

**BEFORE THE MACKENZIE DISTRICT
COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER Plan Change 13 to the Operative
Mackenzie District Plan to establish a new
Mackenzie Basin Subzone within the
existing Rural Zone

**STATEMENT OF
EVIDENCE BY**

Ralf Krüger MLA DipHort ANZILA
Registered Landscape Architect

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- 1 My full name is Ralf Friedrich Wilhelm Krüger. I have been in practice as a landscape architect and environmental planner since 1992. I am a director of Morgan Pollard & Associates Ltd, Landscape Architecture and Planning and the principal and director of Morgan Pollard & Associates Queenstown Ltd, Landscape Architecture and Planning. I have been based in Queenstown since 1994.
- 2 My qualifications are as follows:
 - Masters Degree in Landscape Architecture and Environmental Development from the University of Hannover, Germany
 - Diploma in Horticulture
 - Associate Member of the New Zealand Institute of Landscape Architects
 - Registered Landscape Architect
 - Current member of the NZILA Associateship Panel (since 2003)
 - Registered Workplace Assessor (New Zealand Horticulture Training Organisation)
- 3 Due to the integrated nature of my training and apart from standard landscape architecture qualifications and expertise, I have qualifications and expertise in the following related fields:
 - Landscape planning and statutory planning – I have received formal training in Germany. I do not claim specific qualifications in statutory planning in New Zealand although I have acquired good knowledge in this field.
 - Ecology – I have received formal training in landscape ecology and plant ecology. I am less familiar with faunistic aspects of ecology.
 - Urban design – both from my training background – and specifically from my research into the history of urban open spaces in New Zealand. As part of my Masters thesis – “Urban Open Spaces in 19th Century New Zealand”¹ – I have researched the origins of reserving public open space in the development of New Zealand towns and cities. I have also followed the development of these spaces through the decades to this day and the effect of loss of open space on communities, town hygiene and town planning.
 - History of open space politics and development, history of landscape design, landscape heritage, landscape conservation
- 4 Apart from my academic qualifications, I am a trained landscape gardener and horticulturalist. I have operated a landscape construction and landscape management business for over 30 years – the first 16 in Europe, the last 14 in New Zealand. I am a director of GreenBelt Ltd, a landscape construction and landscape management company based in Queenstown.
- 5 I have been an expert witness at all hearings (more precisely those that have heard evidence from expert witnesses) leading to the “Queenstown Landscape Decisions 1 to 8”. I have won a Silver Award at the 2004 New Zealand Landscape Awards “Pride of Place” (Landscape Planning and Environmental Studies section) from the New Zealand Institute of Landscape Architects for my series of briefs of evidence that assisted the Environment Court in making

¹ KRÜGER, RALF; Stadigrün in Neuseeland im 19. Jahrhundert – Von der Kolonie (1840) zum Dominion (1907), Diplomarbeit am Institut für Grünplanung und Gartenarchitektur der Universität Hannover, 1992, unpublished
Title translated by the author: “Urban Open Spaces in 19th Century New Zealand – From Colony (1840) to Dominion (1907)”. Masters Thesis, Institute for Open Space Planning and Landscape Architecture, University of Hannover (Germany), 1992, unpublished

findings at the various hearings for the "Queenstown Landscape Decisions 1 to 8". This was the highest award presented in this category in the year 2004.

- 6 I have presented evidence at numerous hearings, both, before territorial authorities and in the Environment Court.
- 7 As a registered member of the New Zealand Institute of Landscape Architects (NZILA), I respect and I am bound by the Constitution, the Code of Ethics and the Code of Conduct of this professional organisation.
- 8 Although this is a hearing on territorial authority level, this evidence has been prepared in full compliance with the Environment Court Consolidated Practice Note of 31 July 2006.
- 9 The evidence provided is entirely within my area of qualifications and I have not relied on other landscape expert's evidence. Where I agree or disagree with other experts, I do this in full understanding of their evidence, because this evidence has been assessed by me and it is also within my field of expertise. Where I rely on other expert's evidence, I identify this clearly.
- 10 I am familiar with the District in general through numerous visits over the past 27 years. I have recently spent more time in the district because of professional landscape work carried out in specific parts of the Mackenzie Basin and have gained deeper insight in the landscape complexities, geomorphology and vegetation as well as environmental challenges the area faces.

2 PURPOSE OF THIS EVIDENCE AND BACKGROUND

- 11 This evidence has been prepared to assist the Panel in making a finding as to the appropriateness, functionality and workability of the proposed Plan Change 13.
- 12 I have been commissioned by Mt Gerald Station Ltd to review the proposed Plan Change 13 with particular attention to the components affecting landscape and the underlying landscape study having lead to the finer aspects of the document.
- 13 This evidence is in support of a submission made by Michael Burtscher on behalf of Mt Gerald Station Ltd.
- 14 The structure of my evidence is set out above.

