

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

Of a submission made for a Subdivision and Land use consent at North West Arch, Twizel

for Mackenzie Properties Ltd

**Statement of Evidence of Anna Jane Mackenzie
9 August 2017**

BASELINE MARLBOROUGH LIMITED

PO Box 950
Blenheim 7240
03 578 7299
info@blg.nz

INTRODUCTION

Qualifications and Experience

1. My name is Anna Jane Mackenzie. I am a Senior Planner and Director of Baseline Marlborough Ltd, a resource management planning consultancy.
2. I hold a Masters of Applied Science majoring in Environmental Management from Lincoln University and a Bachelor of Science majoring in Geography from the University of Canterbury. I am an Associate Member of the New Zealand Planning Institute.
3. I have been employed as a planner for 9 years within private consultancies, policy advocacy and in local government at Nelson City Council. My experience is made up of preparing and processing resource consent applications including; assessments of environmental effects for large and small subdivisions, and residential, rural and commercial land uses. I have also prepared applications and presented evidence for plan changes and submissions to various plan changes and Council strategies.
4. I have read the Environment Court's Code of Conduct and agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this statement of evidence are within my area of expertise.
5. The data, information, facts and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.
6. The key documents I have used, or referred to, in forming my view while preparing this brief of evidence are:
 - i. The Mackenzie District Plan
 - ii. The Canterbury Regional Policy Statement

SCOPE OF EVIDENCE

7. My evidence has been prepared to address planning matters associated with the submission of Mackenzie Properties Ltd, and as such is limited to those matters of contaminated land effects, potential land stability effects, visual effects, stormwater effects, infrastructure effects and plan integrity and administration matters. My evidence will cover the following:
- An assessment of environmental effects as it relates to the submission,
 - An assessment of objectives and policies of the relevant planning framework,
 - Plan integrity and administration,
 - Conclusions.

INTRODUCTION

8. The applicant has sought a resource consent application to create 63 higher density residential sections, and four Residential 4 density sections. This subdivision proposal was publicly notified. Mackenzie Properties Ltd made a submission in relation to this subdivision raising concerns with general lack of information to ensure that adverse effects on the environment are minor. This has implications for the sustainable development of Twizel township.

ASSESSMENT OF EFFECTS ON THE ENVIRONMENT

9. Section 104 of the RMA requires a decision maker to consider the actual and potential effects on the environment of a proposed activity when making a decision on an application. The applicant appears to have relied on a previous subdivision consent having been granted in and therefore forming part of the existing environment in their assessment. However, it is my understanding that this original subdivision consent application has not been completed through to titles. It is also my understanding that this subdivision cannot occur until such time as resource consent under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES) has been applied for and granted. Given

this the underlying resource consent cannot proceed, and so in my view cannot be considered as forming part of the existing environment for the purposes of considering this current resource consent application.

Land Stability Effects

10. The application site is located in proximity to what I understand is an old landfill site, and originally formed part of the same allotment. While the application site does not appear to contain the specific area identified as old landfill, it is not clear if any geotechnical investigations to confirm that the ground conditions in this area are suitable for intensive residential activities have been carried out in light of historical activities. I am not aware of any geotechnical assessment under any previous resource consenting process either.
11. Subsidence is set out in the Mackenzie District Plan as a matter of control when considering controlled activity subdivision consents and a matter which a decision maker may refuse consent for under Section 106 of the RMA. It has been my experience, that when considering resource consents for subdivision the well-being of future allotment owners ought to include an assessment as to if the ground conditions are suitable for residential use. I acknowledge that the District Plan does not indicate that there is any geotechnical or historical landfill activity across the specific application site but rather within the southern part of the allotment that still technically forms part of the same certificate of title. Nevertheless, Mackenzie Properties are concerned that unknown historical land use practices across the whole Council owned property may give rise to uncertain geotechnical ground conditions. Section 18 of the District Plan relates to natural hazards, and specifically notes the potential for subsidence associated with landfill activities. Policy 6 of this chapter sets out the following:

Policy 6: With any resource consent process, to ensure that any proposed developments have an adequate assessment completed to identify any natural hazards and the methods used to avoid or mitigate a hazard risk.

