

IN THE MATTER OF the Resource
Management Act 1991

AND

IN THE MATTER OF Submissions and Further
Submissions by Simons
Pass Station Ltd, Simons
Hill Station Ltd and
Pukaki Irrigation
Company Ltd to Plan
Change 13 to the
Operative Mackenzie
District Plan

EVIDENCE OF M.J.G. GARLAND

INTRODUCTION

1. My name is Michael John Graham Garland. I am a resource management consultant residing in Christchurch, where I am a principal of the firm Robson Garland Limited. I have a BA Degree, a postgraduate Diploma in Town Planning and I am a member of the New Zealand Planning Institute and Resource Management Law Association. Between the years 1966 and 1991 I worked in the field of Town and Country Planning in both New Zealand and the United Kingdom for various central and local government agencies and as a private consultant. Since 1991, however, my work has been mainly in the area of resource management.

2. I am familiar with the work required to identify and provide for the protection of outstanding natural features and landscapes in district plans having been involved, working with landscape architects, in various districts such as Central Otago, Hurunui, Queenstown Lakes and the Banks Peninsula portion of Christchurch City.
3. I am also familiar with the Mackenzie Basin from my time in the Ministry of Works in the 1960s and later with the proposal to augment the Opihi with Tekapo water, the latest iteration of Pukaki Village and as a frequent traveler through the district.
4. I have been asked to examine Plan Change 13 from a resource management perspective.
5. In my evidence, I firstly discuss generally the requirements of the Act in relation to the protection of landscapes and the way such matters should be provided for. I then move on to the methods proposed in Plan Change 13 in particular as they affect the operations and proposed future operations of Simons Pass and Simons Hill Stations. Both of these parties have opposed the protection of outstanding landscapes. It is the level of control proposed that concerns them, particularly the classification of the whole basin as outstanding when much of it is a landscape that is typical of the district rather than out of the ordinary in the Mackenzie context.

INTRODUCTORY DISCUSSION

6. Categorising landscapes and considering whether any landscapes need protection is a task generally undertaken by a Landscape Architect. Devising the methods to put in the District Plan generally falls to the Planner. I am mindful, however, of the words of Judge Jackson in Wakatipu Environmental Society v Queenstown Lakes District Council, C189/99 (The WESI Case)

“Ascertaining an area of outstanding landscape should not (normally) require experts. There may be instances where the landscape is flatter or such a large geological unit that an uninformed observer may have difficulty conceiving of it as outstanding in the

first case or as a single landscape in the second. Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis."

7. The Court also made some important observations. For instance, it opined that what is outstanding (out of the ordinary) can only be assessed – in relation to a district plan – on a district wide basis *"because the sum of the district's landscapes are the only immediate comparison that the territorial authority has"*. The Court also observed that while the main body of outstanding landscape will be universally accepted, experts can help to determine where the actual boundaries are. This is sound advice from which to begin the sort of exercise culminating in a plan change such as that now proposed.
8. The Mackenzie District Council has classified the whole of the Mackenzie Basin as Outstanding Natural Landscape. I think one can understand how that might be so in a general sense when viewed on a national or regional (Canterbury) sense, but at a district level a much more refined approach is required because it is at this point that policy is implemented in the form of land use regulation.
9. A very good example can be found with Banks Peninsula. The Canterbury Regional Landscape Study carried out in 1993 identified the whole of the Banks Peninsula as an Outstanding Natural Feature and Landscape on a regional basis. In part I suppose this is so because it stands out as an exception to the generally flat Canterbury Plains. However, on a district (Christchurch City) basis, we know that assessment at a regional level does not imply that every part of the peninsula is outstanding. Indeed the more detailed analysis now accepted by the Environment Court has found that the greater part of the Banks Peninsula is not outstanding in the context of the district.
10. Another example of the different perspectives can be taken from the Selwyn District which initially identified the Canterbury Plains as an Outstanding Natural Landscape. Geomorphologically, in terms of their formation by natural processes, the Canterbury Plains are one of the finest (and rarest) examples of a conglomeration of broad fluvial

megafans in the world. In global terms, the Canterbury Plains are an Outstanding Natural Landscape but in Selwyn they make up the larger part of the district and during the submission period the Council abandoned the outstanding classification. The Council accepted that for the purpose of the Act, they are not outstanding. It has, however retained an outstanding category in its alpine areas of which there are many more examples world wide and even on a national basis.

11. Interestingly enough, the Regional Policy Statement (Chapter 20.4(e) and (f)) in dealing with matters of Regional Significance differentiates between landscapes that are:
 - Distinctive
 - Unique to
 - Characteristic of, or
 - Outstanding within the region.

