

Before the Independent Hearing Panel
Appointed by the Mackenzie District Council

Under The Resource Management Act 1991 (**RMA**)

In the matter of proposed Plan Changes 21 and 22 to the Mackenzie District
Plan

Legal submissions of Counsel for Mackenzie District Council

10 March 2023

Council's Solicitor:

Michael Garbett
Anderson Lloyd
Level 12, Otago House, 477 Moray Place, Dunedin 9016
Private Bag 1959, Dunedin 9054
DX Box YX10107 Dunedin
p + 64 3 477 3973
michael.garbett@al.nz

**anderson
lloyd.**

May it please the Hearing Panel:

Introduction to Plan Change 21 and 22

- 1 Plan changes 21 and 22 (PC21 and PC22) represent Stage 2 of the Mackenzie District Council series of plan changes to review and update the District Plan. PC21 is to implement targeted aspects of the spatial plan. PC22 addresses lighting in the Mackenzie District.
- 2 The content and details of the plan changes are set out in the overview report, section 32 materials and have been fully described by the section 42A reports.

Strategic Objectives and PC20

- 3 From a legal perspective, it is important to note that Stage 1 of the plan review, setting the strategic objectives in PC20 has had decisions made. Those decisions have passed the appeal period with no appeals being lodged in the Environment Court. The strategic objectives introduced by PC20 are therefore beyond challenge.
- 4 Section 86B and 86F RMA, identify when rules in a proposed plan have legal effect and are treated as operative. Both these sections apply to rules in a proposed plan, and do not directly address objectives.
- 5 Because objectives do not themselves trigger the need for a resource consent, the Act does not directly state that objectives have legal effect or are treated as operate under these sections. However, it is submitted that because the strategic objectives are now beyond challenge, they can be attributed full weight in your evaluation of PC21 and PC22.
- 6 It is also relevant to note that the Council staff are intending to take a paper to Council, seeking final approval of the provisions of PC20 under clause 17, First Schedule RMA at the next Council meeting on 28 March 2023. This will represent the final approval of the provisions of PC20.
- 7 This means that when you deliberate on PC21 and 22, the strategic framework that was considered during PC20 is settled, and can be given full weight.

Statutory Assessment

- 8 In opening submissions as part of PC20, the legal tests for assessing plan changes was fully set out. Those tests are not repeated here but are attached as Annexure 1 to these submission for completeness. These tests apply equally to evaluate PC21 and PC22.

Scope of submissions in further submissions

- 9 A key legal issue has been identification of submission points, and further submissions that staff have considered beyond the scope of PC21 (no such issues arose on PC22). This issue has been addressed by the Panel with separate decisions made on those submissions where the Submitters have disagreed with the Council Staff assessment of submission points.
- 10 It is submitted that for the remaining submission points and further submissions that Council Staff have identified are out of scope (and this has not been challenged) the Hearing Panel should decline to consider those points further, being beyond the scope of PC21.

Section 42A report

- 11 The Council planning team (Ms Willox and Ms White) have produced detailed section 42A reports addressing their recommended responses to the substance of the submissions that are within the scope of PC21 and PC22. The Mackenzie District Council rely on and adopt the planning evidence in the section 42A reports and support the recommendations made.
- 12 Counsel for the Mackenzie District Council can respond if necessary with the Council's position to any further changes that the section 42A report writers may recommend in their reply report, having heard the evidence and submissions during the course of the hearing. It is anticipated that Mackenzie District Council will support the recommendations of the planners in their evaluation of any points made by submitters, and the panel.

Dated 10th March 2023



Michael Garbett
Counsel for Mackenzie District Council

Annexure 1 - Statutory assessment

- 1 The statutory tests for a plan change are as set out in *Colonial Vineyard Ltd v Marlborough District Council*, which have been applied and summarised in subsequent decisions.¹ In this case any changes made by PC21 and 22 to the Mackenzie District Plan must:
 - (a) Accord with and assist Mackenzie District Council (**Council**) to carry out its functions (s 74(1) Resource Management Act 1991 (**RMA**));
 - (b) Ensure objectives accord with Part 2 of the RMA (s 74(1)(b) RMA);
 - (c) Give effect to any relevant national policy statement or operative regional policy statement, to the extent it is relevant in the strategic directions (noting that further plan changes on this are to follow) (s 75(3)(a) and (c) RMA); and
 - (d) Establish the most appropriate policies and methods (if any) for achieving the objectives, undertaking the assessment detailed in s32 RMA, taking into account the following:
 - (i) the benefits and costs of the proposed policies and methods (if any); and
 - (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies or methods.
- 2 In making your decision, you must also:
 - (a) have regard to:
 - (i) any relevant proposed regional policy statement or plan, and management plans and strategies prepared under any other Acts (s74(2) RMA);
 - (ii) actual and potential effects on the environment, including, in particular, any adverse effect; and
 - (b) take into account:
 - (i) any relevant planning document recognised by an iwi authority and lodged with Council (s74(2A) RMA).
 - (c) You must disregard any effects of trade competition ((s74(3) RMA).

¹ [2014] NZEnvC 55 at [17].

- 3 In making your decision, you must include a decision on the provisions and matters raised in submissions on PC21 and 22, and the reasons for accepting or rejecting submissions.²

² Schedule 1, clause 10 of the RMA.