## IN THE ENVIRONMENT COURT AT CHRISTCHURCH

**UNDER** The Resource Management Act 1991

IN THE MATTER OF appeals under clause 14(1) of the First Schedule to the

Act

BETWEEN FEDERATED FARMERS OF NEW ZEALAND

(INCORPORATED) MACKENZIE BRANCH

ENV-CHC-2009-000193

HIGH COUNTY ROSEHIP ORCHARDS LIMITED AND

**MACKENZIE LIFESTYLE LIMITED** 

ENV-CHC-2009-000175

**MOUNT GERALD STATION LIMITED** 

ENV-CHC-2009-000181

**MACKENZIE PROPERTIES LIMITED** 

ENV-CHC-2009-000183

**MERIDIAN ENERGY LIMITED AND GENESIS ENERGY** 

**LIMITED** 

ENV-CHC-2009-000184

THE WOLDS STATION LIMITED

ENV-CHC-2009-000187

**FOUNTAINBLUE LIMITED & OTHERS** 

ENV-CHC-2009-000190

R, R AND S PRESTON AND RHOBOROUGH DOWNS

**LIMITED** 

ENV-CHC-2009-000191

HALDON STATION ENV-2009-CHC-000192

**Appellants** 

AND MACKENZIE DISTRICT COUNCIL

Respondent

STATEMENT OF EVIDENCE IN CHIEF OF PATRICIA HARTE ON BEHALF OF MACKENZIE DISTRICT COUNCIL (PLANNING)

**DATED: 15 JULY 2016** 

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#### STATEMENT OF EVIDENCE IN CHIEF OF PATRICIA HARTE

## INTRODUCTION

- 1 My name is Patricia Harte. I am a Resource Management Planner and Principal with the company Davie Lovell-Smith Limited, Christchurch.
- I have the qualifications of a Bachelor of Laws and Master of Science (Resource Management) and have been a full member of the New Zealand Planning Institute for 27 years. I have had 33 years' experience in planning and resource management. Throughout this period I have been involved in the preparation of five district plans and numerous plan changes, the majority of which have been for rural local authorities.
- I have assisted Mackenzie District Council with plan preparation and administration for at least 23 years including research and preparation of plan changes under the Town and Country Planning Act 1977 dealing with ecological and landscape impacts of forestry in the Mackenzie Basin, the current Operative District Plan and Proposed Plan Change 13.
- I filed a Statement of Evidence and Statement of Rebuttal Evidence for the primary hearing on Plan Change 13.<sup>1</sup> I have also provided evidence on the site specific relief sent by Fountainblue and Others, and Mackenzie Properties Limited.<sup>2</sup>
- I have been engaged by the Mackenzie District Council (**Council**) to provide evidence in relation to its post consultation version of Plan Change 13 to the Mackenzie District Plan (**PC13** (s 293V)).
- In response to concerns about the limited level of control over subdivision and housing in the Mackenzie Basin, and in particular the area surrounding Twizel during the period 2004 to 2007, I provided the Council with planning advice on options to address these concerns. This resulted in a decision by the Council in 2006 to change the District Plan by establishing a Mackenzie Basin Subzone within the Rural zone, with special controls to protect the outstanding natural landscape values of the Basin. I prepared the original Plan Change 13 and the section 32 report and provided reports and evidence to the Council and subsequent Court hearings. I also prepared the s293 documentation and undertook consultation with the parties who made submissions to the notified package.

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<sup>&</sup>lt;sup>1</sup> Statement of Evidence of Patricia Harte 13 May 2010 and Statement of Rebuttal Evidence of Patricia Harte 30 July 2010

<sup>&</sup>lt;sup>2</sup> ENV-2009-CHC-000190; and ENV-2009-CHC-000183

I have read the code of conduct for expert witnesses contained in the Environment Court Practice Note (2014). I agree with the code. Except where I state that I am relying on the specified evidence of another person, my evidence in this statement is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

### SCOPE OF EVIDENCE

- 8 In my evidence I:
  - 8.1 address the preparation of the s293 package;
  - 8.2 address the approach used in developing the s293 package;
  - 8.3 address the main elements of the s293 package;
  - 8.4 address the statutory framework and Canterbury Regional Policy Statement;
  - 8.5 address a summary of contested issues;
  - 8.6 address a s32 assessment; and
  - 8.7 list recommended changes to provisions.
- 9 I have included the following annexures to this evidence:
  - 9.1 Annexure **A**: Attachment A to PC13(s293V)
  - 9.2 Annexure **B**: s32 Assessment for PC13 s293 as notified;
  - 9.3 Annexure **C**: s32 Report PC13(s292V).
  - 9.4 Annexure **D**: Summary of submissions to s293 package as notified

### PREPARATION OF THE SECTION 293 PACKAGE

The Court, in its Ninth Decision directed the Council, under section 293 of the RMA to prepare changes to Plan Change 13 (PC13) to the Mackenzie District Plan based on the matters referred to in that Decision and the First Decision as modified by the various other decisions of the Court and the High Court. In response, a working group was created involving Council planning staff Nathan Hole (Manager of Planning and Regulation) and Toni Morrison (Senior Policy Planner), legal advisors, myself (assisted by Arlene Baird of Davie Lovell-Smith) and Graham Densem (landscape architect). Ecological advice was also sought from Mike Harding. I was tasked with providing information and my professional opinion of the requirements of the Court's decisions and how these could most

appropriately be addressed. The approach used in carrying out this task is discussed in **Section B** of this evidence.

- After several months work the group finalised what was referred to as the s293 Package which comprised:
  - Section 293 Report providing information on the s293 process, s293 requirements, Council's s293 proposal and several attachments
  - Attachment A Proposed amendments to Plan Change13
  - Attachment B Environment Court's directed and suggested objectives and policies
  - Attachment C Areas of Landscape Management map
  - Section 32 Assessment report
  - Report by Graham Densem "Intensification and Outstanding Natural Landscapes: Land Management of the Mackenzie Basin in the light of Court decisions"
  - Mackenzie Basin (south and east of SH8) Rapid Desktop Analysis
    Ecological assessment by Mike Harding

This package was then provided to the Council for its consideration and approval as the basis for consultation with all interested parties.

- On 14 November 2015 the s293 package was publicly notified and sent, generally by email, to a list of organisations and all landowners in the Basin. That package, and copies of submissions received, was provided to the Court under cover of Memorandum of Counsel for Respondent dated 22 December 2015.
- All the recipients were advised of the process and were invited to provide feedback on the package by 11 December 2015. I then contacted most of the people who had received the package to find out whether they understood what was happening and whether they were likely to make a submission. I also answered various questions about the changes proposed and process matters at that time and during the submission period.
- There was an excellent response to the package with 32 submissions being received within the specified period. Late submissions were received from Irishman Creek and Bendrose Station. Those submissions included submissions from the majority of landowners, Federated Farmers, Meridian, Department of Conservation, Te Runanga o Ngai Tahu on behalf of Te Runanga o Arowhenua and the Environmental Defence

Society. The submissions ranged from a simple request to be consulted through to detailed responses to every clause being changed. I then coordinated meetings with all the parties who made submissions. Individual meetings were held with almost all parties and were attended variously by myself, Nathan Hole, Councillor Murray Cox, Toni Morrison and Council's legal representatives. A very useful group meeting was held in Lake Tekapo on 10 March 2016 which was attended by a large number of landowners as well as representatives from Federated Farmers. Telephone discussions were held with some submitters.

- The feedback from the written submissions, but particularly from the meetings, provided very useful information and understanding of the issues of the various submitters. This was then used as the basis for a series of recommendations that I prepared for the working group. After discussions a final series of changes to the s293 package were prepared and submitted to the Council for acceptance as the final package to be put to the Court. This included individual maps of the proposed scenic grassland areas at a scale which enabled much easier identification of the boundaries of these areas on the ground.
- The final approved package was lodged with the Court on 27 May 2016. Submitters who were not 274 parties (or primary parties) were written to advising of the package and the Court's directions.

