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6 October 2009

Chief Executive Officer
Mackenzie District Council
P O Box 52
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Dear Sirs

MACKENZIE DISTRICT COUNCIL - PLAN CHANGE 13 - APPEAL HIGH COUNTRY ROSEHIP ORCHARDS LIMITED AND MACKENZIE LIFESTYLE LIMITED V MACKENZIE DISTRICT COUNCIL (Our Ref: 367987-12)

We enclose by way of service a notice of appeal which has been today filed in the Environment Court at Christchurch.

Please note that we have applied for dispensation as to the requirements to serve upon yourself and all other interested parties a full copy of Council's decision on the Plan Change.

Should you have any queries please do not hesitate to contact the writer.

Yours faithfully
MACALISTER TODD PHILLIPS

G M Todd / Lauren Barnett
Partner / Solicitor

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BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY

ENV-2009-CHC-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an Appeal under Clause 14(1) of the First
Schedule to the Act

BETWEEN HIGH COUNTRY ROSEHIP ORCHARD
LIMITED AND MACKENZIE LIFESTYLE
LIMITED

Appellants

AND MACKENZIE DISTRICT COUNCIL

Respondent

NOTICE OF APPEAL

MACALISTER TODD PHILLIPS
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To: The Registrar
Environment Court
Christchurch

1. **High Country Rosehip Limited and Mackenzie Lifestyle Limited** (“the Appellants”) appeal the decision of the Mackenzie District Council (“the Respondent”) on proposed Plan Change 13 to the Mackenzie District Plan.
2. The Appellants lodged submissions on the Plan Change.
3. Notice of the decision was received on 4 September 2009.
4. The part of the decision that this appeal concerns is:
 - (a) The whole decision,

in particular
 - (b) The findings at paragraph 164 of the decision that the appellant’s land should remain within the Mackenzie Basin subzone and the Commissioner’s comments that there was insufficient evidence presented on the values of the land to warrant a rezoning of the land;
 - (c) The decision of the Commissioners not to accept the submission and further submissions of the appellants that the plan change be abandoned or withdrawn;
 - (d) The decision of the Commissioners to reject the further submission of the appellants that there was no need for the Mackenzie Basin subzone and that there should be the same level of control throughout the rural zone;
 - (e) The decision of the Commissioners to reject the further submission of the appellant supporting a submission that the plan change and the section 32 analysis were flawed and should be redrafted;
 - (f) The decision to reject the further submission of the appellants that supported amendments to policy 3L(a) by adding the words:

“Each subdivision to allow a building site”;

and to delete policy 3L(b) or as an alternative to delete policy 3L in its entirety;
 - (g) The decision of the Commissioners to reject the submission to rename the Manuka Terrace rural residential zone and the zone boundaries be amended to include the appellant’s land identified in its submission together with all consequential amendments to achieve the intent of the submission;

- (h) The decision of the Commissioners to reject the appellant's submission that the extent of the Mackenzie Basin subzone be amended to exclude the appellant's land identified in its submission.

5. The reasons for the appeal are as follows:

- (a) The section 32 analysis that supports the plan change is inadequate and does not support the decisions that have been made;
- (b) The plan change has not sought to properly identify and differentiate the different landscapes that make up the rural zone and in particular identify outstanding natural landscapes and other landscapes. To that end, the Council is unable to fulfil its obligations under the provisions of the Resource Management Act;
- (c) No recognition has been given to the fact that the appellants had filed an application for resource consent to subdivide its land prior to the notification of the plan change. Such was recognised in the plan change as notified yet such recognition was deleted in the plan change as amended without any submissions seeking such amendment having been made;
- (d) There are no detailed reasons given for rejecting the appellant's submissions seeking a rezoning of its land and for a decision refusing to take the land out of the Mackenzie Basin subzone;
- (e) The decision refers to the forthcoming review of the Twizel area as being underway. The decision on the Plan Change effectively pre-empts that review. If such a review is to be undertaken, then the same should be undertaken as part of an overall review of the zoning of the area and Plan Change 13 should not be made operative in isolation to that review;
- (f) The decision acknowledges that there is a need for a detailed assessment in various areas and the impacts of development on them. This is an acknowledgement that there has been insufficient study and investigation to justify the plan change;
- (g) No submitter raised any issue that the appellant's land contained values worthy of investigation or protection;
- (h) The decision on the appellant's submission and further submissions raises issues as to what reasonable use might the appellant's land be put. This is a relevant matter for consideration pursuant to section 85 of the Resource Management Act;
- (i) The decisions are contrary to sound resource management planning principles;
- (j) The Commissioners have failed to give any detailed reasons for many of their decisions to reject submissions and further submissions of the appellant.