3 THE LANDSCAPE REPORT

- 15 Before analysing and commenting on the actual Plan Change 13 (PC13), its intentions and functionality, I will comment on the underlying landscape document. This is the report by Graham Densem "The Mackenzie Basin Landscape: character & capacities" (the Densem

report). This report assesses the landscape on a broader (regional) scale, considers landscape values and suggests a strategy how to control development in the district. Because it is this document the Mackenzie District Council (MDC) has primarily relied on, it is important to address its content in detail. The report was specifically prepared to be the "... *background for a Plan Change which the Council wishes to introduce*".²

- 16 I will critically assess the robustness and completeness of the report in respect to the goals that are to be achieved. In fairness to Graham Densem: I have not seen the brief provided to the author– therefore my comments can only relate to the report as it stands and its relationship with the consequential proposed Plan Change 13 document. Some of my critical comments may therefore sound slightly unfair. They are not intended to question or undermine Mr Densem’s professional integrity they are simply critical of his methodology in this study. The deficiencies I will identify in this study may therefore be the direct result of an incomplete, insufficient or otherwise inappropriate brief. .
- 17 Furthermore, I acknowledge that the contents relating to landscape in the proposed Plan Change 13 document is – in parts - an interpretation of the Densem report and does not always reflect the complete opinion of Mr Densem. In particular, I do not believe that Mr Densem’s assessment states anywhere that he has identified any landscapes within the Mackenzie Basin as Outstanding Natural Landscapes – he has always referred to “outstanding landscapes”. I therefore believe that there is a real chance that his professional opinion may have been misinterpreted in the preparation of proposed Plan Change 13.

3.1 LANDSCAPE ASSESSMENT AND ANALYSIS

- 18 The Densem report - specific to the Mackenzie Basin within the Mackenzie District – has analysed the landscape of this identified topographical area (the Basin) on a broad, almost regional level. The analysis relies in significant parts on previous studies – the Boffa Miskell Partners Ltd document “Landscape Change in the Mackenzie/ Waitaki Basins” (1992) and the Canterbury Regional Council Study “Canterbury Regional Landscape Study” by Boffa Miskell Ltd and Lucas Associates (1993). While the references to elements of these studies are useful and appropriate, it must be acknowledged that these have been prepared for other purposes and on a level that was appropriate for these at the time. The reliance Mr Densem has placed on these studies is – in my opinion – dangerous in respect to the primary purpose of his own study. Again, this purpose was to prepare the background and the basis for a plan change requiring identification of landscape values, identification of landscape categorisation (in accordance with Part 2 of the Resource Management Act 1991 (RMA)), formulating goals for sustainable landscape management in this part of the district and suggesting strategies how this can be achieved.

² DENSEM, G; The Mackenzie Basin Landscape: character & capacities, prepared for Mackenzie District Council, November 2007

3.1.1 Methodology

- 19 Such a study – in my view and from my professional expertise and experience - would have required the following basic methodology and structure:
- A **Landscape Description**: topography, geology and geomorphology, ecology, natural heritage, cultural heritage, current landuse
 - B **Identification of Landscape Values**: aesthetic, legibility, transient values, shared and recognised values, values to tangata whenua, historical
 - C **Landscape Categorisation**: identification of Outstanding Natural Landscapes (ONL), Outstanding Natural Features (ONF) and Visual Amenity Landscape (VAL)
 - D **Landscape Character Analysis**: identification of landscape character areas, individual description and evaluation
 - E **Landscape Threats**
 - F **Landscape Management Mechanisms**
- 20 I will - in the following – analyse whether and to what extent robust methodology has been followed in Mr Densem's study.

3.1.2 Landscape Description

- 21 This part of the study has been addressed by some short statements on a number of the relevant aspects and references to the mentioned previous studies. This combination is acceptable and I consider that this part of the study has been completed reasonably satisfactory. Having said that, I am of the opinion that a study proposing outcomes of the consequences now evident, should be more concise even in this section to comprehensively demonstrate the sound basis for assessment in one document rather than cross-referencing to other documents.

3.1.3 Identification of Landscape Values and Landscape Categorisation

- 22 Immediately at the beginning of the landscape values section of his report, Mr Densem makes this statement:
- 23 *"Despite its modified and managed land surface, virtually the entire Basin is 'outstanding' in terms of landscape values. This is because of the uniqueness, natural and visual qualities of the high-mountain basin environment, lakes, landforms, land use, society and Mackenzie identity. Until recently it also has been because of the extensive areas of minimally-modified land surface."*³
- 24 While this maybe broadly and in laymen's eyes correct, it is not based on sound findings. Mr Densem does not backup his statement in the report by evidence of analysis but refers to statements in the mentioned studies he relies on. Again, I note that Mr Densem's assessment does not identify any landscapes within the Mackenzie Basin as Outstanding Natural Landscapes.

³ ibid, par3.2

- 25 This is unfortunate insofar, because appropriate mechanism to carry out the identification and weighting of landscape values are readily available, tested by the profession and accepted by the authorities and the Environment Court. The "Amended Pigeon Bay Criteria" (APBC) – as first prescribed by the Environment Court's First Queenstown Landscape Decision⁴ - are the appropriate instrument. They are:
- A. **Natural Science Factors**
The geological, topographical, ecological and dynamic components of the landscape
 - B. **Aesthetic Values**
Including memorability and naturalness
 - C. **Expressiveness (Legibility)**
How obviously the landscape demonstrates the formative processes leading to it
 - D. **Transient Values**
Occasional presence of wildlife; or its values at certain times of the day or of the year
 - E. **Shared and Recognised Values**
 - F. **Values to Tangata Whenua**
 - G. **Historical Associations**
- 26 In my opinion, it is absolutely essential in any landscape assessment to complete the "test" for ONL and ONF before proceeding to the next steps. It is particularly important if far-reaching conclusions are to be drawn from a study, giving high weighting to landscape identified as such – as has been done in this case.
- 27 In accordance with part 2 of the RMA, in the "First Queenstown Landscape Decision" – further specified and refined in subsequent case law – a tripartite landscape categorisation was introduced:
- Outstanding Natural Landscapes and Outstanding Natural Features under part 2 section 6(b)
 - Landscapes, to which particular regard is to be had under section 7 (in the respect to landscape amenity – called Visual Amenity Landscapes (VAL) in the Queenstown Lakes District)
The Queenstown Lakes Partially Operative District Plan qualifies:
"The visual amenity landscapes are the landscapes to which particular regard is to be had under section 7 of the Act. They are landscapes which wear a cloak of human activity much more obviously - pastoral (in the poetic and picturesque sense rather than the functional sense) or Arcadian landscapes with more houses and trees, greener (introduced) grasses and tend to be on the District's downlands, flats and terraces. The plan identifies the key resource management issues for the visual amenity landscapes to be managing adverse effects of subdivision and development (particularly from public places including public roads) to enhance natural character and enable alternative forms of development where there are direct environmental benefits."⁵
 - Landscapes in respect to which there are no significant resource management issues (called "Other Landscapes" in the Queenstown Lakes District)

