



Plan Change 28 Part B

Historic Heritage and Notable Trees Variation 1 to Plan Change 26 Variation 1 to Plan Change 27

Decision Report

24 July 2025

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Appendix 1: Amended Provisions including definitions for Plan Changes 28 - 30

Appendix 2: Amended Heritage Overlays

Appendix 3: Appearances and Tabled Evidence

List of submitters addressed in this report:

Submitter Ref	Further Submitter Ref	Submitter Name	Abbreviation
PC28.06		Laura Batchelor	
PC28.07		Dan Richards	
PC28.10		Alex Lusby	
PC28.15		Elizabeth Angelo-Roxborough	
PC28.16		Heather Capstick	
PC28.17		John Capstick	
PC28.18	FS01	The Burkes Pass Heritage Trust	BPHT
PC28.19		Warren and Maree Frost	
PC28.20		Michael Bunckenburg	
PC28.21		Graham Batchelor	
PC28.22		John and Joyce Kelly	
PC28.24		Peter and Janine Donohue	
PC28.25		Kelvin Winston Duncan	
PC28.27	FS09	Heritage New Zealand Pouhere Taonga	HNZPT
PC28.31		Transpower New Zealand Limited	Transpower
PC28.33		The Church of the Good Shepherd Tekapo Committee	Church Committee
PC28.34		Burkes Pass Resident Association	BPRA
PC28.35		Chorus New Zealand Limited, Connexa Limited, FortySouth Group LP (trading as FortySouth), One New Zealand Group Limited and Spark New Zealand Trading Limited	The Telcos
PC28.36		Fairlie & Districts Residents and Ratepayers Society Inc	FDRRS
PC28.38		Phillip Quelch	
PC28.39	FS04	Meridian Energy Limited	Meridian
PC28.40		Jim Allan	
PC28.42		Director-General of Conservation	DOC
PC28.43	FS07	The Church Property Trustees	CPT
PC28.44		Janette Kear	
PC28.45		NZ Transport Agency Waka Kotahi	NZTA
PC28.46	FS05	Genesis Energy Ltd	Genesis
PC28.49		John Emery	
PC28.50	FS08	Canterbury Regional Council	CRC
PC28.51		Caroline Thomson	
PC28.52		Susan Allan	
PC28.54		Robyn Thomson	
PC28.56		Nova Energy Limited	Nova
PC28.61		Julie Hadfield	
PC28.62		Julie Greig and Jan Zyzalo	
PC28.64		Opuha Water Limited	OWL

Abbreviations used in this report:

Abbreviation	Full Text
Council	Mackenzie District Council
HH	Historic Heritage
HNZPTA	Heritage New Zealand Pouhere Taonga Act 2014
ICOMOS	International Council on Monuments and Sites
ICOMOS NZ Charter	ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value 2010
MDP or Plan	Mackenzie District Plan
MDPR	Mackenzie District Plan Review
NZAA	New Zealand Archaeological Association
ODP	Operative District Plan
PC28	Plan Change 28
PC29	Plan Change 29
RMA	Resource Management Act 1991
TKO/BP	Te Kopi-o-Ōpihi / Burkes Pass
TREE	Notable Trees
V1PC26	Variation 1 to Plan Change 26
V1PC27	Variation 1 to Plan Change 27

1. Purpose of Report

1. Pursuant to section 43(1) of the Resource Management Act 1991 (RMA), the Mackenzie District Council (MDC) has appointed a combined Hearings Panel of three independent commissioners¹ to hear and decide the submissions and further submissions on Plan Change 28 addressing:
 - Historic Heritage
 - Notable Treeswhich all form part of the Mackenzie District Plan Review (MDPR).
2. The Decision Report sets out the Hearings Panel's decisions on the submissions and further submissions received on Plan Change 28.²
3. The initial Section 42A Report and the end of hearing Section 42A Report (Reply Report) for PC28 Part B were:
 - Section 42A Report Part B: Plan Change 28 – Historic Heritage and Notable Trees; Variation 1 to Plan Change 26; Variation 1 to Plan Change 27, Report on submissions and further submissions. Author: Emma Spalding. Date: 24 April 2025.
 - Section 42A Report Part B: Plan Change 28 – Historic Heritage and Notable Trees; Variation 1 to Plan Change 26; Variation 1 to Plan Change 27, Reply Report. Author: Emma Spalding. Date: 19 June 2025.
4. In our Minute 6 dated 7 May 2025 we posed a number of questions to Ms Spalding (the Section 42A Report author). We received written answers to those questions.³
5. The Hearing Panel's amendments to the notified provisions of PC28 Part B are set out in Appendix 1, including definitions relevant to PC28 Part B. Amendments recommended by Ms Spalding that have been adopted by the Hearing Panel are shown in ~~strike-out~~ and underlining. Further or different amendments made by the Hearing Panel are shown in red font as ~~strike-out~~ and underlining. Amendments to the District Plan planning maps are shown in Appendix 2.

