

**NBEFORE THE HEARINGS PANEL APPOINTED BY
THE MACKENZIE DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of direct referral of an application under s 88 of the Act for
the determination of Resource Consent Application
RM220103

**REBUTTAL EVIDENCE OF PAUL ANDREW SMITH
FOR MACKENIZE PROPERTIES LTD**

Dated: 15 May 2024

INTRODUCTION

- 1 My name is Paul Andrew Smith. I provided my Brief of Evidence (**BoE**) on 9 April 2024.
- 2 My Rebuttal Evidence responds to:
 - 2.1 The Statement of Evidence dated 3 May 2024 of Ms Yvonne Pflüger on behalf of Mackenzie District Council (**Council**); and
 - 2.2 The Statement of Evidence dated 3 May 2024 of Ms Lisa Thorne on behalf of Council.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

- 3 I have provided my qualifications and experience in my BoE dated 9 April 2024. There are no updates or changes to that information.
- 4 I again confirm that I have read the Environment Court Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2023 and I agree to comply with it.

SCOPE OF EVIDENCE

- 5 I provide my Rebuttal Evidence to assist the Commissioners on the following matters:
 - 5.1 Landscape Effects;
 - 5.2 Visual Effects; and
 - 5.3 Spatial Appropriateness.

MS YVONNE PFLÜGER'S LANDSCAPE EVIDENCE

- 6 Firstly, whilst Ms Pflüger's evidence is titled 'Memorandum' it does not, as stated, comply with the Environment Court Practice Note. Specifically, 8.3 (a) v. that requires numbered paragraphs and numbered pages. In preparing my Rebuttal Evidence I have found the lack of paragraph numbers and numbered pages very unhelpful.
- 7 Also, it appears Ms Pflüger may have made an error regarding the date of her site visit, being two days prior to my evidence being completed.

8 I appreciate Ms Pflüger's diagram¹ separating out the three terraces into areas A, B and C. This is useful for reference purposes, and I use these references from hereon. I have added Area D which refers to the 4ha sliver of land adjacent to the existing RLZ on the lowest terrace along Max Smith Drive.

Refer to **Appendix 1, Sheet 3.**

9 I respond to the issues raised in Ms Pflüger's evidence under the following headings.

No Build Areas

10 I agree with Ms Pflüger's recommendation² that no future dwellings should be located on the escarpments. However, I disagree with the extent of the escarpment separating Areas B and C. This is because the area illustrated by Ms Pflüger includes a 9.2ha triangular shaped terrace that varies in width between 30 and 150m, and a small 2m tall escarpment that forms part of the northern terrace, and is not a steep landform.³ Refer to **Appendix 1, Sheets 3 and 4.** Ms Pfluger's depiction of the escarpments do not align with the terrace landform, its limited visibility and the low level of sensitivity. I have identified the extent of the 37m tall escarpment, which is sought to be protected from development on **Appendix 1, Sheet 3.**

11 Overall, the no build area separating Areas B and C should only include the 37m tall escarpment, as illustrated on **Appendix 1 Sheet 3.** Subsequently, the proposal has been updated to include a 'Precinct Overlay - No Build Area' over the site. This is consistent with the Ōhau River Precinct No Build Area Overlay. This 'Precinct Overlay - No Build Area' is additional to the Natural Hazard Overlay area, that dwellings are not allowed to be built in either, Refer to **Appendix 1, Sheets 3.**

¹ Image 1, Page 7.

² Page 7.

³ Paragraph 1, Page 7.