⁴ ENVIRONMENT COURT; Decision C180/1999: *WESI et al v QLDC*, p62. The complete list of the Amended Pigeon Bay Criteria is to be found on pp46-47

⁵ Part 4 of the Queenstown Lakes Partially Operative District Plan

28 Mr Densem – in his study – has not used the professionally and judicially accepted "system" in place. In his opening statement in respect to landscape values (previously quoted), he resorts to the use of the singular term "outstanding" when describing the Mackenzie Basin as a whole. Significantly, he then attributes the origin of this evaluation to both, the natural landscape character and also (partly) the cultural landscape character. This is clearly wrong and must lead to incorrect conclusions. The Court stated in C180/99:

29 *"To qualify under section 6(b) a landscape must not only be outstanding, it must also be 'natural.'"*⁶

30 While I do not profess to have assessed the District's or even the Basin's landscapes, it is obvious from my more localised assessments and also from knowledge of historical and ongoing modifications, that the entire Basin does not exhibit a uniform degree of natural character. Clearly visible evidence of a cultural overlay is available in many parts of the Basin - "... [t]his is a working, occupied landscape ..."⁷ I acknowledge that the boundary between the natural landscape and the cultural overlay is blurred in many areas due to the dominating grandeur, depth, openness and magnificence of the landscape as a whole. However, technically and in professional landscape terms there are clearly obvious areas not displaying the characteristics typical of outstanding natural landscapes. These landscapes – stronger displaying the "cloak of human activity" in the form of interventions by hydro-electric developments and resulting structures, canals, modified lake levels and the like, as well as farming activities and other human overlay – may qualify as Visual Amenity Landscapes (VAL) but not as Outstanding Natural Landscapes. Within these VAL, some smaller areas – not qualifying as landscapes by definition – may have values making them Outstanding Natural Features. From my knowledge of the study area, I am doubtful that "Other Rural Landscapes" exist.

31 In respect to "naturalness" or "natural character". The landscape profession has for many years attempted to define these terms. I quote some such examples that I regard as useful and correct.

32 In 1993, the term "natural" was clearly defined in case law:

*"The word 'natural' does not necessarily equate with the word 'pristine' except in so far as landscape in its pristine state is probably rarer and of more value than a landscape in a natural state. The word 'natural' is a word indicating a product of nature and can include such things as pasture, exotic tree species (pine), wildlife both wild and domestic and many other things of that ilk as opposed to man-made structures, roads, machinery etc."*⁸

⁶ ENVIRONMENT COURT; Decision C180/1999: *WESI et al v QLDC*, par87

⁷ DENSEM, G; The Mackenzie Basin Landscape: character & capacities, prepared for Mackenzie District Council, November 2007, par3.117

⁸ Harrison vs. Tasman DC (W42/93); in: ENVIRONMENT WAIKATO; Natural Character: Concept Development in New Zealand Planning Law and Policy, p46

33 The ecologist Geoffrey Park had previously tendered the view that:

*"A broader definition of 'natural' includes the indigenous elements and processes but also includes other introduced components, provided that those components function in a biological system."*⁹

34 Consistent with these statements and - providing a good illustration – is the diagram below:¹⁰

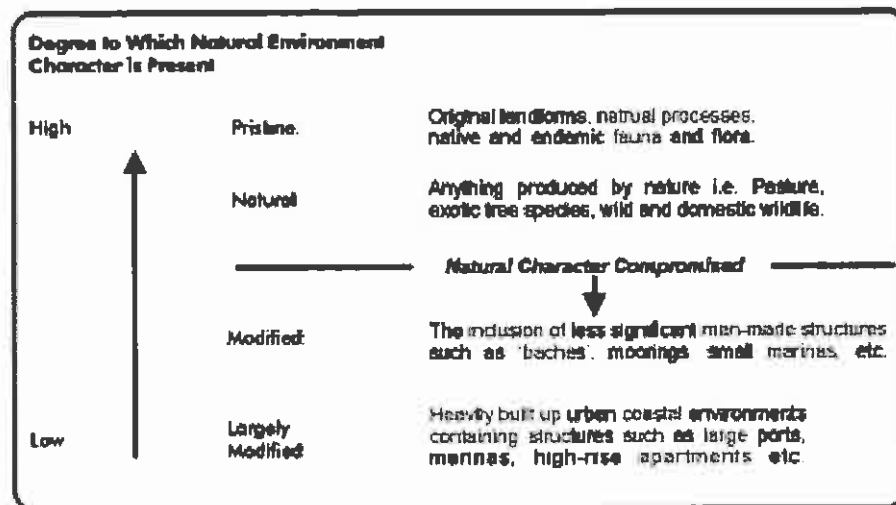


Figure 1: Degree to Which Natural Character is Present (Maplesden 1995)