6. The Appellants seeks the following relief from the Court:

Either, or a combination of the following:

- (a) The appellant's land be rezoned as part of the Manuka Terrace rural residential zone or as any other named rural residential zone with similar rules to the Manuka Terrace rural residential zone;
- (b) The appellant's land be removed from the Mackenzie Basin subzone;
- (c) The Plan Change be abandoned.

7. The appellant seeks costs.



Graeme M Todd

Authorised to sign on behalf of the Appellant

Date: 6th October 2009

Address for Service of Appellant:

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The following documents are attached to this notice:

- (a) A copy of the submissions made by the Appellants
- (b) A copy of the list of names and addresses of persons to be served with a copy of this notice.

Advice to recipients of copy of notice of appeal

How to become party to proceedings

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 days 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).

How to obtain copies of documents relating to the appeal

The copy of this notice served on you does not attach a copy of the decision appealed. This document may be obtained, on request from the Appellants.

Advice

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

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Form 1

Objection to publicly notified plan change

Clause 6 of First Schedule, Resource Management Act 1991

To: Mackenzie District Council

Name of Submitter: High Country Rosehip Orchards Limited

Address for Service: C/- Vivian and Espie Limited
PO Box 2514
Wakatipu
Queenstown

This is a submission on the following proposed plan change (the proposal): Mackenzie District Council, Plan Change 13, Rural Zone - Mackenzie Basin.

The specific provisions of the proposal that my submission relates to are: This submission relates to Plan Change 13 in its entirety.

My submission is: High Country Rosehip Orchards Limited **opposes** Plan Change 13 in its entirety.

High Country Rosehip Orchards Limited ("HCROL") owns land located on the eastern side of State Highway 8 opposite the Twizel township. This land is legally described as Sections 1, 3 and 8 Survey Office Plan 384036.

This submission opposes Plan Change 13 in its current form on the basis that the plan change is: based on a premise that is fundamentally flawed; is not adequately assessed and justified in the section 32 analysis and the Mackenzie Basin Landscape: Character and Capacities Report; contains significant errors and contradictions; will result in adverse consequences for the Mackenzie District as a whole and the HCROL in particular; and is contrary to the purpose and principles of the Resource Management Act 1991.

The specific points of opposition follow.

1. The Premise of PC13 is Flawed

- 1.1 PC13 seeks to "provide greater protection of the landscape values of the Mackenzie Basin from inappropriate subdivision, development and use" by recognizing the entire Mackenzie Basin as an "Outstanding Natural Landscape" through the identification of the Mackenzie Basin Sub-zone (see new Rural Policy 3A), and imposing increased controls over subdivision and building development within that "Sub-zone".

3.0 *The boundary of the Mackenzie Basin Sub-zone is arbitrary*

3.1 The land owned by HCROL is included within the boundary of the Mackenzie Basin Sub-zone. It is submitted that the boundary of the Sub-zone is arbitrary and fails to take into account the relevant geographical, locational and landscape characteristics within the Basin and land owned by HCROL in particular. The following points are noted:

- While the Sub-zone excludes the Twizel township, it overlays the Tekapo township, the Pukaki Village Zone, Glentanner Tourist and Open Space Zones, the Manuka Terrace Rural Residential Zone and the Pukaki Airport Zone. If the rationale for the Sub-zone is founded in the protection of outstanding natural landscapes, it is non-sensical to include within the Sub-zone these other townships and zones that allow for significant subdivision and built development to occur.
- The existing environment on, and in the vicinity of, land owned by HCROL has been significantly modified through: domestication (including national infrastructural assets), intensive grazing, and the spread of exotic species. The plan change documentation does not adequately acknowledge and discuss the effect of these factors in determining the relevant landscape classification and the extent to which the Sub-zone boundary (given its purported recognition of Outstanding Natural Landscapes) should take into account these characteristics and accordingly exclude land owned by HCROL.
- Ultimately, the plan change documentation fails to take account of the proximity of land owned by HCROL to the Twizel township and the extent to which the outer edge of Twizel town logically extends east to incorporate this area.