12. In this case no geotechnical investigations have been carried out, and in my opinion, this results in some uncertainty as to if there are any potential or actual effects in relation to subsidence risks exist.

Infrastructure

13. Water supply and wastewater disposal infrastructure networks are a finite resource and from my experiences in Canterbury, can be a significant limiting factor to the growth of a small town such as Twizel. Adequate provision of Council infrastructure is often designed to meet the demand generated by anticipated yield from current and known future zoned land (i.e. deferred zoning). In this case the applicant is seeking to develop the site to a much greater density than anticipated by the zone. As set out at Paragraph 46 of Ms. Harte's report, the difference in this case is 16 possible connections under the Residential 4 zoning, versus the 67 allotments now proposed. This represents a difference in yield of 51 allotments.
14. Each of these allotments places a greater demand on the reticulated network than could reasonably be anticipated to be generated from this zone by the current Council infrastructure. The costs of infrastructure to the Council is clearly problematic as indicated in Section 13, Issue 3 of the District Plan, and reflected in Objective 2 of this section. Objective 2 sets out that the costs of services are to be met by developers, and Policy 1 outlines that costs of new or upgraded services (including headworks) which are attributed to the impacts of the subdivision or development should be met by developers.
15. The application does not provide information as to if the current Council network has the capacity to accommodate 51 additional allotments, being above what Council could have reasonably anticipated from the site. I note that Ms. Harte has proposed conditions of consent which seek confirmation the engineering details are provided for approval (proposed condition 6). Engineering details are to include the necessary information to ensure that the systems are able to accommodate any additional pressure put on them by the proposed subdivision. However, this does not address what happens if it becomes apparent that the

current infrastructure is insufficient to accommodate the development. Neither the application, the further information, nor the Section 42A report provides sufficient information for the decision maker to be certain that Twizel's reticulated networks have the capacity to accommodate the additional unplanned yield proposed.

16. Objective 1 and related Policies 1 – 16 of Section 13 Subdivision, seek to ensure that adequate provision of key services is made to each allotment. The provision of services is a clear focus of the Mackenzie District Plan. It is my view that sufficient information to ensure that the proposed development does not compromise or exceed the capacity of the current water supply, stormwater disposal and wastewater disposal networks is a necessary part of the decision-making process. Given the scale of the non-compliance of the current proposal with respect to anticipated yield from this area, I have not seen any information which gives confidence that this area can be serviced with key infrastructure, without compromising the integrity of the remainder of the network.

Reserves

17. The proposed subdivision will result in a larger number of properties fronting onto the reserve areas than anticipated under the current District Plan. This will mean a greater number of residents seeking to use the reserve area than anticipated when the zoning was provided. Typically, when an area is rezoned under a plan change process, consideration of the need for reserves to serve a greater number of residents is taken into consideration. Additionally, the type of infrastructure required within reserves such as foot paths, lighting, rubbish bins etc are also considered, and a requirement that this infrastructure is installed as part of the costs of development is made.
18. Because the applicant has undertaken to subdivide off the zoned reserve area, prior to undertaking this non-complying subdivision, the applicant is no longer responsible for undertaking the capital works necessary in the reserve area to provide the amenity likely to be required from a Residential 1 zoned area across the site. I note that the application does

not contain an assessment as to the effect this intensification of the site beyond that anticipated by the District Plan, will have on the reserve areas.