## **APPROACH USED**

- The approach in developing the s293 package was to use the Court's confirmed Objective 3B(1) and (2) as a starting point, together with the Court's suggested Objective 3B(3) and implementing policies as contained in the various decisions. The comprehensive suite of policies provided by the Court to implement the objectives originally included in the First Interim Decision were considered. The Council has chosen to largely accept the suggested policies. However these polices have been amended to maintain consistency of language, to simplify them by grouping like matters together, slightly reordering these and avoiding overlap where possible. In keeping with the format of the current Plan explanations and reasons have been written for all the policies in an effort to provide the reader with a deeper understanding of the genesis and purpose of the policies.
- Rather than just showing the provisions that are being modified by the s293 proposal, these amendments have been incorporated into the version of Plan Change 13 as decided by the Commissioners. These

provisions are contained in Attachment A to the main s293 Report. The changes made to the s293 proposal as a consequence of consultation are shown in red either as deletions (strikethrough) or additions (underline). For convenience, I attach a copy of Attachment A of PC13 (s293V) as **Annexure A.** 

The Scenic Grassland maps which are part of the s293 package have been prepared using the Council's GIS mapping system as a layer that can be incorporated into the District Plan planning maps as an overlay.

### **S293 PACKAGE - MAIN ELEMENTS**

I now set out what I consider to be the main elements of the package which involve changes to PC13. In a number of cases these provisions differ from those originally proposed for consultation as a result of Council responding to the feedback received during consultation. Where this has occurred I have included a description of the change and an explanation for this.

## Landscape approach

- 21 The concept and the identification of low, medium and high visual vulnerability areas were contained in the original landscape report by Graham Densem (2007). The Court in its suggested policies and rules in the Interim Decision then used this concept as a basis for distinguishing between areas more or less suitable for certain activities. The emphasis of visual vulnerability is what can be seen in a landscape and the degree to which change can be absorbed without impacting the outstanding natural landscape as viewed.
- The s293 proposal as notified retained the Court's approach of recognising the varying ability for the landscape to absorb change and included a map showing the areas of low, medium and high visual vulnerability. This was the "Areas of Landscape Management" map in Attachment C to the s293 Report. Reference was also made in a number of policies to the appropriateness of activities and development within these categories of visual vulnerability, closely following the Court's suggestions. In addition the status of farm buildings outside Farm Base Areas was dependant on the visual vulnerability category of the site.

## 23 Relevant policies

• Refer Policy 3B1 – Recognition of the Mackenzie Basin's distinctive characteristics

- Refer Policy 3B2 Subdivision and Building Development
- Refer Policy 3B3 Development in Farm Base Areas
- Refer Policy 3B4 Potential residential, rural-residential and visitor accommodation activity zones and environmental enhancement
- 24 <u>Changes after consultation</u> From feedback received during consultation it was clear that the identification of these visual vulnerability areas created a level of confusion and concern amongst landowners as it was thought that this classification would limit what could be done on their land.
- Council also received submissions from Blue Lake Investments and Fountainblue on the limitations of using only visual vulnerability in assessing the landscape values of a site or area and how these values would be affected by change. While the visual impact of changes in the landscape is very important, this approach does not necessarily value all the characteristics of the landscape. A second component is landscape character or its characteristics. I understand that these are, to a large extent, inherent characteristics and in this regard the landscape is considered as a resource. For these reasons it was decided to use the broader concept of landscape sensitivity to describe the various values of the landscape and their ability to absorb development. This concept includes both visual and character elements and their sensitivity.
- On this basis changes were made to Policies 3B1, 2, 3 and 4 replacing references to visual vulnerability with landscape sensitivity. In addition, it was determined that the status of farm buildings outside Farm Base Areas would be Restricted Discretionary throughout the Basin, whereas previously they were Controlled Activities in areas of low visual vulnerability and Restricted Discretionary in medium and high visual vulnerability areas. I comment further on this change and its implications.

## Scenic Grasslands

- The Court proposed the identification of landscapes of value close to the main roads which required additional protection. The Council proposes to include these "scenic grasslands", which incorporate some tussock grasslands, in the Planning Maps. These areas were originally identified by Graham Densem at the request of the Court as part of the First Decision. They have, more recently, been further ground-truthed and mapped in detail.
- There are 13 scenic grasslands all of which adjoin the main tourist roads (SH8, Haldon Road, Godley Peaks Road or Lilybank Road). I understand

they have been chosen because they are important aspects of the overall outstanding natural landscape of the Basin but they do not necessarily provide distant views (as do the current Scenic Viewing Areas). To protect the values in these Scenic Grasslands, along with existing Scenic Viewing Areas, Lakeside Protection Areas and Sites of Natural Significance, there are stronger controls on buildings, tree planting, earthworks, mining and pastoral intensification to maintain the landscape and ecological values of these areas.

Refer Policy 3B7 – Views from State Highways and Tourist Roads

29 <u>Changes after consultation</u> Not surprisingly the landowners whose land was identified as having a Scenic Grassland on their property were concerned about the new restrictions this would place on them. The Scenic Grasslands were challenged with regard to the robustness of the criteria used in their identification, including the lack of recognition of pastoral improvements. In addition, they considered the range of productive and related activities that could no longer be carried out as of right in these areas was unreasonable and would make their operations non-viable.

PC13 (s293V) retains the Scenic Grasslands and their associated strict controls on buildings and pastoral intensification. However there has been some modification to the boundaries of several Scenic Grasslands as detailed by Mr Densem in his evidence. In addition more detailed plans of all the scenic grasslands have been prepared so that landowners know exactly where they fall on their land. These plans will become an overlay on the Planning Maps.

#### **Pastoral Intensification**

In response to the Court's concerns about the lack of controls to manage 'greening' of the Basin there is now control of pastoral intensification within the Basin. The definition of pastoral intensification has been changed for the Mackenzie Basin Subzone as follows:

**Pastoral intensification** <u>within the Mackenzie Basin Subzone</u> means subdivisional fencing, <u>cultivation</u>, <u>irrigation</u>, topdressing and oversowing and/or direct drilling.

- Whereas Pastoral intensification was only controlled within Sites of Natural Significance under the Operative District Plan, PC13(293V) requires resource consent within the Mackenzie Basin unless it is within:
  - a farm base area, or

 an area where there is an irrigation consent from Environment Canterbury which addressed landscape impacts on the outstanding natural landscape – refer Rule 15A 1.2

Pastoral intensification within the following areas is a **Non-complying** activity:

- Site of Natural Significance, Scenic Viewing Area, Lakeside Protection Area,
- Scenic Grasslands or tussock grasslands within 1km of SH8, Haldon Road, Godley Peaks Road or Lilybank Road
- In all other areas, that is the majority of the Basin, pastoral intensification is a **Discretionary Activity** 
  - Refer addition to Rural Objective 3B(3) (a) and (b) -Activities in the Mackenzie Basin's outstanding natural landscape
  - Refer new Policy 3B13 Pastoral Intensification
- Changes after consultation In response to concerns about possible biodiversity values within Farm Base Areas that could be reduced or lost through pastoral intensification, a setback from rivers of 20m and wetlands of 50m is now required. The other change has been to remove the reference to "subdivisional fencing" from the definition of pastoral farming as fencing can be an effective and low-key way of better managing grazing as well as ensuring stock exclusion from waterways, which is expected to become a requirement in the coming years.

## Irrigators and fences

- There are new rules controlling the location of irrigators (including centre pivots and linear move systems). These are not permitted in Scenic Viewing Areas, Scenic Grasslands, SONS and Lakeside Protection Areas (consent required as a Non-complying Activity). In other areas they must be setback at least 250m from SH8, Haldon, Godley Peaks and Lilybank Roads.
  - Refer new Policy 3B7 Views from State Highways and Tourist Roads
  - Refer Rule 15.1.1.a
- <u>Changes after consultation</u> The rules originally controlled "large irrigators and fences" within more sensitive environments and required large irrigators to be setback from state highways and tourist roads. During consultation it was recognised that reference to "large" created uncertainty as to what was being controlled by the rules. To overcome this uncertainty

and based on the fact that almost all irrigators used in the Basin are the larger type, it was decided to simply refer to them as "irrigators".

The control on fencing was challenged as being at odds with good pasture management. In addition it was considered that traditional high country fencing of the post and wire type was part of the character of the area and did not impact on landscape values of the ability to view into the distance.

