

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 28-30; Variation 1, 2 and 3 to Plan Change 26; Variation 1, 2 and 3 to Plan Change 27; Variation 1 & 2 to Plan Change 23 and the Designations Chapter of the Mackenzie District Plan

Legal Submissions in Reply by Counsel for Mackenzie District Council

19th June 2025

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- 1 These submissions reply to various issues raised by submitters at the hearing.

Fairlie Ratepayers

- 2 Mr Simon Abbott and Dr Elizabeth Mackenzie both opposed the flood hazard overlay. Mr Abbott requested that this overlay does not appear on LIM's (LIM is a Land Information Memorandum). Dr Mackenzie identified that she is not opposed to a flood assessment being required, but opposed any maps being made publicly available.
- 3 A similar issue was raised by Mary Murdoch for Pukaki Airlodge relating to the Pukaki airport. Ms Murdoch did not want flood hazard overlays "loaded on LIM's" and identified this as a key concern.
- 4 The structure of the district plan is to identify by way of mapping and overlays areas where objectives, policies and rules apply. This is the same for the flood hazard overlay. Without this it is impractical to limit or define the spatial extent where relevant rules apply.
- 5 The Hearing Panel's function is to consider submissions on the district plan. The delegation to make decisions on submissions does not extend to determining what approach MDC takes when preparing LIM's for properties. The content of a LIM is a statutory requirement governed under separate legislation (section 44A Local Government Official Information and Meetings Act 1987). This includes information identifying any special feature or characteristic of the land concerned which can include potential inundation known to the territory authority that is not apparent from the district plan.
- 6 The contents of a LIM are a statutory requirement for MDC and cannot be altered by any decision of the Hearing Panel. There is therefore no basis for the Hearing Panel to address this relief sought and any directions about what MDC do, or do not, put on LIM's should not be made by the Hearing Panel.

Julie Hadfield - Opawa Homestead

- 7 Ms Hadfield submitted that she did not give permission to list the Opawa Homestead on the heritage schedule. Ms Hadfield argued that by listing the Opawa Homestead, but not listing other heritage structures, this is inequitable and unfair. Ms Hadfield suggests MDC should list "all or none" of the District's historic heritage buildings.

- 8 In reply it is acknowledged that access granted by a large number of residents to enable the assessment of buildings and structures for their heritage value is appreciated by MDC. This enables MDC Officers and experts to have the best information on which to make recommendations.
- 9 Where historic heritage values are known, they have been assessed. Those buildings that have qualified under the plan's criteria have been listed in the schedule. This is the case for the Opawa Homestead.
- 10 Just because there could be other buildings or structures that may also qualify for listing, this does not mean that the Opawa Homestead should not be listed. Mr Knott has reconsidered his assessment and confirmed that the values of the Opawa Homestead qualify to list this homestead on the heritage schedule. It is submitted this is appropriate.

Glentanner Airport and rocket powered aircraft

- 11 Ross Ivey explained that he considered the Department of Conservation had agreed in September 2024 that it had no concerns about rocket powered launches from the Glentanner Airport. This information has been reported by Mr Ivey from his discussion with two DOC Officers. This evidence is hearsay because evidence has not been provided by the DOC Officers themselves who can be questioned or their evidence considered.
- 12 In related legal submissions Ms Hornsey raised that DOC did not appear at the hearing and speculated that this might be because DOC's evidence contradicts the proposed restriction.
- 13 In terms of the Department of Conservation's position, MDC and the Hearing Panel have received in writing the formal position authorised by the Director-General of Conservation. This is contained in a letter to the Hearing Panel dated 30 April 2025 where a Department of Conservation Officer (Di Finn, Manager Operations, Te Manahuna/Twizel) has indicated that the recommendations of the section 42A Officer had largely addressed the concerns raised in the DOC submission. The letter explains on this basis the Director-General of Conservation no longer wished to appear at the hearing. It is also noted that the letter identified the typographical error relating specifically to GSPZ-R12 recommended by Mr Boyes (August through December, rather than December through August).
- 14 It is submitted that the Hearing Panel can only place weight on the formal position of the Department of Conservation as it is conveyed by the Director-General in the Department of Conservation's 30 April 2025 letter.