2. Hearing and Submitters Heard

6. There were 65 primary submissions and 12 further submissions on PC28 Part B. Of these, 33 submissions and four further submissions relate to the Historic Heritage Chapter, and eight submissions and one further submission related to the Notable Trees Chapter.
7. Further submissions are generally not discussed in this Decision, because they are either accepted or rejected in conformance with our decisions on the original submissions to which they relate.
8. The Hearing for PC28 Part B was held in Fairlie over the period Tuesday 27 May 2025 to Thursday 29 May 2025. The 7 submitters and further submitters set out below were heard:

¹ Megen McKay, Ros Day-Cleavin and Rob van Voorthuysen.

² Decisions on the Contaminated Land, Hazardous Substances, Natural Hazards and Hydro Inundation Chapters, which also form part of PC28 Part A, are the subject of a separate Decision Report.

³ PC28 Section 42A Report Author's Response to Hearings Panel Questions.

Submitter Ref	Submitter Name
PC28.18, PC28.FS01	Burkes Pass Heritage Trust
PC28.21	Graham Batchelor
PC28.27, PC28.FS09	Heritage New Zealand Pouhere Taonga
PC28.35	Telecommunication Companies
PC28.36	Fairlie Residents and Ratepayers Association
PC28.39, PC28.FS04	Meridian Energy Limited
PC28.43, PC28.FS07	The Church Property Trustees
PC28.46, PC28.FS05	Genesis Energy Limited
PC28.50, PC28.FS08	Canterbury Regional Council
PC28.61	Julie Hadfield
PC28.64	Opuha Water Limited

9. The individuals we heard from are listed in Appendix 3. Two submitters tabled evidence but did not appear at the Hearing and they are also listed in Appendix 3.
10. Copies of all legal submissions and evidence (either pre-circulated or tabled at the Hearing) are held by the MDC. We do not separately summarise that material here, but we refer to or quote from some of it in the remainder of this Decision. We record that we considered all submissions and further submissions, regardless of whether the submitter or further submitter appeared at the Hearing.
11. We received opening legal submissions from MDC's legal counsel Michael Garbett who addressed the statutory framework and the proposed heritage overlays for Te Kopi-o-Ōpihi / Burkes Pass (TKO/BP) and the Church of the Good Shepherd. With respect to the proposed heritage overlay for TKO/BP, he set out the background and context for the difference in positions held by the MDC Elected Members and the Council's independent expert evidence.
12. We also received 'overview' evidence from Julie-Anne Shanks (Planning Manager, MDC) regarding the current stage of the MDPR, the PCs notified as part of Stage 4 of the MDPR and their integration with existing operative District Plan provisions.

3. Our Approach

13. We have decided to structure this Decision in the following manner.
14. Ms Spalding's Section 42A Report sequentially addressed the submissions under the following topic-based headings:
 - Historic Heritage
 - Variations
 - Notable Trees
15. For the ease of readers of this Decision, we have adopted the same approach here and mimic the headings used in the Section 42A Report.
16. The submissions received on the provisions covered by each of these headings were summarised in the Section 42A Report. We adopt those summaries, but do not repeat them here for the sake of brevity.
17. Where, having considered the submissions and the submitters' evidence and legal submissions, we nevertheless accept Ms Spalding's final recommendations, we state that we adopt her assessment and recommendations as our reasons and decisions. Where we disagree with Ms Spalding's final recommendations, we set out our own reasons based on the evidence received and state our decisions on the relevant submissions.
18. The consequence of our approach is that readers of this Decision should also avail themselves of the Section 42A Reports listed in paragraph 3 above.

3.1 Statutory Framework

19. We adopt the statutory framework assessment set out in section 6 of the Section 42A Report, noting it is consistent with the framework described by Mr Garbett in paragraphs 5-6 his opening legal submissions.