19. Ms. Harte has noted at paragraph 36 that the golf course across Ohau Road will provide an extensive area of open space that can be enjoyed by future residents. It is not clear to me what Ms. Harte means by this, as the golf course is not an area of open recreational space that future residents of these allotments can use and enjoy, rather it provides a very specific purpose and may not be suitable for certain recreational activities such as for small children to play within. In practical terms, the fact that it is a golf course limits its actual use. However, I do agree that the golf course may provide some visually appealing open space for residents to view and perhaps enjoy in a golfing capacity, presumably with associated green fee costs.
20. Ms. Harte has identified in paragraphs 34 – 36 of her evidence that the reserve areas will continue to provide some amenity for both existing residents in the surrounding neighbourhood, and for future residents of the site. I generally agree that these areas will provide ongoing amenity, however it is not clear if, given the additional development generated by this non-complying subdivision, there will be sufficient recreational reserve area, or if this reserve is of a suitable quality to meet the needs of a more intensive development.
21. In the submission made by Mackenzie Properties questions were raised regarding the level of screening proposed within the reserve areas by the applicant. Ms. Harte has incorrectly assumed at paragraph 54 of her evidence that Mackenzie Properties were proposing some level of screening. The application sets out on page 3, in relation to allotment size and dimensions that *“much of the site is screened from the existing township by the reserves that are being formed under Stage 1.”*
22. Having read the resource consent application and decision for Stage 1, it is not clear that any physical screening is proposed, and therefore, Mackenzie Properties questions what screening is being referred to in this current application. Given this screening is identified in

the application as a key mitigation measure, and given no other mitigation to justify the significant increase in density is proposed, I consider that a landscaping plan is necessary to understand the effectiveness of the proposed mitigation. Landscaping proposed under the Stage 1 development has not been described in this current application either.

23. I note that Ms. Harte has proposed a condition of consent that neighbours to the reserve areas be permitted a fence height of no more than 1.2 m to avoid residents ‘turning their back’ on the reserve areas, and creating un-observed reserve spaces. I agree that this approach is helpful to ensure these reserves are safer spaces, but without knowing what landscaping is likely to be proposed, it is difficult to know if this measure will be effective in combination with any future screening or landscaping of these reserves.

Visual Effects

24. The application seeks to subdivide to Residential 1 zone densities in an area which is zoned for Residential 4 densities. Ms. Harte identifies at paragraph 39 of the S42A report that this will be a significant change. She goes on to note that the lack of submissions by surrounding landowners indicates that the proposal is acceptable to most people. I note that specific notification of immediate neighbours was undertaken as part of the public notification process, however none of these landowners provided submissions in support of the application. Ms. Harte appears to have adopted the approach that immediate neighbours silence means they are content with, or fully understand, the implications of the application for their amenity. Public notification is unlike the written approvals system under section 95E (3) where an affected person provides signature confirmation that they are happy with a proposal and effects on them cannot be considered as an affected person. A person’s silence under public notification does not give the decision maker the ability to disregard the effects on these persons in the manner adopted by Ms. Harte. Rather Section 104 of the RMA guides the decision maker to consider the actual and potential effects on the environment. In this case, the environment includes the existing urban areas of Twizel and its residents.

25. Because this application has been sought as a non-complying activity, rather than as a plan change, there has been no assessment to determine if the Residential 1 zone limits are the most appropriate in this context. There is a significant difference in the effects generated from Residential 1 densities as opposed to Residential 4 densities including increased impervious area, infrastructure pressures, reserve pressures etc. There has been no opportunity to explore, in a cost-benefit context, if some other density in between that of Residential 1 and Residential 4 is more appropriate in this immediate area. A plan change provides the opportunity to carry out these assessments. Given the non-complying nature of the proposal, consideration of alternatives could have been made as part of this process if the effects of the application were considered significant. However, no assessment of this nature appears to have been made to ensure that the proposed development is the most appropriate.

Contaminated Land Effects

26. The application site is on a Council owned property which forms part of a larger property that contains an old landfill to the south of the application area and is identified as a known HAIL site. The subdivision for this underlying area was granted under RM160165, but did not contain a Preliminary Site Investigation (PSI) as required to meet the permitted activity standards for subdividing a known HAIL site under the NES relating to contaminated land. Mackenzie District Council have confirmed in a letter to Mackenzie Properties that such a PSI was required or a resource consent needs to be obtained for the non-compliance, and that confirmation as to when this information was lodged with council would be made to Mackenzie Properties. I understand that this has not to date yet occurred.
27. As this underlying subdivision cannot proceed until the matters under the NES are resolved, it is my view that the whole underlying title is relevant to the current subdivision application. The same provisions under the NES therefore apply to this subdivision. It is the subdivision of a site on which a known HAIL activity has occurred. In order to meet the requirements of

the NES either a PSI must exist, which it does not as far as Mackenzie Properties are aware, or a resource consent application must be sought in relation to this non-compliance. I note that the Section 42A report sets out in Paragraph 20 that Ms. Harte considers that the applicants research of the site is sufficient to ensure that the site is not a piece of land under the NES. However, the identification of part of the original application area includes a known HAIL site and so there is uncertainty in my view as to if this is a piece of land for consideration under the NES.