- 15 Mr Boyes has also attached a further statement from the ecologist MDC engaged on this issue. Trudy Anderson has set out her qualifications and experience to qualify her as an independent expert Ecologist in this matter. Ms Anderson is the only Ecologist who has provided evidence on this issue and her evidence should be given material weight. It is acknowledged that the field observations relied on for the advice have been limited, but that is the best ecological evidence currently available.
- 16 It is highlighted to the Hearing Panel that Mr Boyes has reconsidered the proposed standard to apply to rocket powered aircraft launches. Mr Boyes in his end of hearing report has altered his recommendation to now favour only limiting launches to 2 per 24 hour period. This responds to Mr Ivey's evidence that the controls proposed in the s42A report to restrict launches from the start and end of the day is problematic due to creating conflict with normal scheduled tourist and other aircraft movements beginning around 9am. This more limited restriction Mr Boyes now recommends is submitted to be appropriate to provide respite for the Kakī / Black Stilt during their nesting season.
- 17 Ms Hornsey submitted orally at the hearing that any restriction is likely to have no effect on Glentanner for rocket powered aircraft, because of existing use rights.
- 18 In response to this point it is acknowledged that existing use rights are likely to be in effect based on the current plan rules allowing this activity. Mr Boyes has addressed this in his end of reply report.
- 19 However this in itself does not mean plan rules are pointless. This is because any plan rule created during a plan review can be criticised as ineffective if existing use rights under section 10 RMA are relied on. Plan objectives, policy and rules are forward looking and designed to manage land use as it should be to achieve the purpose of the Act. In relation to Glentanner, the Special Purpose Zone provides a range of permissive land uses, and with those permissions the Plan carries some obligations in the form of conditions that need to be complied with to be permitted. In the future these plan rules (permissive and restrictive rules) could well be relied on by the landowner or occupier if existing use rights do not apply because they lapse, they are exceeded, or for any other reason such as the relevant permitted activities are elected to be relied on. It is therefore submitted that appropriate permitted activities and relevant conditions should be established even if existing use rights may continue in effect.

Anthony Honeybone – Hydro Inundation Risk Overlay and Risk Assessment

- 20 Mr Honeybone was critical of the risk assessment and the lack of a numerical return period for an earthquake to potentially cause a canal or dam failure.
- 21 For an effect such as a potential dam or canal failure this is a risk that carries a low probability, but a high potential impact, within the meaning of effect in section 3 RMA.
- 22 Annual return periods for earthquakes are very different to the production of annual exceedance probabilities for rainfall events. Rainfall events can call on a range of data to extrapolate and assign an annual exceedance probability in a numerical sense.
- 23 It is also noted that Mr Bill Veale, who provided evidence for Meridian Energy Ltd, explained that the dam safety guidelines do not assign any "tolerable risk" in its framework.
- 24 It is submitted there is no need nor any requirement to provide a numerical assessment of risk to justify the hydro inundation risk overlay. The evidence reveals the risk is low, but in the event of a failure or a series of failures the potential impact could be very high, particularly for people or properties close to any failure point.

Canterbury Regional Council and Proposed Flooding Rule - NH-RX

- 25 Ms Justice and Ms Tutty have produced a joint witness statement dated 11 June 2025 (JWS). This sets out a modified proposed rule that Ms Tutty supports, but Ms Justice does not.
- 26 Ms Justice has identified in paragraph 15 of the JWS that she considers this rule an improvement, but is not one she supports, for the reasons she sets out in that paragraph.
- 27 There are three remaining issues from a legal perspective relating to this proposed new rule that mean MDC do not support it. These are:
 - (a) The introduction to the rule is now proposing to exclude earthworks, buildings and structures authorised by a building consent. This is pragmatic and removes from the rule a wide range of earthworks, buildings and structures that would be assessed through the building consent process. While this exclusion is welcome, it raises the question of what earthworks, buildings and structures remain captured by the rule. This will mean that only small or temporary