## **Buildings**

- The term "farm building" has been amended to be limited to buildings directly related to farming and to exclude residential or accommodation buildings. Farm retirement dwellings and their subdivision outside of Farm Base Areas are no longer provided for. Farm buildings outside farm base areas were generally Controlled activities throughout the Basin in the Commissioners Decision. They are now a restricted discretionary activity and are subject to various bulk and location standards.
- To discourage non-farm buildings locating outside of farm base areas, the activity status for non-farm buildings within Farm Base Areas has been changed from Restricted Discretionary to Controlled, but with a number of standards to be met. Farm retirement dwellings are no longer provided for as per the Court's suggestion.
- Non-farm buildings outside farm base areas in the form of cluster housing, rural residential development and visitor accommodation are to be provided for only by way of a change to the District Plan and then only in suitable places.
  - Refer new Rural Objective 3B(3) (c)-Activities in the Mackenzie Basin's outstanding natural landscape
  - Refer new Policy 3B2- Subdivision and Building Development
  - Refer new Policy 3B3 Development in Farm Base Areas
  - Refer new Policy 3B4 Potential residential and visitor accommodation activity zones and environmental enhancement
- Changes after consultation In the notification version farm buildings outside farm base areas are Controlled Activities in low visual vulnerability areas and Discretionary Activities in medium and high visual vulnerability areas. It was considered that there was too great a potential for a farm building to be intrusive in the landscape, even in low visual vulnerability areas, even with additional bulk and location standards. It was therefore

decided that all farm buildings would have the same status of restricted discretionary to enable Council to decline consent, if necessary.

#### **Subdivision**

- Based on the Court's clear reluctance to retain special provision for retirement dwellings outside farm base areas, and on experience with administering the current provision for these dwellings, there is no longer provision for retirement dwellings or their subdivision.
- Provision for subdivision for "facilitation farming activities" has been deleted and all subdivision outside Farm Base areas is now a discretionary activity with a minimum lot size of 200ha unless it is within a SVA, SONS, Scenic Grassland or LPA in which case it is a non-complying activity.
  - Policy 3B2- Subdivision and Building Development
  - Policy 3B5 Landscape aspects of subdivision

## Wilding Trees

There are no new provisions controlling wilding trees but the current method on placing conditions of consent for subdivision, housing and development and in new zones created by plan change is acknowledged in new *Policy 3B14 – Wilding Trees*.

## STATUTORY FRAMEWORK

Plan Change 13 of the Mackenzie District Plan sits within a policy framework of Part 2 of the Resource Management Act 1991 and the Canterbury Regional Policy Statement.

## Part 2 of the Resource Management Act

Section 5 of the RMA specifies that the purpose of the Act is the sustainable management of natural and physical resources, with a further explanation of sustainable management which is:

managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.
- 47 The Mackenzie Basin and its community and the issues associated with land use bring all these considerations into play. The use, development and protection of the natural and physical resources of the Basin are at the heart of the issues raised by PC13, which is why it has been contentious over a long period. What is now proposed by way of the s293 package is possibly more contentious than any previous version of PC13 because it seeks to manage and possibly, at times, prevent some forms of farming where this would adversely impact the outstanding natural landscape of the Basin. It also effectively makes developing some tourism operations involving buildings difficult and/or costly if a property does not have a Farm Base Area. While recognising the imperatives of Part 2, striking some kind of the balance between protecting the natural and physical resources of the Basin, and enabling people and the community to provide for their economic well-being is fundamental to the decisions that need to be made on PC13.
- Also of importance is determining what are the foreseeable needs of future generations in relation to the values and resources of the Basin. The vegetation of the Basin has been transition for centuries and will continue to change.
- In my opinion section 5 sets out very important high-level concepts that need to be addressed, but it does not provide definitive guidance as to what is the most appropriate resource management direction to be pursued.
- Section 6(b) specifies as a matter of national importance:

the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

and sets a strong directive that its protection from inappropriate development must be recognised and provided for in the relevant resource management plan. Like section 5, this section asks the searching questions, but leaves it up to the Council, community, interest groups and Court to work through these matters. In particular, a determination needs to be made as what constitutes inappropriate subdivision, use and development given that people live and work in the Basin and that hundreds of thousands of people visit the Basin every year.

## The Canterbury Regional Policy Statement

51 The development of PC13, through consultation and court processes and application of now recognised good practice in identification and management of outstanding natural landscapes, in my opinion, means that it gives full effect to the Regional Policy Statement. Chapter 12 which deals with landscape is focused on outstanding natural landscapes and sets out what territorial authorities are expected to do in relation to these landscapes. I now set out these core requirements and comment on how PC13 satisfies these.

> ONLs are to be identified<sup>3</sup> – Identification of the whole of the Mackenzie Basin as an ONL has occurred through the hearing, and then decision, by the Court. I note that at some point this will need to be identified on the planning maps.

> ONLS are to have their values specifically recognised and protected from inappropriate subdivision, use and development<sup>4</sup> – the values have been recognised and controls proposed over a range of use, development and subdivision

52 The explanation to Objective 12.2.1 recognises the multi-dimensional aspect of landscape including natural science, aesthetic, transient and heritage and tangata whenua values. It also comments on how these values overlap with the statutory considerations in s6(a) RMA concerned with natural character, section 6(c), significant area of indigenous vegetation and habitats, section 6(f), historic heritage and section 8 in relation to the principles of the Treaty of Waitangi. All these elements are part of the Mackenzie Basin landscape and the overlap between landscape and ecological values in particular, creates a tension that is not easily resolved. I consider this matter later in my evidence.

53 The objectives and policies of the Landscape Chapter of the CRPS do not provide the Council with particular guidance as to what constitutes inappropriate development other than to state the obvious, that it is development which compromises the values of the ONL. Given the scale and the varying capacity of areas within the Basin to accommodate change, it is no easy task to determine what forms of control or management will avoid the "inappropriate" while enabling the community's well-being.

<sup>&</sup>lt;sup>3</sup> CRPS Objective 12.2.1, Policy 12,3,1 <sup>4</sup> CRPS Objective 12.2.1, Policy 12.3.2

As referred to above, the ecological values of the Basin are one of the factors that contribute to its very special landscape values. In this regard I note that the first objective<sup>5</sup> in Chapter 9 of the CRPS is to halt the decline in the quality and quantity of Canterbury's ecosystems and indigenous biodiversity. The s293 package requires consents for pastoral intensification in areas of the Basin, other than in Farm Base Areas and where irrigation consents have been granted and which provide for ONL values. This approach recognises that this intensification has a real potential to alter the landscape character of parts of the Basin, particularly those easily viewed from the State Highways and tourist roads. Significant indigenous vegetation may be present in these same areas so achieving protection of the landscape in some cases may also assist in retaining some of the indigenous vegetation present.

Another relevant aspect of the Mackenzie Basin landscape is that it has strong cultural and heritage significance for both Pakeha and Maori. Again the CRPS seeks that these landscapes are protected from inappropriate subdivision, use and development<sup>6</sup>. PC13 satisfies this requirement through its tight control on subdivision and built development, particularly around the lakes which have particular significance to tangata whenua. The Cultural Impact Assessment prepared in response to Plan Change 13 details elements of the landscape that have spiritual significance including the ability to look up Lake Pukaki to view Aoraki/Mount Cook, without any impediment. This was understood when Council chose to retain lakeside protection area controls.

## **CONTESTED ISSUES**

The Council's memorandum to the Court dated 27 May 2016 listed what were considered to be the potentially contested issues as requested by the Court.

This list was based on the main themes taken from the submissions to the s293 package as notified. Of the 10 submitters who have become s274 parties to the existing appeals on PC13, only three of these have been lodged with the Court since the revised 293 package was released and even these parties have not provided any response to the matters that have been revised. Some of the existing appellants were submitters to the S293 package as notified, but again these submissions were based on the earlier version of s293. Accordingly, at the time of preparing this evidence,

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<sup>&</sup>lt;sup>5</sup> CRPS Objective 9.2.1.

<sup>&</sup>lt;sup>6</sup> CRPS Objective 13.2.2

there remains a degree of uncertainty as to the extent of support or opposition for the latest changes to the s293 Package.

I also note that a number of submitters have chosen not to be parties, so the matters that have been raised in submissions<sup>7</sup> are unlikely to be followed through at this appeal hearing, e.g. improved recognition and provision for tourism and visitor accommodation outside Farm Base Areas. I have attached to my evidence a summary of the requests made by the various submitters.