4.0 *The identification of landscape sub areas, existing nodes and nodal thresholds is arbitrary*

4.1 The identification of landscape sub areas, development node limits and areas where no development is appropriate is arbitrary and lacks sufficient justification in the plan change documentation. In particular:

- The identification of nodal limits attempts to predetermine cumulative thresholds in relation to visual effects - it is impossible to see how such conclusions can be reached without reference to specific development proposals (that contain specifics in relation to the location, nature and scale of the development) assessed in the context of the receiving environment on a case by case basis.
- The identification of "existing homestead nodes" is inconsistent across the Sub-zone. There are a number of properties and areas within the Sub-zone that exhibit characteristics that are consistent with the proposed homestead node concept but have not had an existing node identified.

9.0 In general the proposed provisions are overly complex, incoherent and contradictory in particular:

It is unclear what the 6 – 10 building platform restriction for nodes is seeking to achieve. This limit is arbitrary, it fails to acknowledge that a development “node” could consist of any number of buildings or building platforms depending on the landscape setting.

The wording of standard 12.7.b.x is cumbersome and ambiguous – it is unclear whether it applies to an “access” or an “allotment” and the use of the word “potential” gives the rule virtually unlimited scope in terms of application.

The definition of “Homestead” is so broad that it could apply to any residential unit that provides permanent living accommodation. Further, the purpose of this definition and related exception is unclear.

Development nodes are required to identify building platforms at the time approval for the identification of the node is sought. However, there is no corresponding rule requiring future buildings to be constructed within those building platforms.

Identified nodes are limited to a “10%” extension – it is unclear what this percentage relates to (for example land area or building platforms).

PC13 proposes a requirement that all building nodes must have “substantial perimeter planting” unless they are “sufficiently hidden” to achieve “significant screening”. The subjective judgment required in the application of this rule makes compliance impossible to determine - it therefore lacks sufficient certainty to be enforced as a rule based requirement.

The inclusion of a policy (specifically policy 3G) that specifies a wide range of nodal design criteria “that are expressed in a way that they must be met” is misleading and constitutes an approach which lacks clear purpose and direction and bears little relevance to the particular landscape setting and desired visual amenity outcomes relevant to the Mackenzie District.

9.0 High Country Rosehip Orchards Limited seeks the following relief from the local authority:

9.1 Site Specific Relief

9.1.1 HCROL owns property located on the eastern side of State Highway 8 opposite the Twizel township.

9.1.2 HCROL is concerned that the requirements of PC13: promote the inefficient use of land; are overly restrictive; and fail to take into account the extent to which the

Trade

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Fig. 1. Geology Research Institute Limited
Federal Scientific Center "Geology"



Attn: Dorothy Fagan's Orchard Limited
Respectfully, Carol Fagan, MEd, EdS

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11/11/08 BY 60322 UCBAW/STP

Form 6

Submission on publicly notified plan change

Clause 6 of First Schedule, Resource Management Act 1991

To: Mackenzie District Council

Name of Submitter: Mackenzie Lifestyle Limited

Address for Service: C/- Vivian and Espie Limited
PO Box 2514
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Queenstown

This is a submission on the following proposed plan change (the proposal): Mackenzie District Council, Plan Change 13, Rural Zone - Mackenzie Basin.

The specific provisions of the proposal that my submission relates to are: This submission relates to Plan Change 13 in its entirety.

My submission is: Mackenzie Lifestyle Limited opposes Plan Change 13 in its entirety.

In summary, this submission opposes Plan Change 13 in its current form on the basis that: the plan change is not adequately assessed and justified in the supporting documentation (specifically the section 32 analysis and the Mackenzie Basin Landscape: Character and Capacities Report); contains significant errors and contradictions; will result in adverse consequences for the Mackenzie District as a whole; and is contrary to the purpose and principles of the Resource Management Act 1991.