35 Another working definition of natural character is derived from research undertaken for the Ministry of the Environment in relation to Environmental Performance Indicators by Boffa Miskell Ltd:

36 *"Natural character is a term used to describe the naturalness of all coastal environments. The degree or level of natural character within an area depends on:*

- 1. The extent to which natural elements, patterns and processes occur; and*
- 2. The nature and extent of modifications to the ecosystems and landscape/seascape.*

*The highest degree of natural character (greatest naturalness) occurs where there is least modification. The effect of different types of modification upon the natural character of an area varies with the context, and may be perceived differently by different parts of the community."*¹¹

37 In summary of the above statements - as well as others not quoted – it becomes clear that:

- natural character is not limited to indigenous systems
- natural character declines with the degree of modification

⁹ ENVIRONMENT WAIKATO; Natural Character: Concept Development in New Zealand Planning Law and Policy, p89

¹⁰ *ibid*; p74 – apologies for quality, the original is only marginally better

¹¹ MINISTRY FOR THE ENVIRONMENT; Environmental Performance Indicators: Natural Character, prepared by Boffa Miskell Ltd, 2002

While this definition directly relates to "coastal environment", it is fully applicable to any environment

- 38 While Mr Densem in his general conclusions does not oppose the first point made immediately above, he does not recognise the second point – the important fact that the Basin displays various degrees of modification. To be fair to Mr Densem – he has acknowledged modification in his – already quoted – statement that ... “[d]espite its modified and managed land surface, virtually the entire Basin is ‘outstanding’ in terms of landscape values ...”¹² however, he has failed – in my view - to translate this finding into his conclusions and management strategies.
- 39 To be correct in quoting Mr Densem and to be correct in interpreting his findings, it is important to note that never has he identified any landscapes within the Mackenzie Basin as Outstanding Natural Landscapes – he has always referred to “outstanding landscapes”.¹³ He has therefore not suggested that any landscapes in the study area qualify under part 2 s6(b) RMA – although this appears to be the interpretation of his words by the authors of proposed Plan Change 13.
- 40 Consequential from the Densem report – only having concluded that the entire Mackenzie Basin is an “outstanding landscape” - and incorrectly, proposed Plan Change 13 suggests the introduction of new Policy 3A:

Policy 3A – Recognition of Mackenzie Basin

To recognise the Mackenzie Basin as an outstanding natural landscape and through the Mackenzie Basin Subzone within the Rural Zone, to protect the Basin from inappropriate subdivision, use and development.

- 41 While Objective 3A is correct in principle the consequential Policy 3A - as outlined above and in my opinion - has no justification because of the lack of sound landscape assessment.
- 42 Consequentially, two significant complexes of questions remain:
- is the Mackenzie Basin as a whole a natural landscape?
and (if yes),
 - is it an outstanding natural landscape?
- 43 If the answer to the above complex is no, then the next complex maybe applicable:
- does the Mackenzie Basin contain natural landscapes?
and (if yes),
 - are these – or some of these outstanding natural landscapes?
- 44 Because I have not assessed the landscape(s), I am unable to answer these questions – only a comprehensive study, using a methodology as described above can deliver this. However, from my experience of the area and having perused the landscape analyses available, I feel able to say, that I am of the opinion that the Basin as a whole cannot be regarded as natural and therefore it cannot be an ONL as a whole.
- 45 In respect to the second complex of question, I am equally unable to provide comprehensive answers in the absence of full landscape assessment. However, its is immediately apparent

¹² DENSEM, G; The Mackenzie Basin Landscape: character & capacities, prepared for Mackenzie District Council, November 2007, par3.2

¹³ I have mentioned this earlier in my evidence

that the Basin - and the district for that matter – contain some highly valuable and natural landscapes, some of which have been previously identified.

- 46 The categorisation of the Mackenzie landscapes in respect to their qualification under Part 2 sections 6(b) and 7 is an important precondition for further consideration of development options.

3.1.4 Landscape Character Analysis

- 47 The Densem report has identified nine landscape character areas within the study area. Probably resulting from his brief and his client's district-related responsibilities, he has chosen to delineate these landscape areas in accordance with territorial boundaries rather than geographical facts. This is not intended to be critical – it is rather a finding of fact.
- 48 Embedded within the descriptions of the character areas, the report identifies areas of particular vulnerability and/ or sensitivity and also identifies the degrees of such.

3.1.5 Landscape Threats

- 49 In section 4 the report appropriately identifies and discusses landscape change and the threats to the landscape. I agree with the identified threats

3.1.6 Landscape Management Mechanisms

- 50 The Densem Report – in sections 5-7 – moves to making recommendations in respect to future landscape management and how to avoid, eliminate or reduce effects of the threats identified.
- 51 On 06 February 2008, I contacted Graham Densem to discuss a number of aspects of his report and clarify issues that appeared uncertain. I will refer to those verbal clarifications where appropriate.
- 52 I am of the opinion that the current Mackenzie District Plan lacks proper mechanisms and instruments to adequately manage the district's landscapes and I therefore strongly advocate the view that this plan requires appropriate changes to protect the highly valuable landscapes of the district, some of which – but by all means not all – may qualify as Outstanding Natural Landscapes.
- 53 However, I am doubtful that proposed Plan Change 13 will achieve this in an appropriate and defensible way.
- 54 The report identifies inappropriately sited and designed residential development as a serious threat to the Mackenzie basin landscape. I agree with this finding and I also agree that instruments to prevent this are required in the district plan and that a plan change is required to achieve this. I, however, disagree with the approach taken by the Densem report – and adopted by proposed Plan Change 13.
- 55 Where necessary and appropriate and for ease of understanding, I will refer to the Plan Change 13 numbering when discussing this part of the report.