To assist the Court I now provide an overview of these issues with reference at times to the parties involved. These issues will be assessed in more detail in section H of my evidence using section 32 as the basis for assessment.

## **Visual Vulnerability Classification**

60 The visual vulnerability categories (low, medium and high) are one of the many assessments contained in the 2007 landscape report of Graham Densem which informed PC13's development. As noted earlier in my evidence, the Council's s293 package no longer expressly uses mapping of the high, medium and low visual vulnerability areas as an express basis for policy or rules. The alternative term of "landscape sensitivity" has been used in Policy 3B1 and 3B2 to acknowledge the varying capacity of the Basin to absorb change. This change was done primarily to recognise that visual vulnerability represents only a part of the value of the landscape, which is the part that is appreciated for aesthetic and visual amenity when viewed. The other important element is what could be called landscape character which is based on inherent characteristics of the landscape which include natural science factors. The latter matters were referred to by several submitters and are matters Mr Densem always referred to as being relevant in the understanding and assessment of the values of outstanding natural landscapes.

The second lesser reason for not directly referring to visual vulnerability categories in policies and rules is the scale at which these categories have been identified. Because the visual vulnerability map was at a large scale i.e. 1;3000 2 A3, it was difficult to determine where the boundaries of the different categories fell. This created concern by landowners due to the uncertainty it created. It seemed unnecessary to create misunderstanding, and potentially antagonism, on the basis of a line on the map that was not definitive in relation to the status of most activities. There was also the

<sup>&</sup>lt;sup>7</sup> Charlie Hobbs for Kiwi Tucker for the Soul Ltd and K and L Paardekooper

concern that if land was identified as being in a low visual vulnerability area that this might create an unrealistic expectation for landowners that they could do any development without creating any impact.

Any land use, subdivision or development that triggers the need for resource consent with the Mackenzie Basin Subzone will require an indepth assessment of the landscape impacts of the proposal. It is at this stage that the visual vulnerability classification of the area, the character of the area and its other values, such as its natural science elements, all need to be considered in determining what the values of the landscape are, but also, importantly, what will be the likely impact of the proposal on these values. This will vary considerably even within areas of the same level of visual vulnerability and of course because no two developments are the same.

At this stage I do not know to what extent parties to the appeals will be concerned about this modified approach. However, I note that the Court specifically chose to use the visual vulnerability categories (medium and low) as a basis for specifying where rural residential and visitor accommodation might be provided for by way of a plan change. The Court also distinguished between Farm Base Areas with high visual vulnerability area and other by listing different assessment matters for development with these areas. The Court also used the categories to determine the appropriate status of farm building outside of farm base areas.

## The use of the word "avoid" in Policies 3B7(a), 3B7(c) and 3B13(2)

Policy 3B7(a) as proposed provides:

To avoid all buildings, irrigators and exotic trees in the Scenic Grasslands and the Scenic Viewing Areas

65 Policy 3B7(c) provides:

To avoid clearance, cultivation or oversowing of Scenic Viewing areas and Scenic Grasslands, including tussock grasslands, adjacent to and within the foreground of views from State Highways and the tourist roads.

66 Policy 3B12(2) provides:

To avoid pastoral intensification in Sites of Natural Significance, Scenic Viewing Area and Scenic Grasslands (including tussock grasslands) adjacent to and within the foregrounds of views from State Highways and the tourist roads.

- This use of the word "avoid" has been reflected in the non-complying status of all buildings, including farm buildings, irrigators and pastoral intensification in these areas.
- It is expected that these policies, along with the status of these activities, will be challenged for opposing reasons. The policies and status of activities will be considered to be too strong and therefore onerous for landowners with Federated Farmers supported by Braemar, Mt Gerald and Glenmore specifically requesting removal of the word "avoid" from these policies. On the other hand EDS and the Mackenzie Guardians want "avoid" to be retained and on that basis they consider the status of activities such as buildings and pastoral intensification in Scenic Grasslands, Scenic Viewing Areas and Lakeside Protection Areas justifies prohibited, rather than non-complying, status.

#### **Pastoral Intensification**

The s293 package expands on the concept of pastoral intensification with the Mackenzie District Plan and provides for a significant extension to the areas where it is to be controlled through consenting. Currently control on pastoral intensification only occurs within Sites of Natural Significance (ecological sites). A specific definition of pastoral intensification to apply in the Mackenzie Basin has been added which includes cultivation and irrigation as follows:

**Pastoral intensification** within the Mackenzie Basin Subzone means subdivisional fencing, cultivation, irrigation, topdressing and oversowing and/or direct drilling.

Pastoral intensification is now to be subject to control throughout the Mackenzie Basin Subzone except within Farm Base Areas and on land for which irrigation consent from Environment Canterbury has been granted and which addressed the effects on the outstanding natural landscape. The exemption for irrigation consents only applies to consents granted prior to 14 November 2015 and states:

## Permitted Activities Rule 15A.1.2

Pastoral Intensification (refer definitions) within the Mackenzie Basin Subzone which is:

- (a) within a defined Farm Base Area (refer Appendix R) and is setback at least 20m from the bank of a river and 50m from a wetland; or
- (b) within an area for which a resource consent a water permit to take and use water for the purpose of irrigation has been granted by Environment the Canterbury Regional Council prior to 14 November

2015 authorising irrigation, the consent has not lapsed and effects on the outstanding natural landscape have been addressed through the regional consenting process.

- The main aspect that is likely to be contested is whether pastoral intensification should be controlled at all as it removes the possibility of increasing production and revenue and is therefore a lost opportunity. This could have the potential to seriously impact the viability of a property.
- It is anticipated that the definition of pastoral farming, and in particular its reference to oversowing and topdressing, will be challenged as it involves requiring consent for everyday farming operations some of which arguably have no impact on the landscape. The s274 parties who have raised this issue are Ben Ohau, Federated Farmers (NZ), the Wolds and Simons Pass.
- A third concern is that the control is uncertain because it is not clear what existing use rights can be claimed for farming practices that occur infrequently or on an irregular basis. This concern has been raised in consultation discussions.
- The final matter of contention is the cut-off date for the exemption from the pastoral intensification rule. The proposal in rule 15A.2.1(b) above is that pastoral intensification will only be a Permitted activity if it is within an area over which irrigation consents granted prior to 14 November 2015. This date was chosen as it coincided with the date the s293 package was notified. A number of landowners who have been in the consent process for many years with Environment Canterbury and the Court but have not yet received their consent, want that date extended to cover consents which are at an advanced stage but which have not been granted or are in the appeal process. These parties include Ben Ohau, Mt Gerald, Classic Properties, Federated Farmers, Kidd partnership and Aoraki Downs.

#### Scenic Grasslands

Scenic grasslands are a newly identified environment that requires special controls to retain its natural values, which are primarily landscape values. The Court requested the identification of these scenic grasslands at an earlier stage. 13 of these grasslands have now been identified by Graham Densem at a useful scale on aerial photos that can be incorporated into the Council's GIS system and planning maps as an overlay. They are accompanied by a description of their boundaries and values. Reflecting their importance to the many people who view these areas from SH8 and the tourist roads, they have relatively strict controls which are either the

same or very similar to those applying to Sites of Natural Significance (SONS), Scenic Viewing Areas (SVAs) and Lakeside Protection Area (LPAs). Most activities and building are non-complying in these areas.

- Pased on submissions received by Mt Gerald, Maryburn, Kidd Partnership, The Wolds, Bendrose, Irishman Creek and Simons Pass Station, the main challenges to the Scenic Grasslands are:
  - Whether there is good landscape basis for these areas and their boundaries, given that some include improved grasslands and other development.
  - Whether controls over buildings and pastoral intensification should reduced
  - Whether the economic impact of the restrictions in these areas has been understood and acknowledged.
- 77 EDS and the Mackenzie Guardians have requested that the controls in Scenic Grasslands should be changed to prohibited activities to ensure the activities of concern are "avoided".

