

**BEFORE THE HEARINGS PANEL
FOR PROPOSED PLAN CHANGES 28, 29 AND 30 AND THE PROPOSED
DESIGNATIONS CHAPTER TO THE MACKENZIE DISTRICT PLAN**

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of Proposed Plan Change 28 to the Mackenzie District Plan

JOINT WITNESS STATEMENT

**PLANNING EXPERTS FOR CANTERBURY REGIONAL COUNCIL
AND MACKENZIE DISTRICT COUNCIL**

11 June 2025

INTRODUCTION

1. This joint witness statement (**JWS**):
 - (a) Relates to the management of off-site flooding effects through the Mackenzie District Plan.
 - (b) It is between:
 - i. Ms Meg Justice (acting for Mackenzie District Council)
 - ii. Ms Rachel Tutty (Canterbury Regional Council)
2. The Hearing Panel considering Plan Change 28 to the Mackenzie District Plan (**PC28**) made the following request:

“Rachel Tutty: Consider a rule re diversion of flood water where an expert provides a report and ECan reviews/certifies (work with Meg Justice), similar to rule NH-R1”.
3. This JWS has been written following discussion between Ms Tutty and Ms Justice. Email correspondence took place between 3 June and 5 June, followed by an online discussion on 6 June, further email correspondence between 9 and 11 June 2025, and further online discussion on 10 June. Mr Nick Griffiths also took part in the discussions as a technical expert.
4. In preparing this statement, the experts have read and understood the Code of Conduct for Expert Witnesses as included in the Environment Court of New Zealand Practice Note 2023.
5. This JWS sets out our response to the request set out in [2] above, and sets out:
 - (a) the issues/matters on which Ms Tutty and Ms Justice agree
 - (b) the issues/matters on which Ms Tutty and Ms Justice do not agree, and the reasons for this disagreement.

BACKGROUND

6. Canterbury Regional Council lodged a submission on PC28 that included a request to insert a new rule into the proposed Natural Hazards Chapter to control the exacerbation of flooding on other properties when above ground earthworks or new buildings and structures are carried out in the Flood Hazard Assessment Overlay.

7. The requested rule read as follows:

NH-RX Above ground earthworks, new buildings and structures in the Flood Hazard Assessment Overlay

Activity Status: PER

Where:

1. Flooding will not be worsened on another property through the diversion or displacement of floodwaters

Activity status when compliance is not achieved with RX.1: RDIS

Matters of discretion are restricted to:

1. The likely extent of flooding on the site
 2. The potential for the activity to exacerbate flooding on any other site
 3. The extent to which the earthworks or new building or structure impedes the free passage of floodwater

8. Ms Justice, in her s42A report, recommended that the submission point be rejected on the basis that control of the diversion of water is a regional council responsibility, and that the Mackenzie District Council did not have the technical expertise to carry out assessments as to whether an activity would exacerbate flooding on other sites, as set out at paragraphs 186-189 of the s42A report.

9. Ms Tutty, in her evidence to the hearing panel, again requested that the rule be included in the Natural Hazards Chapter on the basis that it is more efficient and effective to manage such effects in the District Plan, as that Plan already manages the activities that could cause such effects, other provisions included in PC28 do seek to manage offsite effects of floodwaters, and that other district councils in the Canterbury Region have introduced similar rules into their district plans.

10. Mr Michael Garbett, in his legal submission on this matter, agreed with the assessment of Ms Justice, and further considered that there were legal issues with applying the rule suggested by the regional council, relating to the lack of objectivity and certainty in the requested rule.

Results of discussions

11. The discussions held between Ms Justice and Ms Tutty have resulted in some amendments to the rule sought by Ms Tutty, and an agreement that should the rule be included in the Mackenzie District Plan, Canterbury Regional Council will provide some technical assistance to Mackenzie District Council in implementing the rule (as outlined in [13] and [14] below). The amended rule is set out below (changes from the rule originally requested are shown in red):

NH-RX	<u>Above ground eEarthworks,</u> <u>new buildings and structures</u> <u>(excluding Natural Hazard</u> <u>Mitigation Works, land</u> <u>disturbance, and excluding</u> <u>earthworks, buildings and</u> <u>structures authorised by a</u> <u>building consent)</u>	
Flood Hazard Assessment Overlay	<p>Activity Status: PER</p> <p>Where:</p> <p>1 <u>Flooding will not be worsened</u> <u>The activity does not worsen</u> <u>flooding on another property that</u> <u>is not in the same ownership</u> <u>through the diversion or</u> <u>displacement of floodwaters in all</u> <u>events up to and including a 200-</u> <u>year ARI flood event.</u></p>	<p><u>Activity status</u> <u>when</u> <u>compliance is</u> <u>not achieved</u> <u>with RX.1: RDIS</u></p> <p><u>Matters of</u> <u>discretion are</u> <u>restricted to:</u></p> <p>1. <u>The likely</u> <u>extent of flooding</u> <u>on the affected</u> <u>site(s);</u></p>