12. In identifying landscapes and natural features, factors to be considered include whether a site is identified as being a regionally outstanding landscape or natural feature in the Canterbury Regional Landscape Study – the basin is, just like Banks Peninsula.

13. The explanation states that if an area is listed above, that does not necessarily mean that it is of regional significance. A whole lot of listed criteria and other relevant considerations need to be taken into account.

14. While in a general sense it is the Outstanding Natural Landscapes that require protection from inappropriate subdivision and development, some Outstanding Landscape is capable of absorbing development whereas other landscapes are more sensitive and less capable of handling change. The identification of outstanding natural landscapes therefore is not based upon vulnerability but the fact that within the district they have significant naturalness and they stand out from their surroundings.

15. For the above reasons, I believe the first question that should be asked about Plan Change 13 is whether or not it has selected those elements of the landscape that are natural and out of the ordinary when compared with the surrounding landscape. Some landscapes can be unique to the district and distinctive but not “outstanding”. I believe the level of exercise that is required could not simply paint the entire Mackenzie Basin as Outstanding Natural Landscape in district terms. Such an approach is too generic and simply serves to devalue those elements of the landscape that are truly outstanding.
16. My next concern is with the objectives, policies and rules we adopt in providing for the level of protection that Part 2 of the Act requires. Whatever provisions are adopted, they have to be for achieving the purpose of the Act as expressed in section 5 and they have to be justified in terms of section 32 of the Act. The late Judge Treadwell described section 32 as being “*couched in terms which indicate that interference by means of plan provisions should be kept to a minimum*”. While it is section 6 of the Act which requires us to protect outstanding natural features and landscapes, this section is accessory to and subservient to section 5 which outlines the purpose of the Act. Unfortunately this section has come to mean all things to all people. The purpose of the Act, however, is to promote the sustainable management of natural and physical resources. Note that it is not promoting sustainable management of the environment.
17. “Sustainable management”, I believe means managing resources in a manner that simultaneously:
 - (a) allows people and communities reasonably to go about their affairs (social, economic and cultural wellbeing); and
 - (b) takes care of the environment for future generations.
18. We know from section 6 that in taking care of the environment we must place significant weight on protecting our outstanding landscapes. However, in coming back to section 5, which has paramountcy over section 6, we find that this must not come at serious or debilitating cost to people and communities. Since it is people and

communities going about their affairs that can cause damage to the environment (although equally, it can positively affect it), there obviously has to be some sort of balance. On the one hand, we must put up with some adverse effects on the environment if we are to continue to thrive and on the other we must hold back and make some sacrifice in the interest of maintaining a benign environment and providing for the future. It is easy to conjure up an image of a highly regulated regime tempered only by the requirement in section 5 to enable people and communities. The theme in section 5 of not unnecessarily interfering in people's lives however is carried through into section 9. Unlike previous legislation, section 9 starts from the basis that everyone should be allowed to do whatever they want with their land unless a rule in a plan intervenes.

19. However, it is section 32 which provides the real test for any provision in a district plan. The Council must prepare a report justifying the provisions and comparing them against the risks of adopting no provisions. It must also show that the methods it proposes to adopt are the most efficient and effective out of the principal alternatives available. Through this process, it is important to understand that regulation through rules is not enabling in terms of the purpose of the Act. A certain amount of regulation is obviously necessary but regulation does not enable anything. It can however help to ensure that we have a benign environment.
20. This means that firstly even with matters of national importance, these must not be the single issues driving the provisions in our district plans. Even before considering any provisions under section 32 the methods must be balanced in terms of being seen to be methods of achieving the purpose of the Act.

PLAN CHANGE 13

21. The overall purpose of Plan Change 13 is said to be to provide robust provisions for managing the outstanding natural landscape of the Mackenzie Basin and protecting it from inappropriate subdivision use and development. It is suggested that the Plan

Change has been commissioned in response to development pressure within the Mackenzie Basin, particularly residential development and subdivision. However, as far as I can tell and as far as my clients are concerned, there has been no such pressure in their vicinity; quite the opposite in fact, because the Pukaki Village zone has not yet been developed. In all fairness, it seems that the Council is in fact responding to residential growth and development around the fringes of Twizel, the hearings for which, ironically have been deferred.