## Buildings (farm and non-farm) buildings - status

- The status of buildings was changed slightly as a result of issues raised in consultation. In particular, to discourage non-farm buildings outside of Farm Base Areas it was decided to encourage them to establish within Farm Base Areas by reducing their status from restricted discretionary to controlled activity refer rule 3.2.2. However, to ensure certain adverse effects are avoided, there are an increased number of standards for these buildings to meet namely:
  - Minimum building height of 8m
  - Minimum setback from state highways of 100m and 20m from other roads
  - Minimum setback from internal boundaries of 20m
  - Minimum setback of 20m from rivers and 50m from wetlands
  - Maximum gross floor area of a single building of 550m<sup>2</sup>
  - No-farm buildings greater than 100m<sup>2</sup> to be setback 3.6m from other buildings.
- With regard to farm buildings outside Farm Base Areas it was considered that there was potential for a farm building to be intrusive in the landscape, even in low visual vulnerability areas, even with additional bulk and location standards. It was therefore decided that all farm buildings outside

Farm Base Areas would have the same status of restricted discretionary to enable Council to decline consent, if necessary.

It is expected that generally, the status of buildings within farm base areas will not be challenged. However, the definition of what is a farm building is expected to be opposed by some as it no longer includes farm dwellings and farm workers accommodation, that is, it has returned to the definition that was in PC13 as notified. This approach was necessary if the Court's suggestions were to be adopted regarding tight restrictions on buildings outside Farm Base Areas other than farm buildings that need to be in a particular location. The definition of farm buildings in the Decision version of PC13 included "residential units and accommodation used for people predominantly involved in framing activities and their families. If this definition was retained then houses would be Restricted Discretionary or even Controlled activities outside Farm Base Areas, in contradiction to the thrust of not providing for residential buildings outside Farm Base Areas.

The status of non-farm buildings, such as homesteads and visitor accommodation, outside farm base areas is expected to be controversial as they are currently discretionary. A number of submitters were concerned that with non-complying status the test for obtaining consent is as onerous as if it was in a more sensitive area such as a Lakeside Protection Area, and that this did not seem reasonable.

It is not known at this stage whether the status of buildings within farm base areas will be challenged.

## **Tourism and Visitor accommodation**

Submissions were received by two landowners<sup>8</sup> involved in visitor accommodation who considered that PC13 should contain greater recognition and provision made for tourism and visitor accommodation. Their concern was that the new controls on non-farm buildings outside Farm Base Areas meant that any buildings associated with tourism, and in particular visitor accommodation, would find it very hard to establish due to the Non-complying status of these buildings. PC13 (s293V) retains those controls on non-farm buildings and in doing so, does not distinguish between buildings being used for different purposes. These landowners made these submissions have not become s274 parties.

<sup>&</sup>lt;sup>8</sup> Charlie Hobbs and K and L Paadekooper

## Retirement Dwellings and Subdivisions for Retirement Dwellings

- On the basis of the Court's suggestions, the s293 proposal has removed special provision for farm retirement dwellings and the 50ha subdivide standard to accommodate these dwellings. A number of submitters have requested their reinstatement to provide for the handing down of the responsibility for stations from one generation to the other without forcing the older generation off the land.
- PC13 (s293V) does reintroduce retirement dwellings as a recognised exception to the general controls on buildings and subdivision outside Farm Base Areas. In my opinion, while there are social and possible economic benefits of enabling retiring owners to remain living on a station, it is difficult to make these provisions sufficiently robust to avoid misuse of this type of provision.

## **SECTION 32 ASSESSMENT**

- A section 32 Report was prepared for the section 293 Pack as notified. This report is attached as **Annexure B** to my evidence. Following the decision to modify the section 293 package after consultation a revised Section 32 Report was prepared. It is dated 27 May 2016 and is attached as **Annexure C** to my evidence.
- These section 32 reports firstly, consider the genesis of the landscape objectives in the Mackenzie District Plan, including the Court's Ninth Decision which put in place Objective 3A Landscape Values and subclauses (1) and (2) of Objective 3B Activities in the Mackenzie Basin's outstanding natural landscape. The Court also suggested a new Objective 3B(3). The Council's alternative Objective 3B(3) is then explained and assessed in terms of the Act and other objectives in the District Plan. This is followed by an assessment of the effectiveness and efficiency of the main policies and rules relating to buildings and subdivision, pastoral intensification and scenic grasslands.
- I was the author of the section 32 report and the following comments are drawn from primarily from the later report dated 27 May 2016. I have since had the benefit of more detailed landscape evidence from Graham Densem, ecological evidence from Mike Harding and new economic evidence from Dr Doug Fairgray. I refer to this evidence where relevant.

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

- Objective 3B(1) and (2) was confirmed by the Court in 2013 when it stated that the objective should require protection and enhancement of the outstanding natural landscape and then specify the attributes of the Basin which contribute to the Basin being outstanding. The objective was to then provide a specific exemption for the Waitaki Power Scheme given it is an integral part of the Basin.
- The wording of the new Objective 3B(1) and (2) as confirmed by the Court is:

## Objective 3B – Activities in the Mackenzie Basin's outstanding natural landscape

- (1) Subject to (2)(a), to protect and enhance the outstanding natural landscape of the Mackenzie Basin subzone in particular the following characteristics and/or values:
  - (a) the openness and vastness of the landscape;
  - (b) the tussock grasslands;
  - (c) the lack of houses and other structures;
  - (d)residential development limited to small areas in clusters;
  - (e) the form of the mountains, hills and moraines, encircling and/or located in, the Mackenzie Basin;
  - (f) undeveloped lakesides and State Highway 8 roadside;
- (2) To maintain and develop structures and works for the Waitaki Power Scheme:
  - (a) within the existing footprints of the Tekapo-Pukaki and Ohau Canal Corridor, the Tekapo, Pukaki and Ohau Rivers, along the existing transmission lines, and in the Crown-owned land containing Lake Tekapo, Pukaki, Ruataniwha and Ohau and subject only (in respect of landscape values) to the objectives, policies and methods of implementation within Chapter 15 (Utilities) except for management of exotic tree species in respect of which all of objective (1) and all implementing policies and methods in this section apply;
  - (b) elsewhere within the Mackenzie Basin subzone so as to achieve objective (1) above
- In its First Decision the Court suggested a further subclause (3) to Objective 3B to deal with specific maters of pastoral farming, pastoral intensification and subdivision and buildings. The Council has chosen to include a new subclause (3) addressing those matters, but with important changes. It is these changes that require assessment. The two versions of the subclause are set out in the table below:

Environment Court Objective 3B(3)	Council - s293 Package Objective 3B(3)
Subject to objective (1) above and rural objective 1,2 and 4	Subject to objective (1) above and rural objective 1,2 and 4
(a) to enable pastoral farming while limiting building , fencing and shelterbelts	(a) to enable pastoral farming
b) to enable pastoral intensification cultivation and/or direct drilling and high intensity (irrigated) farming in appropriate areas south and east of SH8 except adjacent to, and in the foreground of views from, State Highways and tourist roads;	(b) to enable pastoral intensification, including cultivation and/or direct drilling and high intensity (irrigated) farming, in Farm Base Areas and in areas for which irrigation consent was granted prior to 14 November 2015 and the effects on the outstanding natural landscape have been addressed through the regional consenting process; and elsewhere, to manage pastoral intensification.
to enable rural residential subdivision, cluster housing and farm buildings preferably around existing homesteads (where they are outside hazard areas) or in the areas of low visual vulnerability shown on map z in the district plan.	c) to enable rural residential subdivision, cluster housing and farm buildings around existing homesteads (where they are outside hazard areas).

- 92 The purpose of both versions of subclause (3) is to acknowledge and address activities that have the potential to impact the outstanding natural landscape of the Basin, and in particular impact the values listed in Objective 3B(1). The emphasis is on activities being enabled where they are appropriate and managed elsewhere, but with the important proviso that this is subject to Objective 3B(1) and Rural Objective 1 Indigenous Ecosystems, Vegetation and Habitat, Objective 2 Natural Character of Waterbodies and their Margins and Objective 4 High Country Land. This proviso means management and control of activities is to occur where this is required to:
  - Protect or enhance the outstanding natural landscape
  - Safeguard indigenous biodiversity and ecosystem functioning through protection and enhancement of significant indigenous vegetation and habitats
  - Sustain ecosystem functions, open space and natural values of the High Country
  - Preserve the natural character and functioning of the District's lakes rivers and wetland and their margins

All these matters are based on the requirement to recognise and provide for matters in section 6 of the Act.