56 While I agree with Policies 3C, 3D, 3F, 3K, 3L(a), 3N and 3O in principle, I disagree with Policies 3E, 3G, 3H, 3I, and 3L(b).¹⁴ I will explain as follows:

3.1.6.1 Settlement Pattern

57 As a basis for his proposed landscape management mechanisms, Mr Densem has identified a settlement pattern that he regards typical for the Mackenzie District. I accept that some aspects of his report in this respect are correct but I am doubtful that his findings are based on a sound heritage assessment. I regard the general thrust of creating development areas resembling the "nodal" nature inherent in the perceived historic settlement pattern as principally containing some logic. However, I see the limitation of development to such nodes as problematic, impractical and arbitrary.

58 For my evidence given at the hearing leading to the "Third Queenstown Landscape Decision"¹⁵ I have carried out research in the historical settlement pattern of the Wakatipu Basin. Using historic maps, descriptions and field survey, I believe to have recorded all historic homestead locations and sites of settlement – both, still existing and abandoned as well as lost. From this pattern, I have measured and further interpolated a typical distance between these homesteads and settlements. I had suggested using this as a base for establishing new clusters of rural living opportunities in the context of the favoured fully discretionary regime. This has directly translated into the Court-written assessment matters for the District Plan – the so-called "Radius Criterion"¹⁶ was created. While I still believe that my research is correct, I am now of the opinion, that an unworkable rule has been created and it appears that everyone is having difficulty applying it. From my own experience, it also appears that the assessment matter is in fact brushed over quickly in any assessment and in hearings.

59 I have explained this in detail, because I am of the opinion that the nodal approach taken by Mr Densem will lead to similar difficulties in planning and assessment reality. Furthermore – while I had suggested using the settlement pattern as a base for rules within a fully discretionary regime -the nodal approach, in my opinion, is restrictive and equivalent to a zoning approach, but without proper justification as to the boundaries of those zones.

3.1.6.2 Urban Areas and Nodes (Policy 3E)

Policy 3E – Limitations on Residential Subdivision and Housing

To only provide for residential subdivision and housing development within identified urban areas of the Basin (Twizel and Lake Tekapo) and within identified or approved building nodes.

60 It is my understanding from reading the proposed Plan Change 13 document, that all other objectives and policies builds on the assumption that the Mackenzie Basin is an ONL and that Policy 3A is a logical consequence. I have, however, outlined above that – in my opinion –

¹⁴ I have not considered Policy 3M

¹⁵ ENVIRONMENT COURT; Decision C186/2000: *WESI et al v QLDC*

¹⁶ QUEENSTOWN LAKES PARTIALLY OPERATIVE DISTRICT PLAN; part 5.4.2.2.3.c.5

Policy 3A is in fact incorrect and unjustified because it is not based on sound landscape assessment. Therefore, I believe, those policies and rules relying on this policy are flawed.

61 I have outlined my general reservation in respect to the appropriateness of the nodal approach above. The reasons are:

- lack of assessment and sound basis for number of nodes
- no identification of node location
- some design criteria are arbitrary and non-justifiable

62 As discussed above, it appears that the Densem landscape assessment has been carried out on reasonably high level without going into significant detail. This maybe the result of the brief. In any event, it is my opinion, that the conclusions and recommendations Mr Densem provides are not proportional to the assessment detail. He clearly identifies numbers of nodes per landscape sub-area – and this is where my difficulty with the approach begins. Mr Densem states:

63 *"Map 8 identifies a series of sub-areas within each Landscape Character Area, and these are the basic context area for each estimate of capacity. A sub-area is a collection of areas within usually two or more stations, which are the general outline areas within which the sites for new nodes should be located. Thus by cross-reference between Maps 7 and 8, specific sites for possible new nodes can be identified. The 'maximum number' in Map 8 is this study's estimate of the point beyond which adding more and more nodes would begin to change the outstanding landscape character of that area."*¹⁷

64 This paragraph is complex and requires some unravelling. Firstly Mr Densem introduces "sub-areas" within each landscape character area. He explains what the sub-areas in his view constitute but I cannot detect how the boundaries are fixed and what forms the basis for the creation of such sub-areas. Secondly – and setting aside this problem for a moment - he then sets a fixed number of nodes for each sub-area. He explains that "...by cross-reference between Maps 7 and 8, specific sites for possible new nodes can be identified."¹⁸ I have attempted to understand that but fail to see how this reference was made and how numbers have been arrived at. I have used Mt Gerald Station as an example, where at least two areas qualify for inclusion in the list of existing and new nodes. I will also set aside this issue and come to the final, and third, discussion point arising from the above paragraph. "*The 'maximum number' in Map 8 is this study's estimate of the point beyond which adding more and more nodes would begin to change the outstanding landscape character of that area.*"¹⁹ The "maximum number" therefore is an estimate. This seems correct - it can in my view only be an estimate, because the scale of landscape assessment has been at such a level that a finite and accurate number cannot be determined. However, Plan Change 13 has done just that and therefore fails to accurately represent the correct level of "restriction" it purports to achieve. What is perceived to deliver a "...high level of certainty as to where and in what form residential

¹⁷ DENSEM, G; The Mackenzie Basin Landscape: character & capacities, prepared for Mackenzie District Council, November 2007, par5.46

¹⁸ ibid

¹⁹ ibid (my emphasis)

subdivision and development would occur ..."²⁰ – as Ms Harte has phrased it – delivers in fact not much more than an arbitrary and rather coarse approach.