22. The greatest concern to my clients is that the Plan Change seems designed to place very heavy control on anything that changes the landscape. Even if ultimately the rules of this Plan Change do not do so, there is concern that once the proposed objectives and policies are settled (and especially, identification of the entire Basin as outstanding) they might be used to justify tighter controls through a further plan change without there being an opportunity then to challenge the said objectives and policies.
23. Mr Fastier's evidence has explained that changes to the landscape are needed to ensure responsible land management, to control rabbits, hieracium and to retain the soil, large tracts of which, devoid of pasture cover, are being lost to the wind. Plan Change 13 seems to seek to preserve the status quo, which is not sustainable management of resources. Innovation and change must be facilitated and this will involve land development, subdivision, and more farm houses and buildings in locations suited as much to good farming practices as to landscape criteria. The Plan Change is too much directed by a single issue and does not in that case meet the much broader purpose of the Act: that of promoting sustainable management of resources. In that respect, the District Plan, as it currently stands, better fits the purpose of the Act. As Mr Glasson and Dr Steven pointed out in his evidence, areas of outstanding natural landscape are already protected in the operative plan and it is not a "take no action" option.

CLIENT'S SUBMISSIONS

24. My clients oppose the whole of the Plan Change - not because they do not believe outstanding natural landscape should be protected, but because it fails to strike an appropriate balance between enabling land owners and protecting landscape values. The Mackenzie Basin contains a great variety of landscapes even within the Simons Pass and Simons Hill Stations and much of it the Basin is a working landscape as you have heard from Dr Steven and Mr Glasson. There are large parcels which could be labeled typical rather than outstanding and, above all, there are plenty of opportunities to place buildings sensitively within the landscape. Buildings and houses will be necessary if the land development that is needed to sustain the productive capacity of the soil is to occur.
25. Many parts of the basin are highly modified by human activity. For instance, Lakes Benmore and Ruataniwha are not natural nor for the most part is Lake Pukaki and Lake Tekapo's shoreline is far from being in its natural state. A network of canal and pylon lines cross the basin - one of the local benefits of which is that water is now available for irrigation over a portion of the basin including Simons Pass and Simons Hill. While rabbits have been held in check by calicivirus, this effect is expected to be temporary and there are still large areas of potentially productive land that have been taken over by hieracium and wilding pines or remain largely bare as a result of previous rabbit infestation. I understand that soil is being lost to the wind at a rate of up to 2.2 tonnes per ha annually in some places. These areas are not presently stocked, but with water, could be sown in pasture and become productive providing the sort of returns which would enable the cost of pest eradication and control to be recovered and sustained. In many ways, the present landscape should not be valued for the way it is.
26. Settled Rural Policy 4A relates to Vegetative Cover:
"Land use activities should be carried out in such a way that a robust and intact vegetation cover is maintained to assist in supporting the life supporting capacity of the soil." Preserving the land in its current state is not desirable because the current state is actually one of deterioration of standards.

27. Policy 4C is to

“Encourage the use of land management techniques that maintain or enhance the life supporting capacity of soils”.

Significant investment is required to achieve this Policy and this must be financed from returns from the land. In the introduction to the Plan Change, it is explained that the Plan Change *“is based on the general principle that residential use and subdivision should follow the current land use patterns of the Basin, namely being limited to either existing towns or existing clusters of buildings usually associated with homesteads”*. I believe this places too much value in the status quo which is reflective of past land management which has not always been good for the land. The Plan Change should be facilitating and enabling responsible change – not preserving the status quo. Simons Pass and Simons Hill Stations currently contain only one centre pivot (on Simons Hill) yet water will be available for 10-15 of these with the creation of a similar number of fully economic units. While there may be some logic to having the 200ha minimum standard for subdivision, there should be provision for a dwelling and outbuildings on every unit of that size. A careful arrangement of boundaries may well allow development of collective nodes but it is important that this should not unduly compromise good land management and efficient farming operations. The answer may well be to couple each subdivision application with the establishment of suitable positions for buildings – this could be a matter over which control is reserved in the subdivision process.

28. For the landowner responsible for stewardship of the land, the Plan Change does little but signal an uncertain future. Farmers want to do what they do now but better and there is no encouragement in the Plan Change for them to do so. I will discuss a number of instances where there is a great deal of uncertainty:

- (i) Proposed Planning Map 8 is so scaled that it is difficult to discern how properties are affected. One potential node may be spread over several

properties. This could lead to a “first in first served” situation and severely disenable some landowners. In such cases, the issue of legal boundaries should have been examined with some care.

