁵⁰ Meridian submissions 16 December 2013.
⁵¹ i.e. within the Mackenzie District.

MACKENZIE DISTRICT COUNCIL

REPORT TO: PLANNING AND REGULATIONS COMMITTEE

SUBJECT: DISTRICT PLAN REVIEW TIMETABLE

MEETING DATE: 4/2/2014

REF: REG 6/6

FROM: KARINA MORROW PLANNER

PURPOSE OF REPORT:

To provide the committee with an updated District Plan Review timetable.

STAFF RECOMMENDATIONS:

1. That the report be received.

WAYNE BARNETT
CHIEF EXECUTIVE OFFICER

ATTACHMENTS:

None.

BACKGROUND:

As the Committee is aware, the Council has embarked on the early stages of reviewing its District Plan. An internal timeframe and work programme was initially established by staff, and discussed with the previous members of the Planning Committee. There is no statutory timeframe for plan changes or reviews, so any timeframes are internal only.

That initial timetable previously outlined to the council for the District Plan Review was as follows;

- 2013/2014
 - Information gathering and commissioning/completion of technical studies
 - Initial targeted stakeholder consultation
 - Council workshops on policy streams
 - Drafting and targeted consultation on draft provisions
- 2014/2015
 - Finalised drafting and completion of section 32 report
 - Public notification of proposed provisions
- 2015/2016
 - Submissions & hearings
 - Decisions
 - Appeals
- 2016/2017
 - Mediation and Environment Court

However, as a result of various factors, including the impending Resource Management Act reforms and staff work-loads being directed to other policy areas, it is considered appropriate to adjust these time frames. Essentially staff consider that it would be prudent to delay the bulk of drafting and consulting on provisions until the 2014/2015 financial year, in the hope that a RMA reform bill will have been introduced by this time. This should provide a clearer picture of the required content of District Plans. It is also hoped that there will be a more settled picture with respect to Plan Change 13.

As such, the revised timeframes are as follows:

- 2013/2014
 - Information gathering and completion of technical studies
 - Progressing review of some (but not all 1) plan provisions or issues. These have been identified by staff, and are:

¹ All other plan review work programmes will not be progressed until the next financial year 2014/15, when it is hoped there will be more certainty in relation to RMA reform and PC13.

- a) More complex policy issues that will require longer periods for working through, and
 - b) Those areas that are unlikely to be affected by RMA reforms and Plan Change 13.
- Stakeholder consultation on those identified matters
- Council workshops on those policy streams
- 2014/2015
 - Progressing review of remaining plan provisions
 - Stakeholder consultation & Council workshops
 - Drafting and consulting on provisions
- 2015/2016
 - Final drafting and legal review
 - Section 32 report
 - Notification
- 2016/2017
 - Submissions
 - Hearings
 - Decisions
 - Appeals
- 2017/2018
 - Mediation and Environment Court

The amended time table results in an additional one year being added to the District Plan Review programme.

POLICY STATUS:

N.A.

SIGNIFICANCE OF DECISION:

No decision requested.

ISSUES & OPTIONS:

Staff have considered two options:

1. To proceed with the current timetable for Plan Review. This has not been adopted as it would require additional and immediate resourcing, and creates the possibility that work undertaken will not conform with any new requirements following RMA reform.
2. To establish a more realistic timeframe which takes in to account present staff workloads and takes a prudent approach in respect of uncertainties created by RMA reform and PC13. This timeframe requires ongoing progress on certain matters which are unlikely to be subject to change.

ASSESSMENT OF OPTIONS:

Option 2 is preferred for the reasons set out above.

CONCLUSION:

As a result of work-loads and the impending RMA reforms the proposed timetable for the District Plan review has been amended. In summary, the work programme has been extended by an additional one year.