Visual Effects

Northern Terrace – Areas A and B

- 12 I agree with Ms Pflüger's recommendation that dwellings should be appropriately setback from the terrace edge alongside the southern stretch of the Pukaki Canal Road. This is because people spending time at the Ōhau A hydro station will see the site from a stationary location (not driving). Therefore, they will be more sensitive to seeing development, notwithstanding that rural lifestyle development along Max Smith Drive and / or Pukaki Canal Road will be visible enroute to this destination.
- 13 To further mitigate the potential effects of seeing "*one or two roof lines near the eastern edge of the site (Viewpoint 10)*"⁴ the proposal has been updated to include the western triangular corner of the site within the 'Precinct Overlay - No Build Area'. Refer to **Appendix 1 Sheet 3**. This no build area, coupled with buildings being excluded from the Natural Hazard Overlay, means that dwellings will be setback at least 380m from the western corner of the site.
- 14 It is worthwhile mentioning that I do not consider that the northwestern corner of the site needs to be included in the 'Precinct Overlay - No Build Area'. As discussed in paragraphs 67 and 69 of my BoE, seeing one roofline of a future dwelling from Pukaki Canal Road will be associated and visually consistent with the small visible nodes of rural living development that are seen from this stretch of road. Given this, an additional dwelling will be perceived as forming part of the development in Twizel, which is contained to one large terrace and the two smaller terraces alongside Max Smith Drive.

Southern Terrace – Area C

- 15 I disagree with Ms Pflüger's reasoning on why development on the southern terrace (Area C) will have moderate adverse visual effects. This is due to the reasoning included in my BoE, paragraphs 57 – 64 and 76 - 80 and my opinion below.

⁴ My BoE, Paragraph 68.

- 16 The 120ha site forms the southwest corner of the approximately 1,780ha terrace containing Twizel. This 1,780ha area is illustrated on Appendix 1 Sheet 5 and is generally contained by Glen Lyon and Old Glen Lyon Roads to the north, State Highway 8 (SH8) to the east, Max Smith Drive to the south and Pukaki Canal Road to the west. This area excludes the extensive RLZ along Mānuka Terrace and the 49 lots west of the site between the Ohau Canal and Ohau River.
- 17 Whilst Ms Pflüger considers this 120ha area to be large⁵, it will form 6.7% of Twizel's developable land (including the Precinct Overlay - No Build Area and Natural Hazard Overlay), with capacity for a maximum of 25 rural lifestyle dwellings / properties. No more than eight of which will be located on the southern terrace (Area C), which is approximately 32ha in area. Therefore, I continue to maintain that *"whilst resulting in a reduction to the open space values, the future rural lifestyle properties enabled by the proposed RLZ will cohesively form part of the PC25 RLZ and LLRZ development, and the overall pattern of development west of Twizel township"*⁶.

Landscape Effects

- 18 Ms Pflüger's landscape effects assessment⁷ focus' solely on the adverse effects on the site. It does not consider the effects on or the way in which the proposed RLZ will fit within the receiving environment, as defined in my BoE⁸, or the wider landscape. Notably, the Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines (**TTatM Guidelines**) state that a pitfall to be aware of when preparing a landscape assessment is *"Not identifying the relevant landscape. If not assessed at the appropriate spatial scale and context, the effects could be diluted across too broad an area or concentrated on an unreasonably narrow area."*⁹ Underlined for emphasis.

⁵ Second to last paragraph, Page 5.

⁶ My BoE, Paragraph 10.

⁷ Fifth paragraph, Page 6.

⁸ GA Sheet 3 and Paragraph 28.

⁹ Page 241

Regarding this, I consider that Ms Pflüger has over emphasised the degree of adverse effects because the spatial scale she has used was far too narrow.