- (ii) The provision of nodes for large numbers of buildings around existing homesteads is not always appropriate. If land is to be developed and subdivided there will have to be provision for new homesteads within each subdivided area, otherwise there will be little point in subdivision. Each group of buildings will need to be properly sited and if the concept of a node means buildings are to be suitably grouped rather than scattered I think that is supportable. If however the homesteads for several properties are forced into a collective grouping that simply may not work with good land management practices. The answer lies with greater flexibility. Simons Hill station has two homesteads, suitably located with outbuildings. Their locations could equally have been designated as nodes prior to building.
- (iii) The provision for new nodes also does not follow the logical pattern of land development for farming purposes. The locations chosen seem to have been based on the single issue of landscape. In one case on the Simons Pass and Simons Hill Stations this has led to a completely inappropriate location in the bed of the Pukaki River. In my observation, the terrace above that area could easily provide a home for a number of nodes or groupings of buildings. It is dotted with crevices and erratic deposits from glacial times. Mr Glasson has made a similar observation. Clustering of numerous buildings is appropriate in some places but not in others where one, two or three buildings only can be effectively accommodated. I note also that Policy 6B to require dwellings to be set back from property boundaries to reduce the possibility of significant exposure to adverse effects from a neighbouring property may well count against close groupings between different ownerships. Also, I would not have thought it was always in the best interest to have buildings housing animals near dwellings in the first place.
- (iv) The provision for isolated farm buildings is also uncertain. If an accessory building is not considered to require a remote location and is not within a node,

apparently it becomes non-complying. This means there is an undue element of discretion involved in deciding the status of a proposal.

- (v) Policy 3G tends to exacerbate the level of uncertainty rather than the opposite as contended by the Council. The matters that have to be satisfied are so numerous, so broad and leave so much room for divergence of opinion and could be interpreted in such a way as to be directed toward avoiding any visual effects from new buildings. Some effects of a negative nature must be able to be accommodated in a working landscape where management techniques must be encouraged to evolve. In any event, visibility of built form alone does not necessarily equate to an adverse effect. Policy 3G strongly suggests otherwise.

29. Overall, I think the Plan Change is cumbersome, complicated, and unwieldy. It seems to be heading down a path that the Environment Court has already rejected during the development of provisions in Queenstown Lakes and Banks Peninsula.

30. The new Simons Hill homestead is well sited but had Plan Change 13 been notified at the time, it would have fallen into the non-complying category and consent might well have been difficult to achieve. The homestead allows the owner and his son (who jointly runs the farm) to live on the same property while not being in each other's pockets and while still enjoying the amenity that comes with *not* being tucked away in a river-bed.

SECTION 32

31. I do not believe the section 32 report is adequate. As Mr Vivian has explained, it does not appear to acknowledge the purpose of the Act as expressed in section 5. That should be the starting point and should very much shape the following analysis. The Objectives, Policies, Rules and methods to be examined are not to be directed singly at section 6(b) matters; they have to be methods of achieving the purpose of the Act. This requires an acknowledgement that section 5 requires other issues to be taken into

account, other issues which could conceivably overwhelm section 6(b) issues in many circumstances.

32. Plan Change 13 represents a significant shift in the approach taken by the District Council and the section 32 report does not properly assess the impact of this. For instance, the cost of not allowing any building development as of right (aside from accessory buildings within nodes) is not adequately considered. Such costs can be private opportunity cost or indeed costs in terms of the environmental damage which can only be checked by development or new land management provisions which the plan change will discourage or prevent. Farmers are not just concerned about the need for consents because they might be “Bothersome”. There are significant risks and costs involved in gaining consent. A lot of time and money is needed to obtain the consents necessary for innovative and future farming practices.

33. In a case such as this, understandably the Landscape Architect must play a very important role. Judge Jackson in the WESI case was at some pains to explain the role of the Landscape Architect. The recognition of an outstanding landscape as I understand it is universal and there will be little or no disagreement over what is outstanding – that does not require expert analysis. Experts can help define the boundaries and refine the approach but you must not expect a specialist to step outside the boundaries of his or her expertise. What I am saying is that a Landscape Architect’s role in this case is confined to the landscape – a section 6(b) matter. Mr Densem’s report cannot be required to take in the overarching role of section 5. This, however, is what the Council and its planners are expected to do. In my opinion, they have not.

34. Notably in this case even the Landscape Architects do not universally agree that the whole of the basin is outstanding natural landscape and it is quite apparent that there are divisions within the community. I think the legislature anticipated this, for it made provision in the Act for appropriate protection of other high quality (but not so natural or outstanding) landscapes under (particularly) section 7(c), (d) and (f):

- (c) *The maintenance and enhancement of amenity values.*
- (d) *Intrinsic values of ecosystems.*
- (f) *Maintenance and enhancement of the quality of the environment.*

35. Notably the ethic of stewardship and the efficient use and development of natural and physical resources are also matters to which councils shall have particular regard under section 7 and these are elements which seem to have been given scant regard in Plan Change 13.