65 It is my professional opinion that only a small-scale and very accurate, local assessment can lead to strong and defensible conclusions of such a detailed nature. In my opinion and from my understanding of the documentation, such an assessment has not been carried out - at the very least, the Densem report does not demonstrate such an assessment. The proposed number and location of nodes remains difficult to understand.

66 Moving onto the nodal concept as a whole. The MDC planning officer states:

67 *"The Plan Change adopts nodal development as the most appropriate form of residential subdivision and development within the Mackenzie Basin...*

68 *... It is acknowledged that the approach is new for the district and not a common method of control of residential development within rural areas ..."²¹*

69 I regard the latter statement as an understatement – to my knowledge, a nodal approach as proposed is not only uncommon, it has no precedent whatsoever. I have not seen any evidence of where this type of approach has been used to manage residential growth in vulnerable landscapes in New Zealand - neither Ms Harte nor Mr Densem provided examples either.

70 Also, Ms Harte contradicts herself in making this statement and previously saying that the nodal development is the most appropriate form of development. Something that has neither been tried nor tested cannot be regarded as most appropriate. I do not wish my critical comments to be seen as an attempt to stifle innovative planning and landscape management practice, because I am not. But I am of the opinion that any such innovation must be thoroughly conceived before being trialled. With all respect to Mr Densem's and Ms Harte's professional integrity – I do not think that his is the case here.

71 Ms Harte continues to outline, why the nodal approach is supposedly the best option:

72 *"The first [aim] is to avoid the adverse effects of sporadic development, which is far more likely to occur if provision is made for single dwellings to be built throughout the Basin. Because building node sites will need to be suitable and attractive for more than one purchaser, the location of buildings and proposed servicing of these will need to be well thought out and sustainable over time. This should help prevent casual, poorly planned development within the Basin. Secondly, the clustering of building within the Basin is a characteristic built form that has worked well within the Basin landscape and so is a proven form of development. Thirdly the servicing of residential developments in terms of roading, water supply, sewage treatment and disposal, stormwater disposal and electricity and phone is not straightforward in more remote areas. The joint use of services by a number of dwellings/properties, such as a new road, enables the costs to be shared and therefore servicing becomes more economic. Sharing also creates the potential for more sustainable servicing solutions."²²*

²⁰ HARTE, P; Proposed Plan Change 13, Mackenzie Basin, Mackenzie District Plan, Officer Report, August 2008, pp4-5

²¹ *ibid*, p3 (my emphasis)

²² *ibid*, (my emphasis)

- 73 These aims are not consequential to the nodal approach. Best land development practice is not conditional to a prescriptive planning regime, equating to zoning. Such positive results can be achieved in a discretionary regime with tight controls and well phrased objectives, policies, assessment matters and rules.
- 74 In my opinion, the nodal approach – while bearing some logic in respect to its historical associations – is inappropriate and impractical. It is also somewhat contradictory to the enabling approach of the RMA without proper justification.

3.1.6.3 Nodes and their Character (Policy 3G)

- 75 Having opposed the nodal concept in principle, I will nevertheless address all other parts of proposed Plan Change 13 relating to this concept. Policy 3G sets out the individual design and performance criteria for new nodes. I have created two groups of criteria – the first group contains those matters that I am critical of, the second group contains those criteria that are functioning criteria for any regime.
- 76 The first group of criteria - I will discuss these individually.

Policy 3G - Approved Building Nodes

New building nodes will only be granted as "approved building nodes" where the Council is satisfied that:

2. The built development is to be located within an area of trees, planted or natural, that visually absorbs the buildings from outside view or the location is sufficiently hidden so as to achieve significant screening from outside the node. Development shall be inconspicuous by day and night from public places on land and from waters within a distance of 2 kilometres.

Comment:

I do not wholeheartedly support the use of newly planted vegetation to integrate built development in the Mackenzie landscape. This is for the following reasons:

- in an otherwise treeless landscape, buildings can often be appropriately located in discrete topographical situations; trees would attract attention
- trees itself could create inappropriate effects on an otherwise open landscape and would – additionally – draw attention to a node (appropriate or not)

6. The node is located such that it is not significantly visible from roads and areas where there is public access.

Comment:

Traditionally – and as is evident from Map 1 of the Densen report – homesteads and the remainder of the traditional farming node are located at or very near roads. They are also often highly visible and their existence is visually very evident and demarcated at the road. This criterion – while purporting to draw on the historical associations – is denying this fact. If implemented, it is my view, such a criterion will be counterproductive to what is trying to be achieved – integrate appropriate development logically into this landscape.

If the nodal site - or any other development for that matter - has been accepted as appropriate and considered able to absorb change in the first instance, the development does not require to be hidden, although it must be well designed and integrated.

7. *The node is located away from the shoreline of any lake such that it will not be conspicuous from the lake or from along the lake margins. Note all buildings are required to be a minimum of 100m from lakes under Rural zone rule 3.1.1.f*

Comment:

I am also critical of this criterion. It is my view that historically – throughout New Zealand – settlement was located along the coast and the margins of lakes and rivers. Consequentially, appropriate and well designed new residential development can be located in similar situations today. I am aware of the conflicts that have already arisen in the immediate past and the fact that some of the locations have seen inappropriate development.

I have discussed this matter with Mr Densem personally and he responded to my comments that the stations around many lakes including Wakatipu, Wanaka and Hawea (which I am very familiar with) have homesteads on their shores, that these lakes have had water-based transport. The Mackenzie and Waitaki lakes (the natural lakes that is) did not – in his opinion. Therefore such settlement locations would be opposing local history.