28. In terms of effects, there is the potential that historical activities on the site may have resulted in a possible risk to human health from contaminants in the soil. I note that the applicant has undertaken their own assessment and determined that the site will not create a risk by virtue of not being a piece of land. However, I note that a specific PSI has not been carried out, and in my view this raises uncertainty as to if there are any potential effects from historical land use practices.

Effects Summary

29. In my view, the proposal has potential adverse effects in relation to geotechnical matters, infrastructure capacity and availability, adequate provision and quality of reserve areas to meet increased demand generated, and adverse visual effects. Also, there is the potential for contaminated land effects which have not been fully explored. Whether or not these translate into actual effects is difficult to determine due to a general lack of information provided within the application.
30. The site is zoned for low density residential development with an anticipated yield of 16 properties. The proposal however seeks to provide 67 allotments across the site, which is a significant increase. It is not clear from the application if all of the potential adverse effects have been fully considered, and therefore if effects will be minor. In my opinion, there is insufficient information to determine this non-complying subdivision consent application.

OBJECTIVES AND POLICIES OF THE PLANNING FRAMEWORK

31. In accordance with Section 104 it is appropriate to consider the proposal in light of the objectives and policies of the relevant planning framework. In this case, the provisions relevant to the submitters concerns are generally contained principally in the Mackenzie District Plan.
32. Ms. Harte has undertaken an assessment of the Objectives and Policies relating to the proposed development, which is helpful as I note that no assessment appears to have been undertaken as part of the original subdivision application. This raises questions as to if the application ought to have been accepted under Section 88 of the RMA, although I am aware that there is little ability to address this through the current hearings process.
33. I note Ms. Harte has undertaken an assessment of the proposal in the context of the Residential 1 zoning, being the resulting densities sought by this non-complying activity. I do not disagree with her assessment of these provisions as the proposed development appears to be a well-designed Residential 1 type development. However, the application site is not a Residential 1 zoning, it is a Residential 4 zoning which has very different anticipated outcomes as set out in the District Plan.
34. In particular I note that Ms. Harte has considered Residential Policy 1B – Density and Scale: Residential 1 Zones at paragraphs 63 and 64 of her evidence, and has set out in her assessment that land can be used more efficiently than Residential 4 styled development. I disagree with this assessment. At the time that the District Plan was developed, it was identified that this area of land was most appropriately zoned as Residential 4 land. From a planning perspective, it is my experience that it is appropriate to have lower density zoned land at the periphery of an urban area to provide a buffer between rural or industrial activities and more intensive sensitive residential land. This is reflected in the explanation for Residential 4 Zoned land under Residential Policy 1D – Residential 3 and 4 Zones, which identifies the buffering purpose of these lower density zones. It is not clear how much of a

buffer the plan makers considered was necessary between the Residential 1 zone to the north of the application site and the Deferred Industrial zoned land to the south of the application site. I note that under the current proposal, this buffer will be reduced to approximately 150 m from a potential 400 m if the site were to remain developed to its intended Residential 4 zone density.

35. Neither the Section 42A report nor, the applicant has provided any evidence to suggest that the proposed development is a more efficient use of the land, or what effect the reduction in the amount lower density buffer land will have on the future use of the deferred industrial zoned land to the south. It is my view that the proposed intensification of Residential 4 zoned land has the potential to place additional demands on infrastructure, demand for suitable reserve areas, and additional traffic pressures. These potential effects have not been adequately considered under the current proposal.
36. At paragraphs 65 – 67 Ms. Harte has considered the specific policy relating to the Residential 4 zone. I agree with Ms. Harte's assessment that the proposed non-complying application is not consistent with this policy. It is my view that the proposal is significantly more intensive than the low density spacious urban character sought by the Residential 4 zone in Residential Policy 1D to the extent that I consider it to be contrary to this policy.
37. I note Ms. Harte has set out that the existing reserve to the north and east of the application site will provide a sufficient buffer between the proposed development and existing development on Rata and Totara Drives. I agree that the reserve areas will provide sufficient buffer between Residential 1 zoned land to the north and the proposed Residential 1 style application. However, it is not clear if the 250 m reduction in the buffer between the southern boundary of the proposed development and deferred industrial zoned land to the south will be a sufficient setback. The applicant has not provided an assessment of the potential reverse sensitivity effects with the deferred industrial zoned land to the south. It does not appear that