93 Subclause 3(a) refers to enabling pastoral farming. The Council's version has removed the Court's qualification in relation to fencing, buildings and shelterbelts reflecting there that there are now no controls on fencing and

that shelterbelts are provided for subject to setbacks. However there are controls on farm buildings outside Farm Base Areas so it would be more accurate to refer to this limitation in (3)(a).

94 In relation to pastoral intensification the Court's suggestions for subclause (3)(b) provided for pastoral intensification in "appropriate areas to the south and east of SH8 except where adjacent to, and in the foreground of views from, State Highways and tourist roads". In response a desktop study to ascertain whether there is likely to be significant indigenous vegetation in this area was commissioned. This study by Mike Harding is part of the s293 package and concludes that on the basis of readily available information substantial parts of the floor of the basin to the south and east of SH8 are likely to support significant indigenous vegetation and/or significant habitats of indigenous fauna. It is for this reason that I understand, the decision was made not to refer to this area as suitable for pastoral intensification. The values in this area are described further in the Mr Harding's evidence9. I note that the Court's suggested version refers to "appropriate areas" to the south and east of SH8 and in doing so may have been acknowledging that some areas would not be appropriate for ecological reasons.

With regard to areas close to SH8 and tourist roads, PC13 (s293V) does not include this major qualification in their objective 3B(3)(b), but rather have addresses this at policy level in **Policy 3B7 – Views from State Highways and Tourist Roads**, where pastoral intensification is to be avoided within identified Scenic Grasslands and Scenic Viewing Areas.

Like the Court's approach, the emphasis in the Objective is on the areas where intensification is enabled, rather than where it is strictly controlled. PC13 (s293V) enables pastoral intensification in Farm Base Areas and in areas where irrigation consents have been granted by Environment Canterbury, provided these consents have taken into account effects of irrigation and irrigators on the values of the outstanding natural landscape.

On the basis that Farm Base Areas were often already a modified environment it was considered that pastoral intensification may not create significant landscape issues. Since that decision a rapid assessment of the ecological values of farm base areas was undertaken by Mike Harding, as outlined in his evidence<sup>10</sup>, which indicated while large parts of these areas had little or no indigenous vegetation or habitat of value, there were a number of areas of significant indigenous vegetation. Mr Harding also

<sup>10</sup> Evidence in chief of Mike Harding paragraphs 54-57

<sup>&</sup>lt;sup>9</sup> Evidence in chief of Mike Harding paragraphs 33-43

concluded that several of the Farm Base Areas incorrectly included wetlands and some Sites of Natural Significance and that the boundaries need to be amended to exclude these areas. In my opinion, I would expect that most landowners would prefer to have intensive farming operations, such as dairying, further away from their homestead and workers accommodation and so are unlikely to take advantage of the permitted activity status of pastoral intensification in Farm Base Areas.

With regard to enabling intensification in areas which have received irrigation permits, I understand this was done as a matter of fairness recognising that it was unreasonable for landowners to have gone through a drawn out consenting process at considerable expense to then have to apply for further consents. This was especially so as many of the recent irrigation consents have conditions controlling the location of the irrigated areas and irrigators to avoid significantly impacting the values of the ONL.

The proposed pastoral intensification objective ends with the statement that beyond the areas where it is enabled, it is to be managed. This is reflected in the rule regime where pastoral intensification in the most sensitive environments (Scenic Grasslands, Scenic Viewing Areas, Lakeside Protection Areas and Sites of Natural Significance) is a non-complying activity and elsewhere it is a Discretionary activity. The section 32 report concludes, and I agree, that the Council's approach is more appropriate because:

- It better protects the landscape beyond the foreground views, and
- It is expected to better protect likely significant ecological values to the south and east of the SH8.

Mr Harding in his evidence comments on the removal of subdivisional fencing from the definition of pastoral intensification and considers that this could result in loss of significant indigenous vegetation<sup>11</sup>. He does acknowledge that new fencing is unlikely to occur without the other elements of pastoral intensification. This concern highlights the difficulty of developing a plan change which has protection of landscape as its main purpose but which also needs to consider and provide for maintenance of biodiversity values. A fence in many situations will not have significant impacts on the landscape but could result in loss of significant indigenous vegetation.

101 With regard to **buildings and subdivision** subclause (3)(c) of the Council's version of Objective 3B limits rural residential subdivision, cluster

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<sup>&</sup>lt;sup>11</sup> Evidence in Chief of Mike Harding paragraph 87

housing and farm buildings around existing homesteads, that is, within Farm Base Areas. The Court's suggested version also provides for these activities in areas of low visual vulnerability. Graham Densem has considered this matter and concludes that subdivision for rural residential development is very likely to compromise the essential open, uncluttered pattern of development in the Basin and is therefore at odds with the values of the Basin, even in areas of low visual vulnerability. He describes rural residential subdivision as creating a lowland pattern of development which is contrary to that of the high country. I agree, and for this reason I consider that at Objective level it is appropriate to succinctly state the clear preference for buildings and their associated curtilage and trappings to be in building nodes and not spread about.

## Policies, rules and methods

- The alternatives against which the s293 policies and rules have been assessed in relation to best achieving Objective 3B(3) are the Court's suggested policies and rules refer section 5.4 Summary of Policy and Rule Assessments in the Section 32 Reports for s293 as notified and revised version in **Annexure B** and **C** to my evidence.
- In relation to **buildings and subdivision** the two approaches are actually quite similar. Both:
  - Seek to limit buildings primarily within Farm Base Areas
  - Farm buildings are an exception due to the need for some of these to locate close to where productive work is undertaken.
  - Buildings are to be avoided in the most sensitive areas such as Scenic Grasslands, Scenic Viewing Aras and Lakeside Protection Areas.
  - Rural residential development and visitor accommodation is only to be provided for by way of plan change and then only in areas of lesser landscape value and after robust assessment of their impact.

The main differences between the two approaches are the slight differences in the status of activities.

- 104 Firstly, I comment that in order to provide for more liberal provisions for farm related buildings, it was considered necessary to amend their definition to exclude homesteads and workers accommodation, which, in principle, do not need to locate beyond the homestead cluster.
- The Court proposed that non-farm buildings in Farm Base Areas would have the status of Controlled or Restricted Discretionary depending on the

visual vulnerability classification of the Farm Base Area. Initially the Council chose, for simplicity, and because most Farm Base Areas were in high visual vulnerability areas, to give them the same restricted discretionary status. A matter raised during consultation was the need to positively discourage people from applying for non-farm buildings outside farms areas and to do this by encouraging them to locate within these areas.

PC13 (s293V) provides a less stringent activity status for non-farm buildings to establish within Farm Base Areas by making these Controlled activities rather than Restricted Discretionary as originally proposed. As pointed out in the section 32 report for PC13(s293V) in Annexure C<sup>12</sup>, with regard to effectiveness there are merits in having the power to decline consent especially as most Farm Base Areas are on land classed as high visual vulnerability. In my opinion the lesser status of Controlled is more appropriate in order to encourage non-farm buildings into Farm Base Areas as these have always been the intended focus of built development within the Basin. At this stage it is unknown how effective this approach will be.

The status of farm buildings outside Farm Base Areas in PC13 (s293V) differs from the Court's approach. The Court suggested that in these areas the status of farm buildings is based on the level of landscape visual vulnerability in which the building is proposed to be located i.e. Controlled Activity in low visual vulnerability areas, Restricted Discretionary in medium visual vulnerability areas and full Discretionary Activity in high visual vulnerability areas.

A simpler regime has been chosen with all farm buildings outside Farm Base Areas being restricted discretionary activities with the matters of control being external appearance and location within the landscape and lighting as well as being subject to addition standards in relation to size and building separation. The restricted discretionary status is considered sufficient to enable an assessment of landscape impacts of farm buildings based on the sensitivity of areas in accordance with the Plan's objectives. It also provides power to decline a proposal if necessary, whereas Controlled Activity status does not.

The exception to this approach is with farm buildings in the sensitive environments such as Scenic Viewing Areas, Scenic Grasslands, and Lakeside Protection Areas which are non-complying. This stronger control

<sup>&</sup>lt;sup>12</sup> Page 11 Efficiency and Effectiveness, 2<sup>nd</sup> para

is considered appropriate given the prominence of these areas within the outstanding natural landscape of the Basin. It is also considered to be effective in achieving **Policy 3B7 Views from the State Highways and Tourist Roads** which is to avoid buildings and other structures in these areas.