	<p>2. <u>The adverse effects resulting from the diversion or displacement of floodwater</u> The potential for the activity to exacerbate flooding on any other site;</p> <p>3. <u>The extent to which the earthworks, or new building or structure impedes the free passage of floodwater</u> Any increased flood risk for people, property or public spaces; and</p> <p>4. <u>The effectiveness of any proposed migration measures.</u></p>
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12. The reasons for the proposed changes are as follows:

(a) Exclusion of land disturbance – removes the requirement for minor earthworks to be assessed for compliance with the rule, and leaves only earthworks that permanently alter the profile, contour or height of the land, which are most likely to cause off-site flooding. For reference, land disturbance is defined in the Mackenzie District Plan as:

Means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) that

does not permanently alter the profile, contour or height of the land.

This exclusion is consistent with the rule included in the Kaikōura District Plan. It should also be noted the definition of earthworks in the Mackenzie District Plan specifically excludes some activities and serves to narrow the scope of the rule. The definition of earthworks is as follows:

- (b) Exclusion of buildings, structures and associated earthworks authorised by a building consent – this is consistent with the approach being proposed in the Timaru District Plan. The exclusion acknowledges that there is a potential overlap between the building consent and resource consent processes. The Building Act includes a requirement that structures and buildings, and associated earthworks that are covered by a building consent are assessed to determine that they will not increase flooding on another site.
- (c) Addition of “in all events up to and including a 200-year ARI flood event” – provides certainty as to what flood event is managed by the rule. The 1 in 200-year ARI is consistent with the flood event used in the building consent process .

13. Mr Griffiths indicated at the hearing that Canterbury Regional Council would be happy to provide technical assistance to Mackenzie District Council. Canterbury Regional Council routinely gives assistance to district councils, and as part of the ongoing relationship with Mackenzie District Council, agrees to:

- (a) Help Mackenzie District Council to establish whether a detailed assessment of off-site flooding effects is needed to determine compliance or otherwise with the permitted activity standard contained within Rule NH-RX. For example, Canterbury Regional Council may be able to identify that:

- i. a detailed assessment is not necessary because the site will not be subject to flooding; or
- ii. any effects caused by the proposed activity will clearly not manifest beyond the property boundary; or
- iii. the effects of the proposed activity are not obvious, and that a more thorough investigation is needed to quantify the effects.

(b) Help Mackenzie District Council to review work that has been carried out to quantify the off-site flooding effects of a proposed activity. This would involve reviewing the work that has been carried out and advising Mackenzie District Council as to whether Canterbury Regional Council consider the methodology used is appropriate for quantifying effects, and if not, identifying any shortcomings.

14. Canterbury Regional Council do not agree to:

- (a) Quantify off-site flooding effects associated with proposed activities on behalf of applicants or Mackenzie District Council; or
- (b) Comment on the significance of off-site flooding effects that have been quantified.

15. Ms Justice agrees that the rule set out in this JWS is an improvement on the rule sought by Ms Tutty in her evidence, because the broad scope of activities that the rule will apply to has been narrowed. However, Ms Justice remains of the view that the rule is impracticable for the Mackenzie District Council to implement, and that it is not an effective or efficient method to manage the potential issue of off-site flooding effects. Ms Justice considers that:

- (a) Mackenzie District Council do not have the technical skills or information in house to make a determination about compliance with the rule.

- (b) Changes in legislation, for instance the proposed 'granny flat' exemption to the building consents, may inadvertently impact the implementation of the rule.
- (c) Any earthworks that alter the ground level (unless the earthworks are authorised by a building consent) will be required to demonstrate that off-site flood effects will not be worsened on another site. The term 'worsen' will capture any degree of flood water diversion, regardless of the scale and the effect of the diversion. Ms Justice considers that for the rule to be efficient and effective, it should only apply to activities that result in unacceptable adverse effects.
- (d) The rule is proposed to apply to all areas within the Flood Hazard Assessment Overlay. The Flood Hazard Assessment Overlay covers a large part of the district and identifies areas that may be subject to flooding. It does not identify high flood hazard areas, rather high flood hazard areas are identified through the site specific flood hazard assessment process. It is therefore expected that the rule will apply to a far broader area than is necessary in practice, which is not an efficient method.
- (e) No clear method is available to the community to allow them to demonstrate compliance with the rule.