CONCLUSION

36. I think it is obvious that the categorisation of the whole of the Basin as Outstanding Natural Landscape is not the correct approach to take for the District Plan. Even Mr Densem agrees that the Basin comprises a series of areas and sub-areas which at various scales can also be considered landscapes in their own right. The Act provides for the different components to be treated differently and the Environment Court decisions so far have followed that course in Hurunui, Christchurch City (Banks Peninsula) and Queenstown Lakes.

37. I have read Dr Steven's and Mr Glasson's evidence. Unlike them, I should not come to my opinion on a single issue because I must take into account the purpose of the Act as expressed in section 5. I prefer their approach to that taken by Mr Densem because their combined views are not so trenchant as to disallow a balanced approach. Mr Vivian has also grasped the importance of such a balanced approach and I find that I agree with his views.

38. These then are the reasons I believe the plan change should be rejected or, if not, varied to reflect the various levels of protection appropriate to the different components of the Basin taking proper account of the need for people and communities independently to provide for their social, economic and cultural wellbeing. The District Plan cannot play

an active social, economic or cultural role but it must allow these things to happen at the same time as taking care of the environment.

39. It seems to me that the Council has started the exercise with the intention to recognise the balance required, because Policy 3B – Economy, Environment and Community states:

“To encourage a healthy productive economy, environment and community within and maintain the identity of the Mackenzie County”.

40. I fear that this balance is not reflected adequately in the measures that follow: a healthy productive economy, environment and community will require changes in the pattern of land management.

WHAT IS THE BEST WAY FORWARD?

41. I believe the Council is in a similar situation that which Banks Peninsula found itself in ten years ago. In that case there were large areas allocated to the Outstanding Natural Landscape category on the basis of a landscape study directed at forestry planting. A Task Force was set up to find some common ground between submitters. Little was found, however, and the Council embarked upon a variation to the plan which was just as controversial. The issues were not resolved until a further, much more robust, landscape study was undertaken and the plan was varied yet again. A final resolution was reached this year, largely through mediated agreement between parties with very diverse positions.

42. In my observation, the level of opposition reduced significantly in Banks Peninsula once a robust landscape assessment had been done and in some instances following more meaningful consultation. Also, the more multi-disciplinary approach undertaken during the study helped bring about a better balance in terms of the Purpose of the Act. There are strong parallels for Mackenzie District because there is a real outcry from the

community affected here just like there was in Banks Peninsula at the first round. Something like two-thirds or more of the rural land ownership in the basin has expressed opposition to this plan change.

43. I do not recommend that this Council should take the same lengthy course but I do think that it is at great risk of finding itself in the middle of protracted litigation unless it changes tack considerably. Unlike many plan changes for which I have provided evidence (but very similarly to the BPDC situation), this is not one where a single submitter (or several submitters) can put forward an alternative package of provisions. The task is simply too large and too costly for an individual to undertake. This is why I suggest that the Council has to re-visit this Plan Change and formulate more appropriate provisions based on more accurate landscape delineations.
44. I consider that there should be a significantly more refined approach to the selection of areas of outstanding natural landscape. It should be recognised that within the Mackenzie Basin there are some typical landscapes and some that are out of the ordinary, requiring greater protection. The resulting plan change should then reflect the purpose of the Act as expressed in section 5. Until that is done as I have said, the current plan better reflects the purpose of the Act.
45. Mr Glasson has concluded that, provided appropriate principles of development are applied, there will be room for as of right or controlled activity status for buildings throughout the Basin. This will facilitate evolving farming operations, innovation in land management techniques and, consequently, some responsible changes to the visual environment. In my opinion, an appropriate level of permitted and controlled building development is essential in enabling people to provide for the wellbeing with certainty and without undue cost.
46. If the concept of nodes is to mean that buildings are to be grouped in suitable locations, then that is supportable but it needs to be flexible enough to allow for the maintenance of privacy and the separation of buildings housing animals from residences.

Subdivision patterns need to be devised so that the buildings essential for proper management are also able to be established. In some cases, there will have to be a compromise so the provisions of the plan should not be unduly prescriptive.

47. I believe that a plan change encompassing all of these elements will better achieve the settled objectives and policies of the District Plan and also the purpose of the Act. I consider it is important for the Council, as a responsible local authority, to pay heed to significant level of opposition from those most affected and withdraw or significantly amend the Plan Change. There would be very little risk in taking the time to properly address the issue of controls within the basin as I cannot see any examples of real pressure for residential subdivision and development beyond the Twizel township itself.