The third change relates to not providing for rural residential subdivision in low visual vulnerability areas. I have considered this in my evaluation of Objective 3B(3)(c) above.

## Scenic Grasslands

The identification of Scenic Grasslands and associated strong controls on pastoral intensification, buildings, and to a lesser extent, irrigators, earthworks and planting, is one of the key elements of the s293 package. These areas, which may not be in the foreground to a distant view, were proposed by the Court as being important aspects of the overall outstanding natural landscape and because they were highly visible from State Highways and tourist roads.

The Court at times referred to these areas as tussock grasslands<sup>13</sup> and at other times as scenic grasslands<sup>14</sup>. Mike Harding assessed the ecological values of the proposed Scenic Grasslands in June 2016. His summary of these 13 areas contained in his evidence is that these areas support vegetation that is typical of uncultivated parts of the Mackenzie Basin. From an ecological aspect they are not all "grasslands" as there are shrublands, herbfields, cushionfields and bare ground. There are tussocklands within some of the sites but often this is not the main component of the vegetation.

These areas have been called Scenic Grasslands in the s293 proposal. At times in policies 3B7 and 3B13 have referred to them as *Scenic Grasslands* (including tussock grasslands). This may have caused confusion as the Department of Conservation in their s274 Notice now request that these references be changed to "Scenic Grasslands, including indigenous vegetation". Whereas the reference to "including" in the s293 policy is to mean tussock grasslands within identified Scenic Grasslands. I presume DoC want the policy to refer to all indigenous vegetation, whether this is within or outside the Scenic Grasslands. In my opinion this matter needs to be clarified by rewording of the references to Scenic Grasslands.

<sup>14</sup> Interim Decision at 189

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<sup>&</sup>lt;sup>13</sup> Interim Decision at 190

- Scenic Grasslands are addressed in two inter-related policies. Policy 3B7 Views from State Highways and Tourist Roads contains policy in relation to Scenic Grasslands and to other areas adjacent to State Highways and tourist roads. It specifies that within Scenic Grasslands buildings, irrigators, exotic trees, clearance, cultivation or oversowing are to be avoided. Policy 3B13 Pastoral Intensification also states that pastoral intensification is to be avoided in Scenic Grasslands, Scenic Viewing Areas and Sites of Natural Significance. However the rules do not treat all these activities in the same manner. Buildings and pastoral intensification are Non-Complying in these areas and the remaining activities are Discretionary activities. EDS and the Mackenzie Guardians in their submissions to the notified s293 provisions requested that all these activities be Prohibited activities on the basis that Policy 3B7 and 3B13 refer to avoidance of these activities.
- There were also many submitters challenging the Scenic Grasslands identified on their properties on the basis that these areas were not special and the proposed limitations, in particular those on pastoral intensification, would severely limit the economic use of these areas with consequent viability issues for their farming operations. Clearly these restrictions will either incur the expense of lost production and profit and/or will involve the cost of applying for resource consent, including the fees of specialists and Council fees. The benefit of these limitations is that these areas are very likely to remain available for viewing and experiencing by the local and visitor community for years to come.

## Pastoral Intensification

- Policy 3B13 Pastoral Intensification largely replicates the details contained in Objective 3B(3)(c) which are that pastoral intensification:
  - maintains the outstanding natural landscape and meets biodiversity and high country objectives
  - is to be avoided in the most sensitive environments Scenic Grasslands, Scenic Viewing Areas and Sites of Natural Significance (Non-complying activity)
  - is enabled in Farm Base Areas and consented irrigation areas (Permitted subject to conditions)
  - Managed elsewhere (Discretionary activity)
- 117 A rule is required to control pastoral intensification in the sensitive environments if Objective 3B(3) is to be achieved. The question then is whether non-complying status is the most effective status for this rule. Any

status less than non-complying could indicate that pastoral intensification in these areas would be acceptable in many cases. I note however there is a range of activity types covered by the definition of pastoral intensification including oversowing and topdressing, which would generally have limited landscaped impacts, but greater impacts on indigenous vegetation. In contrast a move to dairying in these areas that are considered to be the most sensitive to change because of their inherent values and/or the values prized by the public, is unlikely to be acceptable. Some submitters seek Prohibited status in these sensitive environments especially as the policy seeks to "avoid" pastoral intensification.

- I consider that there may be a need to better align the policy and rules where the term "avoid" is used in relation to an activity as it would appear to provide little room for movement, despite the fact that there is wide range of effects that could result from different forms of pastoral intensification. It may be more appropriate to refer to avoidance of effects on the significant or outstanding values rather than avoidance of the activity per se.
- With regard to efficiency of the controls on pastoral intensification I have considered whether the proposed controls Plan Change 5 (PC5) to the Canterbury Land and Water Regional Plan. This Plan Change introduces a region-wide the requirement for Farm Management Plans which need to be prepared where irrigation could result in nutrient (nitrogen) loss. It also contains specific provision for the Waitaki Area in terms of limits on nutrient loss for the various catchments involved.
- PC5 makes very limited references to landscape and does not require it to be taken into account in consent assessments. On this basis it is not clear whether further consents for irrigation could contain condition limiting areas of irrigation and the location of irrigators, as has happened in the recent past. It does however require ecological assessments up to the point where the Mackenzie District Plan is reviewed and new rules on significant natural areas are operative. I also note that the need for ecological assessments is only triggered if the nutrient loss exceeds the levels specified for each catchment. This appears to assume that the degree of nutrient loss (to soil and groundwater) in some way equates to the degree of impact of irrigation on indigenous vegetation and habitat. I would not expect that to be the case. Submissions to PC5 have yet to be heard. For all these reasons I do not consider that PC5 provides an alternative efficient control to achieve maintenance of the outstanding

natural landscape values of the Basin as compared to the pastoral intensification controls in PC13(s293V).

Dr Fairgray in his evidence considers the cost and benefits of PC13 in relation to the control on pastoral intensification. He states that the direct costs are opportunity costs in the form of a lower level of production and income. These costs would accrue to farms for which intensification would otherwise be a viable option and which do not have an irrigation consent from Environment Canterbury. He mentions there will also be the costs of acquiring consent under pC13, whether they are successful or not. These costs then have indirect opportunity costs for the district and regional economies. Dr Fairgray then describes the benefit of PC13 which is avoiding the reduction or loss of value from any reduction in the quality of the landscape. I agree with Dr Fairgray's description of the costs and benefits relevant to the proposed pastoral intensification control.

He provides a detailed description of the various values placed on landscapes. He then assesses the relationship of tourism to maintenance of the outstanding natural landscape of the Basin and states that while it is reasonably certain that the landscape is important for tourism, the value of the natural landscapes cannot be equated with the value of tourism. He notes that the sensitivity of visitor numbers to the quality of the Basin's landscape is not known, that is, it cannot be estimated to what extent a reduction in the values of the landscape would result in a reduction in tourism. I agree with this assessment of the situation and simply state that this acknowledges the considerable challenge involved in assessing the costs and benefits of the pastoral intensification provisions.

He then moves to assessing the costs and benefits of PC13 and concludes that there would be limited value in assessing the costs and benefits at a Basin-wide level because the opportunity cost of forgone production will be specific to the farm and to the type of intensification. He also considers that the reduction in the landscape and environmental values will be sensitive to the location. While I generally agree with the analysis, I consider there may be situations where the scale and form of the landscape is such that it could be considered that the impact of a development is beyond what could be considered a localised impact. From this analysis he concludes that the proposed scale that PC13 will be applied is relatively efficient.

Dr Fairgray then looks at the effectiveness of the pastoral intensification provisions and concludes that they will be effective both in protecting the

outstanding natural landscape and environmental attributes of the Basin in combination with other provisions in the Plan, and in enabling farming activity in locations where this is feasible. He considers that the financial incentives to intensify will encourage farmers to develop to the upper limit of what can be feasibly intensified and that protection of the landscape will place an upper limit on that intensification. I assume this approach, to some extent, is an assessment at a level beyond individual farms as it is possible that some farmers may have an application for pastoral intensification declined even though the land could be feasibly intensified.

