

Received by fax
16/10/09
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gallaway cook allan
LAWYERS
incorporating blake horder gowing

16 October 2009

The Chief Executive
Mackenzie District Council
c/- Glen Innes
P O Box 52
FAIRLIE 7949

ATTN: Nathan Hale

Dear Sir

MACKENZIE DISTRICT COUNCIL: PLAN CHANGE 13

Please find **enclosed** by way of service notice of appeal by MacKenzie Properties Limited, filed with the Environment Court at Christchurch today.

Yours faithfully
GALLAWAY COOK ALLAN

A handwritten signature in blue ink, appearing to read "Chris Thomsen".

Chris Thomsen
Associate (Dunedin)

Email: chris.thomsen@gcalegal.co.nz

DUNEDIN
Corner High &
Princes Streets
PO Box 143
DX YP80023
Dunedin 9054
New Zealand

T **03 477 7312**
F 03 477 5564

WANAKA
24 Dungarvon Street
PO Box 450
DX ZP96504
Wanaka 9343
New Zealand

T **03 443 0044**
F 03 443 6651

DUNEDIN PARTNERS
Nathan Adams
John Anderson
Helen Davidson
Stephen Grant
Nicky Hay
Roger Macassey
Phil Page
David Robinson
Diccon Sim
David Smillie

WANAKA PARTNERS
David Brent
Peter Gowing
Felicity Hayman
Tony Horder

ASSOCIATES
Gina Chin
Gareth Foley
Kathy Grant
Taryn Gudmanz
Jo Hambleton
Elsja Kinley
Chris Thomsen

CONSULTANTS
Warren Alcock
Jan Caunter
Iain Gallaway
John Walker

CHIEF EXECUTIVE
Karyn Close

NOTARIES PUBLIC
David Brent
Iain Gallaway
Peter Gowing

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of a plan change pursuant to
the First Schedule to the Act

BETWEEN **MACKENZIE PROPERTIES
LIMITED**

Appellant

AND **MACKENZIE DISTRICT
COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON
PLAN**

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

Solicitor on record: P J Page

P O Box 143, Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564
Email: phil.page@gcalegal.co.nz

TO: The Registrar
Environment Court
Christchurch

1. Mackenzie Properties Limited appeals part of a decision of Mackenzie District Council on the following plan:

The Mackenzie District Plan – Plan Change 13

2. Ruataniwha Farm Limited made a submission on the Plan Change. Ruataniwha Farm Limited was struck off the Companies Register on 14 October 2009. Mackenzie Properties Limited is a successor to Ruataniwha Farm Limited, section 2A Resource Management Act.

3. Mackenzie Properties Limited received notice of the decision on 8 September 2009.

4. The decision was made by Mackenzie District Council.

5. The part of the decision that Mackenzie Properties Limited is appealing is:

Those parts of the decision that relate to the boundaries for the Manuka Terrace Rural Residential zone.

6. The reasons for the appeal are as follows:

- (a) Mackenzie Properties Limited owns land legally described as Lot 3 DP 75206, known as the Ohau River Block. The Ohau River Block is on the southern boundary of the Manuka Terrace Rural Residential Zone.
- (b) Ohau River Block was zoned Rural prior to the notification of Plan Change 13. The decision on Plan Change 13 results in the Ohau River Block being included in the Mackenzie Basin Subzone.
- (c) Prior to the notification of Plan Change 13, Mackenzie Properties Limited applied to subdivide the western part of the Ohau River Block into approximately 49 residential allotments and a balance allotment. This application is a controlled activity and was processed on a non-notified basis. A decision upon that application has not been given at the time of filing this appeal, but

given that it is a controlled activity Council may not refuse consent.

- (d) The Plan Change will result in residential buildings upon the 49 residential lots being assessed as discretionary activities.
- (e) It is not a sustainable use of resources (a subdivision) for there to be a possibility that consent will be refused to utilise that subdivision.
- (f) It is inappropriate from a planning perspective for a subdivision consent to be granted for residential activity where Council may frustrate that consent by declining building upon the new lots.
- (g) The Court has criticised rules in other Plans that give Council that jurisdiction to decline consent for buildings that are necessary for a residential subdivision to be developed for that purpose, *Spackman v Queenstown Lakes District Council* [2007] NZRMA 327.
- (h) Given that the resource consent application before Council is for a controlled activity and it cannot refuse consent, it is inequitable and contrary to Part 2 for Council by way of a plan change to frustrate the use of that subdivision by way of a plan change.
- (i) The Ohau River Block shares characteristics with the Manuka Terrace Rural Residential Zone. The Block does not sit well with the rest of the Mackenzie Basin Subzone and should not be subject to this subzone.
- (j) The Ohau River is the natural boundary for the Manuka Terrace Rural Residential Zone.
- (k) Council has failed to properly consider Mackenzie Properties submission as it relates to this appeal as the Schedule of Decisions of Submissions at 34 does not address its submission.
- (l) The section 32 analysis is inadequate as it relates to this appeal.
- (m) The decision upon Mackenzie Properties submission is contrary to Part 2.