Because I was not quite satisfied with this statement, I have asked Michael Burtcher to carry out some research. He – in his evidence – will provide some detailed records that Mr Densem was incorrect:

"For some years the Glentanner wool was ferried across Lake Pukaki on a whale boat brought from Timaru".

"As there was no road, the wool had to be carted by bullock wagon to the head of Lake Tekapo, then taken by boat down the lake, five bales at a time."²³

Not only because of these passages, but because I am convinced that such development can be good landscape management, am I of the opinion that extremely well sited and carefully designed human habitation at the lakeside can be highly appropriate.

15. *The node identifies and provides for a minimum of 5 and a maximum of 10 building platforms in locations that ensure the buildings (if suitably designed and clad) will be inconspicuous.*

Comment:

I note that Mr Densem – in par 5.34 of his report – suggested 5-15 buildings on an area of 2-5 hectares. In my verbal discussion with Mr Densem, he confirmed that the 2-5ha related to the size of the entire node and not to individual lots within a node.

Irrespective of that, I regard this criterion as unfounded, as set out in my evidence above.

16. *The node will not be able to be seen from key views up Lake Tekapo and Lake Pukaki during the daytime and will not be obtrusive when viewed at night.*

Comment:

As in 6.) above: if the nodal site - or any other development for that matter - has been accepted as appropriate and considered able to absorb change in the first instance, the development does not require to be hidden, although it must be well designed and integrated.

²³ Williams, V in: BURTSCHER, M; Brief of evidence, September 2008

19. *The node does not exceed the threshold for nodes specified for that property or property group in the report "Mackenzie Basin: Character and Capacity" 2007.*

Comment:

This criterion is unfounded for the reasons set out in my evidence above.

77 In this second group, I have "lumped" together those criteria that I am in general agreement with – although not in the context of the nodal strategy.

1. *The buildings and structures and associated roading and boundary developments will be visually inconspicuous, fit into the landscape and not detract from the landscape characteristics and values of the Mackenzie Basin (refer report "The Mackenzie Basin Landscape: character and capacity").*

3. *Nodes are to have a low-key rural character in terms of location, layout, and development, with particular regard to construction style, materials and detailing. No urban forms or detailing should occur.*

4. *The node is located away from main surfaces, ridgelines, and skylines of landforms. (Refer report "The Mackenzie Basin Landscape: character and capacity" for descriptions of areas to be avoided in terms of their vulnerability to change).*

5. *The node is adjacent to a change point of the topography, such as a slope, stream course or forest edge.*

9. *The location and use of the nodes will not adversely impact on the functioning of sites of environmental value including all water bodies and Sites of Natural Significance identified in the District Plan.*

8. *The node is separated from any existing or approved building node by several kilometres, both within properties and between neighbouring properties to retain a sense of isolation.*

10. *The node is not within a Scenic Viewing Area or Site of Natural Significance or above 900metres.*

11. *The location and use of the node, in particular any residential use of the node will not have the potential to create reverse sensitivity impacts on rural activities or activities such as airports, power generation or transmission infrastructure.*

12. *The location and use of the node will not adversely impact on wahi tapu and historic heritage.*

13. *The earthworks, hard surfaces and roads, other than the access road, are located within the node and are minimised, designed, constructed and rehabilitated to avoid adverse visual or environmental impacts.*

14. *All access roads are sited to follow 'landscape "changes" such as gullies and changes of slope, to avoid crossing landscape "surfaces" and designed to retain a "farm" character.*

17. *The night sky is protected through the management of light spill.*

18. *All planting is of local native plant species and/or non-wilding prone exotic plant species.*

20. *The node and its associated level of domestication will not result in an adverse incremental or cumulative impact on the features, landscape values and amenity values and character of the landscape character sub-area in which it is proposed to be located and does not exceed the maximum number of new nodes for the sub-area identified in Map 8 of the report "The Mackenzie Basin Landscape: character and capacity" contained in Appendix R of this Plan.*

21. *The establishment of the node and its use avoids, remedies or mitigates any adverse effects of natural hazards.*

22. *The water, sewage treatment and disposal and stormwater services are designed, operated and maintained:*

- o Independently of Council services*
- o in a way which mitigates adverse effects on the environment*
- o sustainably over time, given the extreme climatic conditions that may be experienced over the life of the development*
- o through effective legal arrangements between the respective owners of houses or other facilities within the node.*

Comment:

Without the words "node" or "nodes" and with some appropriate rephrasing, these criteria can form part of an assessment matters and rules complex for a discretionary regime. These criteria are not necessarily specific to the nodal concept.

The way these criteria address some of the landscape management matters can be regarded as best practice for locating and designing human habitation in the rural landscape.

3.1.6.4 Policies 3H, 3I and 3L(b)

Policy 3H – Extensions to Existing Identified Nodes

Extensions to existing identified building nodes will only be granted where the Council is satisfied that all the matters listed above in Policy 3G are satisfied other than items 8 and 13, and that there is no longer sufficient land available within the identified node for the operational requirements of the property.

Policy 3I – Farm and Non-residential Buildings

Farm and other non-residential buildings, other than farm buildings that require a remote location, are required to locate within identified or approved building nodes.

Policy 3L - Subdivision

(b) To only provide for subdivision for residential purposes within identified or approved building nodes.

78 Consequential to my criticism of the nodal concept, I regard these policies as inappropriate.

4 RECOMMENDATION

79 It is my opinion, that the proposed Plan Change 13 will be unworkable and will effectively disturb processes it intends to smooth. Because the basis the proposed plan change has been constructed on is "shaky" – as I have outlined above – it will be further challenged in the future, should it become operative.