## Capacity to Absorb Development

- Policy 3B1 Recognition of the Mackenzie Basin's distinctive characteristics has the important purpose of recognising that within the extensive outstanding natural landscape of the Mackenzie Basin there are a variety of areas and that the capacity of these areas to absorb change or development without comprising the landscape varies. This policy in its original form and in the Court's suggested policies relied, in part, on the three categories of visual vulnerability (high, medium and low) to indicate the ability of areas to absorb development, largely on the basis of that being built development.
- Following consultation where reservations were raised with using visual vulnerability as the only basis for determining the ability of an area to accommodate change references to visual vulnerability in policies were changed to landscape sensitivity.
- The changed reference from visual vulnerability to landscape sensitivity is intended to look at the landscape in a more holistic way. The question then is whether policy 3B1 and policy 3B2, which also uses the new terminology, is the most appropriate means of achieving Objective 3B(3). For the reasons listed in the previous paragraphs I consider that there are benefits in acknowledging the broader concept of landscape as it acknowledges natural attributes which have landscape value even if they are not easily viewed by the public. I also consider that these benefits are such that this approach is more appropriate than that contained in the s293 package as notified. I do however have reservations about removal of the reference to the visual vulnerability map in the Explanation of Policy 3B1 (bullet point 5). I consider this is a useful resource in any landscape assessment and note that Mr Densem comments that:

Although subsequently encapsulated in 'visual vulnerability' categories they also, in my view, substantially take account of landscape character<sup>15</sup>

For this reason I am of the opinion that this bullet point should be put back into the Explanation so that readers will be aware of this map when they are considering or assessing any development.

With regard to the implementations of these policies through rules as detailed in the section 32 Report in pages 10 and 11 there are three main rule changes relating to non-farming buildings in Farm Base Areas, farm buildings outside Farm Base Areas and rural-residential type development in low visual vulnerability areas. I now assess these changes drawing on the section 32 report.

## <u>Buildings</u>

129 Regarding non-farm buildings, such homesteads, as accommodation and visitor accommodation, the Court suggested the status of these should depend on the visual vulnerability status of the Farm Base Area with the status ranging from Controlled to Restricted Discretionary<sup>16</sup>. Initially, for simplicity and because almost all Farm Base Areas are within areas of high visual vulnerability, a single activity status of Restricted Discretionary was proposed for all non-farm buildings in Farm Base Areas. After consultation the status was change to Controlled as an encouragement and to discourage people from applying for resource consent to establish these buildings outside Farm Base Areas.

In terms of managing built development in Farm Base Areas Restricted Discretionary status is more effective than Controlled as it enables a proposal to be declined if necessary. However I consider that in this situation it is appropriate to take a wider view to ensure there is an effective regime overall for non-farm buildings, not just with Farm Base Areas. As noted above the effectiveness of this approach is unknown at this stage.

The second change relates to farm buildings outside Farm Base Areas. The Court suggested that in these areas the status of farm buildings be based on the level of landscape visual vulnerability in which the building is proposed to be located i.e. Controlled Activity in low visual vulnerability areas, Restricted Discretionary in medium visual vulnerability areas and full Discretionary Activity in high visual vulnerability areas. In the s293

<sup>16</sup> Interim Decision at 259

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<sup>&</sup>lt;sup>15</sup> Graham Densem evidence in chief, para 67.

proposal as amended all farm buildings outside Farm Base Areas are Restricted Discretionary activities with the matters of control being external appearance and location within the landscape and lighting as well as being subject to addition standards in relation to size and building separation. The exception to this is that farm buildings in the sensitive environments such as Scenic Viewing Areas, Scenic Grasslands, and Lakeside Protection Areas are non-complying. I consider this Restricted Discretionary status is sufficient to enable an assessment of landscape impacts of farm buildings based on the sensitivity of areas in accordance with the Plan's objectives.

# Policy 3B4 - Potential residential, rural residential and visitor accommodation activity zones and environmental enhancement

The third change is to Policy 3B4 and relates to not providing for rural residential, residential and visitor accommodation zones in low visual vulnerability areas. In the Court's version, these activities were to be enabled both around existing homesteads and in areas identified as low visual vulnerability. I assume the Court's reference to "around existing homesteads" is referring to Farm Base Areas.

133 Council's alternative version of Policy 3B4(2) removes reference to cluster housing and rural residential development being suitable within medium and low visual vulnerability areas. This was done on the basis of Graham Densem's earlier report<sup>17</sup> which concludes that rural residential subdivision, that is, subdivision for residential purposes within the Basin, is considered to be at odds with maintaining the extensive high country character, which is one of large open areas with occasional nodes containing buildings. While low and medium visual vulnerability areas have greater potential than high visual vulnerability areas to accommodate wellsited buildings. Rural residential subdivision however, is different to buildings as it covers a larger area and normally involves a number of outbuildings as well as the residential dwellings, and typically has fencing of a style not typical of the high country. In addition, rural residential subdivision often involves multiple lots and so its visual impact is greater. For these reasons, there is real potential for this form of subdivision to adversely affect the character of the outstanding natural landscape.

For these reasons I consider this policy which guides future plan changes within the Basin should not encourage this form of development, even in

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<sup>&</sup>lt;sup>17</sup> Graham Densem *The Mackenzie Basin Landscape – character and capacities* November 2007

low visual vulnerability areas and that the proposed modified Policy 3B(4) is the most appropriate way of achieving Objective 3B(3)(c).

## SUGGESTED AMENDMENTS

- On the basis of matters raised in my evidence and other evidence I discuss and recommend the following changes to PC13(s293V):
- The Department of Conservation in their s274 Notice have requested addition to the list of trees which are Prohibited Activities due to their propensity to result in wilding tree spread. The list is contained in Rule 3.5.1. I consider this inclusion of the additional trees to be appropriate but note that this provision was not included through the section 293 process. I am unsure therefore whether it is possible for the Court to amend it in these proceedings.
- As noted in paragraph 113 of my evidence, there is potential confusion in relation to policies 3B7 and 3B13 where there is reference to "Scenic Grasslands, (including tussock grasslands)" and "Scenic Grasslands, including tussock grasslands". In my opinion to avoid this confusion I recommend removal of the reference to "including tussock grasslands" in these policies.
- On the basis of my discussion in paragraph 92 I recommend that Objective 3B(3)(a) be amended to include reference to limiting buildings when enabling pastoral farming as follows:

## To enable pastoral farming while limiting buildings

In relation to Policy 3B1 which I discuss in paragraph 127, I recommend that the following bullet point be added to the Explanation for this policy to alert readers of the Plan to the existence of the Visual Vulnerability map:

Three levels of visual vulnerability having high, medium and low ability to absorb development have been identified within the Mackenzie Basin and are contained in the 2007 Report "The Mackenzie Basin Landscape – character and capacity' referred to above.

140 Haldon Station have queried Rule 15A.3.2 which lists pastoral intensification in the following areas as a Non-complying activity:

Pastoral intensification (refer definitions) in the Mackenzie Basin within a Site of Natural Significance identified on the Planning Maps and scheduled in Appendix I, Scenic Viewing Areas, Scenic Grasslands or Lakeside Protection areas identified on the Planning

Maps or tussock grasslands within 1km of State Highway 8, Haldon Road, Godley Peaks Road or Lilybank Road.

Haldon Station notes that the Court lists tourist roads in the Interim Decision<sup>18</sup> and includes "Haldon Road to the Mackenzie Pass Road". On this basis they query Rule 15A.3.2 which refers to all of Haldon Road as being subject to setbacks for pastoral intensification. I understand that it was not the intention that Haldon Road south of Mackenzie Pass Road, which has lower levels of traffic, was intended to be subject to this control. Accordingly I recommend that Rule 15A.3.2 be amended to read:

Pastoral intensification (refer definitions) in the Mackenzie Basin within a Site of Natural Significance identified on the Planning Maps and scheduled in Appendix I, Scenic Viewing Areas, Scenic Grasslands or Lakeside Protection areas identified on the Planning Maps or tussock grasslands within 1km of State Highway 8, Haldon Road to the Mackenzie Pass Road, Godley Peaks Road or Lilybank Road.

Patricia Harte 15 July 2016

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<sup>&</sup>lt;sup>18</sup> Interim Decision at [111].

## **ANNEXURES ATTACHED**

Annexure A: Attachment A to PC13(s293V)

Annexure **B**: s32 Assessment for PC13 s293 as notified;

Annexure C: s32 Report PC13(s292V).

Annexure **D**: Summary of submissions to s293 package as notified