any potential reverse sensitivity effects have been considered within the Section 42A report either.

38. Turning to the subdivision objectives and policies in Section 13 of the Mackenzie District Plan, Ms. Harte has undertaken an assessment of Objective 1 and its associated policies. I note Ms. Harte has identified what she considers to be the relevant policies, however in my view that she has omitted two key policies relating specifically to stormwater in Twizel.

39. Policies 10 and 11 are as follows:

“Policy 10: Land modification, development and subdivision in the Residential zones and the Rural-Residential 1 and 2 zone in Twizel should occur in a way that (a) protects the performance of natural overland flowpaths and open watercourses; (b) protects water quality by the use of filtering mechanisms where necessary such as stormwater treatment ponds; and (c) provides stormwater in an integrated and cost effective manner.”

“Policy 11: For subdivision and development in Twizel, to require where appropriate/necessary a comprehensive stormwater management plan which addresses stormwater runoff and management of its effects.”

40. I cannot comment as to if the proposed stormwater methods meet the specific provisions of policies 10 and 11 as I am not an engineer. Typically for a development of this size and in an area where development of this density is not anticipated by the zone, a suitably qualified and experienced engineer would provide an assessment as to the effectiveness of the proposed stormwater treatment and disposal methods. These policies indicate to me that there are some specific stormwater concerns in Twizel which need to be appropriately and comprehensively managed to ensure adverse effects are avoided. Ms. Harte has noted at paragraph 70 of her evidence the overall approach for stormwater management proposed, and that engineering detail is required to be worked out. The proposal has a non-complying status, and will generate more stormwater than was originally anticipated from this site due

to the significantly larger amount of hardstanding, roof and roading areas. The lack of engineering detail makes it unclear as to if the proposed method of disposing of water is sufficient to avoid adverse flooding effects both within the site or onto neighbouring properties as a result of this subdivision. This has implications for making a decision on this consent application under section 106 of the RMA.

Canterbury Regional Policy Statement

41. No assessment of the Canterbury Regional Policy Statement (CRPS) has been undertaken as a part of this application, and I have not undertaken a comprehensive assessment as part of considering this application. However, I note that the CRPS does contain objectives and policies which specifically relate to natural hazards and contaminated land and generally seek to ensure adverse effects on people from natural hazards and contaminated land effects are avoided.

Summary

42. The proposal is clearly contrary to the low density, spacious low scale suburban living environment, with plantings where appropriate environment, anticipated by the District Plan for this zone. I note this plan was developed in community consultation, and was part of a robust planning process. The Section 42A report sets out that Ms. Harte considers that the proposed application represents a more efficient use of land than the intended outcomes under the zoning. I have not seen any evidence from the applicant to support this approach, and it is my view that given the application is so inconsistent with provisions relating to the Residential 4 zone, that it can be considered to be contrary to the provisions.

CONCLUSION

43. Overall the proposal does not contain sufficient information, in my opinion to consider whether or not the effects are minor or more than minor. There is a clear lack of information

relating to geotechnical matters, infrastructure capacity including stormwater, reserves landscaping, and contaminated land matters.

44. The proposal is contrary to the objectives and policies relating to the Residential 4 zoning, and in my view, can only be considered in the context of these objectives and policies. The Residential 1 policies are not relevant, as the site is not zoned Residential 1.
45. Overall, I consider that there is insufficient information to make an informed decision on this application. Therefore, it is my view that resource consent should be declined.

9 August 2017

Anna Mackenzie

Senior Planner