earthworks and structures not needing building consent are covered by the rule. Obvious examples that come to mind are small scale earthworks (it is noted there is no scale threshold proposed at all), garden sheds, wood sheds, carports and the like. Such small or even temporary earthworks and structures that do not need a building consent will not normally come to the MDC for any assessment. This means MDC will have to try and educate the public and builders that such earthworks and structures, despite not needing a building consent may need assessment under the rule for whether they worsen flooding on another property in a 200 year ARI flood event. It is submitted that the remaining small or temporary earthworks and structures that do not require a building consent are generally likely to be of lower value and probably not the ones that the rule was intended to capture to manage effects from large or obvious diversion of flood flows. Therefore, it is submitted that the revised rule lacks utility.

- (b) It is submitted that the evidence presented does not appear to identify what the problem is that this rule is designed to regulate. It is not clear from the evidence whether any small earthworks or structures have actually caused (or will cause) a diversion of flood flows in the Mackenzie District creating any adverse effects on neighbouring properties. The rule is intended to apply throughout the flood hazard assessment overlay. This is a vast area of the District, and the rule potentially could add complexity and cost to a number of landowners wanting to establish small structures or carry out otherwise permitted earthworks. It is therefore submitted that the costs have not been quantified, or estimated, to enable the Hearing Panel to assess if the benefits (if any) can be justified in section 32 terms.
- (c) Key to assessing compliance with the rule is whether earthworks, buildings or structures that do not need a building consent “worsen flooding on another property”. This remains complicated to assess and essentially calls for an expert's judgment or modelling to predict how a 200 year ARI flood event will be altered on a property and landform. The points made in opening remain of concern. Overall it is submitted that a technical assessment such as this for small, lower value or even temporary earthworks and structures will be cost prohibitive if administered properly. It is noted that the Canterbury Regional Council have set out in paragraphs 13 and 14 of the JWS what can be done to assist MDC to administer this rule. This is very welcome and helpful. This offer places Canterbury Regional Council in a peer review role providing advice. Peer review advice will be useful, but it does not go so far as enabling Applicants or the MDC to

defer to Canterbury Regional Council in the same way as currently occurs to establish a minimum floor level by a certificate issued. This means Applicants will be left to bear the cost of an assessment that Canterbury Regional Council can review. This too is inefficient and not quantified in section 32 terms. This rule is therefore not supported for inclusion in the district plan.

Clause 16 Delegation

- 28 The Hearing Panel asked Ms White to advise who has delegation to consider a Clause 16 change in the context of the TEMP chapter.
- 29 In terms of the Hearing Panel, the delegation by MDC was made in general terms in 2022 to authorise the Hearing Panel to hear submissions and evidence and make decisions on the district plan review in the following terms¹:

That the Council delegate to the commissioners the power to hear the submissions/further submissions and evidence and make a decision on behalf of Council on the Mackenzie District Plan Review pursuant to Section 34A(1) of the Resource Management Act 1991.

- 30 It is considered that the Hearing Panel can make changes under Clause 16, First Schedule RMA. These are changes of minor effect or to correct minor errors. Any Clause 16 changes are considered part of the functions of the Panel under the First Schedule of the RMA to tidy up minor issues that arise when making decisions on the "Mackenzie District Plan Review".
- 31 If there is any concern about this from the Panel, such changes could be signalled and left to Council Officers to make under their delegated power, following the Panel's decisions. This power is delegated to the GM Corporate, Commercial and Planning and is at times exercised by Mr Dickson on behalf of MDC.

Section 42A Officers' Replies

- 32 The section 42A Officers have produced final reply reports with recommended chapters for consideration by the Hearing Panel.

¹ Resolution made by MDC on 5 July 2022 in resolution 2022/44, found here: https://mackenzie.infocouncil.biz/Open/2022/07/CO_20220705_MIN_3633_EXTRA_WEB.htm

- 33 It is submitted that these respond where appropriate to submissions, evidence and questions where Officers have considered their recommendations should be altered in light of what they have heard.
- 34 This concludes the MDC input into this Stage 4 hearing process. MDC looks forward to the decisions of the Hearing Panel and thanks you for your time and consideration.

Dated this 19th day of June 2025



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