The specific points of opposition follow.

1. *Inadequate Section 32 Analysis*

1.1 The section 32 documentation singles out the Mackenzie Basin area and imposes an incredibly stringent residential subdivision and land use regime within the Mackenzie Basin Sub-zone on the basis that the Mackenzie Basin is an "outstanding natural landscape". However the Mackenzie Basin Landscape: Character and Capacities Report (hereafter "the Report") that is relied on in the section 32 analysis (hereafter "the analysis") does not support this conclusion. In particular:

- While the Report refers to the Mackenzie Basin as an "outstanding landscape", the Report never explicitly describes the Mackenzie Basin as an "outstanding natural landscape". It is also noted that previous reports presented to Council

1.3 The section 32 analysis does not adequately identify and consider the economic realities of current and future rural land use activities in the Mackenzie Basin nor the effect of PC13 in relation to the ongoing sustainability of rural land use activities. In particular:

- There is inadequate analysis and recognition of consented subdivision activities and applications for controlled subdivision activities lodged prior to the notification of PC13, that now require non-complying activity consent to give effect to the anticipated future land use post subdivision – in particular the construction of residential buildings.
- There is inadequate analysis of the effects a 200Ha minimum allotment size will have on viable farming practices within the District - particularly with future increases in the availability of irrigation for farming purposes which will make allotments smaller than 200Ha viable farming units.
- There is inadequate analysis of the outcomes of PC13 in terms of the District's ability to provide for, and the desirability of, rural living opportunities.
- There is inadequate analysis of the economic and social consequences of the changes proposed as part of PC13, in particular the extent to which the increased controls will render some rural properties incapable of reasonable use.

1.4 Despite the catalyst to PC13 being expressed broadly as a response to “development pressure for residential subdivision and development in the Mackenzie Basin”, the content of the section 32 focuses narrowly on the protection of outstanding natural landscapes from inappropriate subdivision, use and development. This has resulted in other important considerations such as the appropriate location, scale and form of future economic growth within the district being ignored or given insufficient weight.

1.5 This narrow focus has also led to a failure to take into account the extent to which other activities such as - such as permitted farming activities and the spread of wilding species can lead to changes in landscape character far greater than that which may arise from rural residential type development.

2.0 *Inadequate analysis of geographical, locational and landscape characteristics*

2.1 PC13 introduces the notion of a Mackenzie Basin Subzone. The boundary of the Mackenzie Basin Sub-zone is arbitrary and the Sub-zone itself is considered inappropriate for the following reasons:

- While the Sub-zone excludes the Twizel township, it overlays the Tekapo township, the Pukaki Village Zone, Glentanner Tourist and Open Space Zones, the Manuka Terrace Rural Residential Zone and the Pukaki Airport Zone. If the rationale for the Sub-zone is founded in the protection of outstanding natural landscapes, it is non-sensical to include within the Sub-zone these other

4.2 The method adopted of identifying site / area specific nodal capacity levels is misleading for the following reasons:

- The intended effect of these figures is unclear and meaning ambiguous. For example – do these figures prescribe an absolute cap on node numbers in the relevant areas? Will applications for nodes within or under that threshold be declined if Council later considers a lower threshold to be appropriate?
- Landowners / developers may interpret this figure as a guarantee that future nodal development on their property will be approved by Council. The reality is that despite this figure, discretionary activity approval from Council is still required and there is no guarantee that approval will be forthcoming.
- Overall this approach seeks to predetermine development outcomes while retaining Council discretion to consider any applications on a case by case basis. This is illogical and contradictory. If Council wishes to retain discretion in relation to the future identification of nodes, then no nodes should be identified and any future applications should be considered case by case on their merits. Alternatively, if Council is confident that these figures are an accurate representation of cumulative thresholds and wants to provide landowners with corresponding certainty in terms of development, then a lesser activity status (such as controlled) should apply to future applications for nodes that fall within the identified limits.

5.0 *Creating an unfair rural development “playing field” without adequate resource management justification*

5.1 In general, the approach of identifying development nodes and nodal capacity thresholds is unfair as it effectively declares development “winners” and creates “losers”.