- 19 Ms Pflüger refers twice to Objective 2 of General Rural Zone (**GRUZ**) to assist with justifying why the site should not be zoned rural lifestyle.¹⁰ As outlined in my BoE “*the current Rural Zone policy provisions are not overly relevant as it is proposed to rezone the site*”¹¹. Therefore, the proposed zoning will inevitably provide for a different outcome than the current zone. Rather, the focus of my assessment and evidence is on the way in which the proposed zoning aligns (or not) with the adjoining zoning, landscape context and the ability to utilise clear and defensible boundaries when defining the extent of the proposed zone. Regarding this, I do not consider that the current underlying zoning provides reasonable justification to retain its current zoning. Furthermore, this highlights the narrow spatial scale Ms Pflüger has used.
- 20 Ms Pflüger is incorrect in stating that the site’s eastern boundary is defined by a change in elevation¹², whereas this change in elevation defines the internal boundary between Areas A and B. Notably she contradicts herself in her following paragraph. The eastern boundary of the site is defined by a north-south running fence line / cadastral boundary, which directly adjoins the western boundary to the existing RLZ¹³.
- 21 Similarly, Ms Pflüger is incorrect in stating that the site is adjacent to Lake Ruataniwha and the no build area to the west. Max Smith drive is located immediately south of the site with a series of terraces descending to the lake. Also, west of the site is the Pukaki Canal and the two roads that run along either side of it.
- 22 As assessed in my BoE Paragraphs 83 and 84, the Pukaki Canal will form a very clear boundary to the rural living development (LLR and RL zones) within

¹⁰ Fifth paragraph, Page 6 and last paragraph, Page 8.

¹¹ My BoE, Paragraph 84.

¹² Third paragraph, Page 6.

¹³ My BoE, Paragraph 84.

Twizel, more so than the escarpment separating Areas A and B. This is highlighted by the fact that existing rural living development accessed off Pyramid Terrace, immediately north of the site, already extends beyond this escarpment.

- 23 Max Smith Drive and the southern end of the Pukaki Canal Road will be a continuation of the current urban boundary that Max Smith Drive already forms east of the site.
- 24 Overall, I do not resile from the conclusions in my BoE.

MS LISA THORNE'S SECTION 42A REPORT

Spatially Appropriate

- 25 Ms Thorne's S42A report describes why Pyramid Terrace, and the site were excluded from the proposed RLZ¹⁴. Notably, she states that "*Together the RLZ proposed in PC25 and the GRUZ proposed in PC23 seek to confine RLZ areas in Twizel to only those that are already zoned in the Operative Plan as rural residential, and to zone the Operative Plan rural area as GRUZ which has a minimum permitted density of 100ha.*"¹⁵
- 26 I consider that this process was flawed because it has not considered existing areas of rural living development that exists within the GRUZ, specifically, the 4ha – 20ha lots accessed via Pyramid Terrace. These properties do not align with the 100ha minimum lot size required in the GRUZ, being 80ha – 96ha smaller. The resulting landscape is one that is characterised by dwellings scattered across an open terrace. Although outside the scope of my rebuttal, this results in a lack of underlying rationale and to my mind these properties are more consistent with the RLZ it adjoins to the east. Also, given the level of development on Pyramid Terrace that Council currently considers to be appropriate for the GRUZ, I find it difficult to envisage how the Council could decline an application for RL development within the applicant's site, which

¹⁴ Paragraphs 175 – 180.

¹⁵ Paragraphs 175 – 180.

will result in a similar outcome. This appears to go against the key issues that the spatial plan and District Plan are seeking to resolve.¹⁶

- 27 Ms Thorne relies upon Ms Pflüger's evidence, that Large Lot Residential Zone (LLRZ) with a 2000m² minimum lot size along The Drive is a considerable distance from the town centre. Notwithstanding that any RLZ is typically located on the outskirts of an urban centre by virtue of being rural lifestyle where there is an availability of larger lots which provide owners and occupiers a sense of open space that is not provided for within a built environment.
- 28 It appears that Ms Thorne and Ms Pflüger do not place any weight on the fact that the proposed RLZ will be the same distance from the town centre as the existing rural living properties along Pyramid Terrace and indeed considerably closer than the existing RLZ on Mānuka Terrace. Refer to **Appendix 1, Sheet 5.**
- 29 Overall, I consider that the proposed RLZ will be spatially appropriate contained within the 1,780ha terrace containing Twizel township.



Paul Smith

15 May 2024

¹⁶ Paragraphs 179.