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 30 working dates after this notice was lodged with the Environment Court. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

2. How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the Appellant's submission or the decision appealed. These documents may be obtained, on request, from the Appellant.

3. Advice

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

Contact Details of Environment Court for Lodging Documents:

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

The Christchurch address of the Environment Court is:

83 Armagh Street (corner Durham Street)
Christchurch 8011

Its postal address is:

P O Box 2069
Christchurch 8140

And its telephone and fax numbers are:

Telephone: (03) 962 4170
Fax: (03) 962 4171

Plan Change 13 - Names and Address of Submitters and Further Submitters

Name	Address1	Address2	Address3	Address4
Mackenzie District Council	c/- Glen Innes	P O Box 52		FAIRLIE 7949
Environment Canterbury	c/- Vin Smith	P O Box 345		CHRISTCHURCH 8140
Rhoborough Downs Ltd	Nicola Hornsey	P O Box 17		LAKE TEKAPO 7945
Bruce Pipe	P O 737			TIMARU 7940
Simons Pass Station Ltd & Pukaki Irrigation Company Ltd	c/- Goodman Steven Tavendale Reid	A C Limmer	P O Box 442	CHRISTCHURCH 8140
NZ Defence Force	c/- Rob Owen	Private Bag 902		UPPER HUTT 5140
Mt Gerald Station Ltd	Michael Burtischer	P O Box 81		LAKE TEKAPO 7945
W E Robinson & W J Ellery	c/- Alan Clark	P O Box 47-587	Ponsonby	AUCKLAND 1011
John Harvey Blair	15 Allum Street	Kohimarama		AUCKLAND 1071
Irishman Creek Station Ltd	Justin Wills	Private Bag 910		TIMARU 7940
Mackenzie Branch Federated Farmers of New Zealand	c/- J B Murray	The Wolds Station	Private Bag	FAIRLIE 7949
Guide Hill Station	c/- David Richard & Marion Patricia Gould	Braemar Road		LAKE TEKAPO 7945
Department of Conservation	c/- Cheryl Colley	Private Bag 4715		CHRISTCHURCH 8140
Lone Star Farms Ltd	c/- Rata Consulting Ltd	5 Erniea Terrace	Cashmere	CHRISTCHURCH 8011
Star Holdings Ltd	c/- Rata Consulting Ltd	5 Erniea Terrace	Cashmere	CHRISTCHURCH 8011
South Canterbury Branch of Royal Forest & Bird Protection Society of NZ	c/- Fraser Ross	29a Nile Street		TIMARU 7910
Meridian Energy Ltd	c/- Boffa Miskell	Rochelle Hardy	P O Box 110	CHRISTCHURCH 8140
Coldwater Group	c/- Caleb Ballin	P O Box 41039	Ferrynead	CHRISTCHURCH 8247
Lana Hastie	P O Box 57			TWIZEL 7944
High Country Rosehip Orchards Ltd	c/- Vivian & Espie Ltd	P O Box 2514	Wakatipu	QUEENSTOWN 9349
Mackenzie Lifestyle Ltd	c/- Vivian & Espie Ltd	P O Box 2514	Wakatipu	QUEENSTOWN 9349
Fountainblue Ltd, Southern Serenity Ltd & Pukaki Tourism Holdings Partnership	P O Box 47			TWIZEL 7944
Steven Rhodes	15 Jasper Way	Springfield Lakes	Brisbane	QUEENSLAND 4300
Frank Hocken	P O Box 100			TWIZEL 7944
Ken & Glenda Robinson	42 Brooks View Heights	Tasman	RD 1	UPPER MOUTERE 7173
Brenda Agnew	P O Box 140			TWIZEL 7944
C Hughes & Associates Ltd	c/- Nicola Scott	P O Box 599		WANAKA 9343
Craig Aaron Robinson	Mawheraiti Postal Centre			GREYMOUTH
K M Lane	121 Deans Ave	Riccarton		CHRISTCHURCH 8011
Brett J Robinson (Nettlebed Family Trust)	42 Brooks View Heights,	R.D.1	Upper Moutere	NELSON 7173

Plan Change 13 - Names and Address of Submitters and Further Submitters

Name	Address1	Address2	Address3	Address4
Angela Robinson	459A North End Road	Fulham	London	UNITED KINGDOM SW6 1NZ
Andrew Dyer	2 Westminster Place	Rototuna		HAMILTON 3210
Ursula Krebs	PO Box 545			WANAKA 9343