5.2 Further, many of the landscape sub areas to which the nodal limits apply straddle property boundaries thereby making it unclear as to what location / property the node relates to. This encourages disagreement and competition between adjoining land owners and promotes a situation where landowners / developers will need to effectively “race” their neighbours to maximize and secure their nodal entitlement.

6.0 *Opportunity to provide a comprehensive rural living regime*

6.1 PC13 provides an opportunity to identify and differentiate areas within the District that are appropriate for rural lifestyle development. PC 13 in its current form fails to fully utilise this opportunity. In particular:

- The section 32 analysis fails to be forward thinking in terms of the future growth or needs of the District in relation to rural residential, tourist or resort development, and accordingly fails to take the opportunity to accommodate

with certainty that a house could be constructed on that site as a further restricted discretionary activity approval will be required for the construction of a building.

- 7.4 The provisions relating to the number of building platforms within a node – being restricted to 5 – 10 platforms, does not take appropriate account of the extent to which future nodal development may be capable of containing more than 10 or less than 5 building platforms per node without resulting in more than minor adverse environmental effects.
- 7.5 The provisions relating to the extension of identified nodes – being 10%, is arbitrary and does not take appropriate account of the extent to which some identified nodes may be capable of extensions in excess of 10% without resulting in adverse environmental effects.

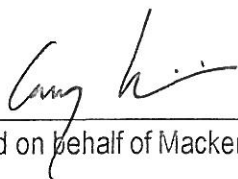
8.0 *Incoherence and Contradictions*

- 8.1 In general the proposed provisions are overly complex, incoherent and contradictory. In particular:
- It is unclear what the 5 – 10 building platform restriction for nodes is seeking to achieve. This limit is arbitrary, it fails to acknowledge that a development “node” could consist of any number of buildings or building platforms depending on the landscape setting. Furthermore, the “homestead” exception in relation to this rule lacks rational justification.
 - The definition of “Homestead” is so broad that it could apply to any residential unit that provides permanent living accommodation. Further, the purpose of this definition and related exception is impossible to determine.
 - Development nodes are required to identify building platforms at the time approval for the identification of the node is sought. However, there is no corresponding rule requiring future buildings to be constructed within those building platforms.
 - Identified nodes are limited to a “10%” extension – it is unclear what this percentage relates to (for example land area or building platforms).
 - PC13 proposes a requirement that all building nodes must have “substantial perimeter planting” unless they are “sufficiently hidden” to achieve “significant screening” – the subjective judgment required in the application of this rule makes compliance impossible to determine with sufficient certainty.
 - The wording of new subdivision Standard 12 7.b.x is cumbersome and ambiguous – it is unclear whether it applies to an “access” or an “allotment” and the use of the word “potential” gives the rule virtually unlimited scope in terms of application.
 - The inclusion of a policy (specifically policy 3G) that specifies a wide range of nodal design criteria “that are expressed in a way that they must be met” is

- b) That the Manuka Terrace Rural Residential Zone be renamed the Twizel Rural Residential Zone and the Twizel Rural Residential Zone be amended to include that part of High Country Rosehip Orchards Limited land identified as proposed Lot 1 (229 hectares) as shown on the attached subdivision plan.
- c) Consequential amendments to achieve the intent of the submission.

9.2 Alternative Relief Requested

- 9.2.1 If the specific relief referred to in 9.1 above is not accepted, then Mackenzie Lifestyle Limited seeks the plan change is either withdrawn or cancelled.
 - 9.2.2 If any of the above reliefs are not accepted by the Council, then Mackenzie Lifestyle Limited requests compensation from the Council in accordance with section 85 of the Act to the extent that PC13 renders their interest in proposed Lot 1 incapable of reasonable use for rural lifestyle development.
- 10.0 Mackenzie Lifestyle Limited wishes to be heard in support of its submission in relation to the site.
- 11.0 If others make a similar submission, Mackenzie Lifestyle Limited will consider presenting a joint case with them at a hearing.