80 The Officer Report states:

81 *"A broader discretionary approach is proposed by some submitters as an alternative to nodal development, including a discretionary regime with no minimum lot size. I understand that some of these requests are based on experience in the Queenstown area. While that approach has some advantages in that it is simpler "up front" it has been based on specific identification of outstanding natural landscape and features within a large landscape. This approach was considered, however the as mentioned above large-scale landform(s) of the Mackenzie Basin do not lend themselves to easy identification and separation into discrete landscapes. Even if this were done the areas covered would be so substantial as to be little different than determining that the Basin is an outstanding landscape in its own right as well as containing outstanding landscapes within it. Added to this is the approach to landscape protection and assessment of building development around Queenstown and its lakes, which has been developed by the Council and Environment Court through numerous, often contentious applications for development. There is now a more focused approach to what is considered for example, an acceptable level of "domestication".*

82 *The situation in Mackenzie differs from the above and the Council and its advisors were very keen to have a system of control that provided a high level of certainty as to where and in what form residential subdivision and development would occur. This would enable the landscape and servicing implications of development to be predictable and acceptable. Discretionary activity status with no direction on these matters means that every application is looked at anew, making decision making difficult and the outcomes unpredictable. While building node development is discretionary, the assessment matters to be addressed are extensive and the concept of clustered development clear with the intention that decision-making is hopefully easier and less contentious for all parties. Added to this is the use of carrying capacity that removes many of the difficult and contentious matters which arise where each development causes decisions makers to look at the issues of adverse cumulative effects afresh, with the potential for serious argument. For these reasons it is considered that the nodal approach with strong policy and carrying capacity assessment is preferable to a more broad brush policy approach proposed by a number of submitters."*²⁴

83 I disagree with the position taken by Ms Harte. Firstly, there is no landscape evidence that an attempt has been made to identify individual landscapes and sub-landscapes within the Basin. I disagree that "[t]he approach of identifying specific outstanding natural landscape and features within a large landscape was considered ..."²⁵ The Densern report has not done that. Therefore, it is unjustified to dismiss a discretionary approach on that basis. Apart from that, such an approach is not dependent on the size of landscapes or the ability to break landscapes into smaller units and sub-units - a discretionary regime is dependent on sound analysis of all landscape values and characteristics and a consequential and equally sound development of planning matters.

84 Secondly, there is no landscape planning basis to dismiss a fully discretionary approach. It is obvious that objectives, policies, assessment matters and rules need to be phrased very carefully and specific to the respective landscapes and landscape types of the district. The nodal approach will – in my opinion - not create any certainty at all, because number of nodes,

²⁴ HARTE, P; Proposed Plan Change 13, Mackenzie Basin, Mackenzie District Plan, Officer Report, August 2008, pp4-5

²⁵ *ibid*, p3

locations, size and design will be continually challenged and – again in my opinion – will not stand scrutiny in the Environment Court. This is, because the identified nodes, their quantities and locations, as well as design criteria are not based on the firm landscape assessment they should be.

85 Should the approach of landscape management as proposed in Plan Change 13 be considered further? I do not think so. If yes, it requires significant effort to create a possibly workable, practical and defensible framework. In my opinion this outcome is unlikely. I clearly prefer a fully discretionary regime. The landscape and planning professions in New Zealand have advanced significantly and the pool of knowledge has reached profound depths. Additionally, decision makers, such as local and regional councillors and in particular independent Commissioners have gained significant expertise and experience in applying such discretion to applications in vulnerable landscapes. To this end, I recommend to broadly proceed as follows:

- Withdrawal of proposed Plan Change 13
- Preparation of a comprehensive district-wide (not limited to the Mackenzie Basin) landscape study with the following goals:
 - Identification of ONL, ONF, VAL and Other Rural Landscapes using acknowledged landscape assessment methodology (see 3.1.1 and 3.1.3 above), incl consultation community values
 - Identification of landscape threats
 - Preparation of sound landscape management mechanisms; formulation of strong objectives and policies ensuring ongoing protection of the highly valuable Mackenzie landscapes
- Public Consultation
- Plan Change proposal – fully discretionary regime in respect to human habitation within the Mackenzie landscapes, as well as farming practices

86 Significant parts of the Queenstown Lakes Partially Operative District Plan – in particular those relating to landscape protection and management of the resource - have been developed over a number of years by the Environment Court.²⁶ The current strategy managing residential activity has replaced insufficient management tools in the notified (and later revised plan). I acknowledge that the mechanisms available now are not ideal. However, this is not because they do not function – they do - but because they have not been cohesively developed by a team of experts but by the Court based on evidence. This system is obviously deficient. I have been a landscape witness in all Queenstown landscape hearings²⁷ and have followed closely how the current strategy has developed over the years. I had suggested a fully discretionary regime at the outset and this is what has been introduced. The set of objective, policies and assessment matters available in the plan now has been further refined by a significant amount of local (and national) case law and has – as the most recent years have demonstrated – prevented a continuation of the unsustainable over-consumption of the landscape resource.

²⁶ I have explained the tripartite landscape structure of the district earlier in my evidence

²⁷ ... in all those where expert evidence was heard

- 87 A profound pool of knowledge and expertise in respect to the operation of discretionary regime has compounded over the years. The Mackenzie District – in my opinion - now has the chance to withdraw proposed Plan Change 13 and to utilise this professional resource to the advantage of creating a set of modern landscape management tools avoiding inappropriate development (and conversely enabling appropriate development) within its highly valuable and partially vulnerable landscapes.

Queenstown, 07 September 2008
Ralf Krüger MLA DipHort ANZILA
Registered Landscape Architect