16. Ms Tutty considers that the amended rule, along with the assistance offered by Canterbury Regional Council answers the Panel's request to "Consider a rule re diversion of flood water where an expert provides a report and ECan reviews/certifies, similar to rule NH-R1".

17. Ms Tutty also considers that this approach is the most effective and efficient option for the management of off-site flooding arising from earthworks, and new buildings and structures in the Mackenzie District, for the following reasons:

- (a) Mackenzie District Council manages the activities covered by the rule (earthworks, buildings, and structures) and it is most efficient and effective for that council to also manage off-site flood effects as a consequence of those activities. It would not make sense for persons proposing to undertake those activities to have to apply for a regional council consent for displacement or diversion of floodwaters as a consequence of those activities.

The rule is intended to relate to uses of land that are managed by district councils under s9 of the Resource Management Act 1991 (RMA), and the off-site flooding is a consequence of those activities rather than a restriction relating to water to be managed by regional councils under s14 of the RMA.

- (b) Mackenzie District Council is already responsible for assessing off-site flooding effects for all buildings, structures, and associated earthworks covered by building consents, and must have some technical expertise in this area. In any case, Canterbury Regional Council has technical expertise and agrees to assist Mackenzie District Council with the implementation of the rule, as set out in [13] and [14] above. Ms Tutty notes that the Building Act does not specify a method for assessing off-site flooding effects.
- (c) Changes in legislation, including the proposal that building consents will not be required for 'granny flats' are likely to result in the rule being even more necessary as it will be the only mechanism available to manage off-site flooding effects from those activities.
- (d) It is important that the rule should apply to the entire Flood Hazard Assessment Overlay rather than just high hazard areas, because within high flood hazard areas off-site flooding effects are less significant as displacement or diversion of floodwater is likely to be onto land that is already flooded, whereas in other parts of the Flood Hazard Assessment Overlay displaced or diverted floodwater could be responsible for a large proportion of the flooding on the affected site. Should the flood hazard assessment conclude that there is no risk of flooding on the site, there will also be no risk of displacing or diverting floodwater onto another site.
- (e) There is no requirement in the rule for applicants to demonstrate compliance with the PER-1. This is also the case with other Permitted Activity rules in the Mackenzie District Plan.

(f) Ms Tutty understands the difficulty with the lack of scale in the term “worsen” and would welcome further discussions as to how that could be addressed.

18. There was discussion about the possible inclusion of an advice note in the Rule NH-RX along the lines of “To ascertain whether PER-1 is met, Mackenzie District Council may seek external advice, including from the Canterbury Regional Council”. It was not considered that anything would be gained by the inclusion of such an advice note, and that it could be confusing for plan users.

19. Should the amended rule NH-RX be included in the Mackenzie District Plan, both Ms Tutty and Ms Justice agree that point 1 from NH-MD1 (“The likely nature and extent of flooding on the site and the potential to worsen flooding on another site”) can be removed, which will remove the requirement for Mackenzie District Council to consider off site flooding effects for resource consents triggered under rules NH-R1, R2 and R3. Matter of discretion (a) under rule NH-R4 can also be removed (“the extent to which infrastructure increases the natural hazard risk or transfers the risk to another site”). Ms Tutty considers that this matter of discretion could difficult to implement, and it is uncertain whether natural hazards other than flooding are included in it.

20. Ms Tutty also requested in her evidence that policies NH-P4 and NH-P5 are amended to include consideration of increased flood risk on another site. Those requested amendments would be consistent with the amended Rule NH-RX. Ms Justice agrees that the additions to NH-P4 and NH-P5 are appropriate to ensure these policies are consistent with rule NH-RX, if rule NH-RX is included in the Natural Hazards Chapter.

SUMMARY

21. In summary, Ms Justice remains of the view that the diversion of water is a matter more appropriately addressed in the regional plans administered by the Canterbury Regional Council.

22. Ms Tutty does not agree with that view and considers that it is open to the Mackenzie District Council to manage off-site flooding that is consequential to activities it manages under its district plan. Ms Tutty considers that the amended rule NH-RX along with the assistance offered by Canterbury Regional Council is the most efficient and effective method to manage those effects and answers the Panel's request to consider a rule re diversion of flood water where an expert provides a report and ECan reviews/certifies, similar to rule NH-R1.

Dated this 11th day of June 2025



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Rachel Claire Tutty



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Meg Justice