Signed on behalf of Mackenzie Lifestyle Limited

11 April 2008.

Date

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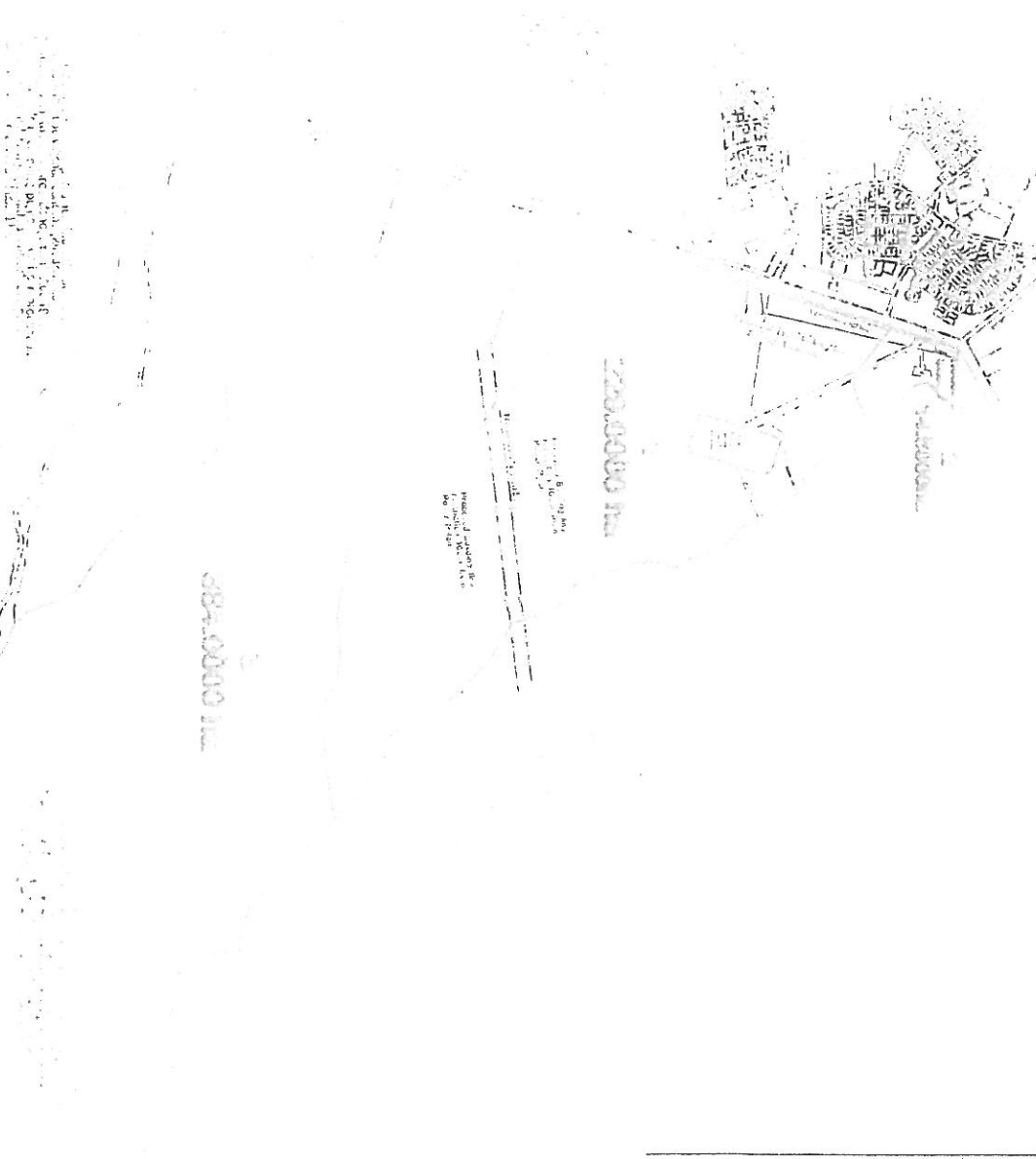
HEAD AND TAIL

Surveyed	
Plotted	
Checked	
Approved	

Resource Consent Application
 Proposed Subdivision of
 Section 1 SO 384093

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Scale 1:500
 Sheet 1 of 1



Location Plan