3.2 Out of Scope Submissions

20. We agree with Ms Spalding that Gary Burrows (55.01) is not considered to be in scope of PC28 Part B as it relates to matters which are the subject of PC29. The consequence of that is that we decline to consider those matters.

3.3 Uncontested Provisions

21. Table 1 of the Section 42A Report listed provisions within PC28 Part B, V2PC26 and V2PC27 which were either not submitted on, or where submitters sought their retention. Table 1 also listed the relevant submissions. HN2PT (28.27.05, 27.06, 27.07), Genesis (28.46.04), CRC (28.50.52) and Nova (28.56.14, 56.09) variously supported the amendments proposed to various parts of the Plan which are consequential to the introduction of the various new chapters proposed in PC28 Part B.
22. We have decided to accept the submissions listed in Table 1 of the Section 42A Report and we do not discuss those submissions further in this Decision. Consequently, the provisions listed in Table 1 of the Section 42A Report and section 5 of this Decision report are retained as notified (unless a clause 10(2)(b) or clause 16(2) change has been made to them).

3.4 Supporting Submissions

23. Elizabeth Angelo-Roxborough (28.15.01), in a primary submission, supports in full the submissions of Graham Batchelor (28.21) and Jane Batchelor (28.18 – The BPHT submission prepared by Jane Batchelor). Our decisions on Graham Batchelor and BPHT submission points therefore applies to that of Elizabeth Angelo-Roxborough (15.01).

3.5 Section 32AA Assessments

24. Where we adopt Ms Spalding's recommendations, we also adopt her s32AA assessments. For those submissions we are satisfied that Ms Spalding's recommendations are the most appropriate option for achieving the purpose of the RMA, the relevant objectives of the District Plan and for giving effect to other relevant statutory instruments.
25. Where we differ from Ms Spalding's recommendations, we are required to undertake our own s32AA assessment at a level of detail that corresponds to the scale and significance of any changes we recommend to the notified District Plan provisions. In that regard we are satisfied that any such amendments are a more efficient and effective means of giving effect to the purpose and principles of the RMA and the higher order statutory instruments, for the reasons we set out in this Decision.

4. Historic Heritage – Introduction

4.1 Assessment

26. HN2PT (27.08) sought a suite of changes to the Introduction of the Historic Heritage Chapter. Of these, two matters remained in contention at the Hearing, including:
- deletion of the reference to the New Zealand Archaeological Association (NZAA) website maps, with added commentary that archaeological sites may not be known or recorded. HN2PT considered that including a link to the NZAA maps could mislead Plan users, as there is absence of data for some areas.

- deletion of the reference to 'conducting earthworks' as there are other scenarios which may lead to discovery of archaeological sites, and the current wording could give Plan users a false sense of certainty.
27. In response to Panel questions posed in Minute 6, Ms Spalding put forward alternative drafting options to address HNZPT's concerns, including:
- The addition of wording to the Introduction to make explicit that that the NZAA ArchSite is not an exhaustive list. For example, "ArchSite can be a means of undertaking an initial check for the presence of archaeological sites, but does not provide an exhaustive list of all archaeological sites".
 - The addition of other examples of ground disturbance activities in the Introduction. For example, "Ground disturbance activities may result in the discovery of other, currently unknown, archaeological sites. If an archaeological site is discovered (for example when conducting earthworks, forestry operations, mining, road construction, building, landscaping or fencing, or demolishing a 19th century building), work that could affect the site must be stopped and contact made with HNZPT for advice".
28. We heard from Mitzie Bisnar, planner for HNZPT, who explained that while the alternative wording put forward goes some way to addressing HNZPT's concerns, she remained of the view that the inclusion of the reference to the NZAA mapping tool could lead to the assumption that, if no archaeological sites are identified on the map, ground disturbance works can proceed without further consultation. She reiterated that the NZAA tool does not always capture the full extent of archaeological potential across all sites, and the absence of a recorded site does not necessarily indicate a lack of archaeological value. In her view, this may result in Plan users proceeding with earthworks without properly considering the need for archaeological assessments, and therefore, damaging significant heritage.
29. Ms Bisnar also clarified that she does not object to the specific example of ground disturbance (earthworks) per se, rather her concern is that there may be other situations where the archaeological value of a site and the type of development proposal may warrant earlier consultation with Heritage New Zealand. In her view requiring consultation prior to ground disturbance can ensure archaeological sites are appropriately managed and preserved from the outset.
30. In her s42A Reply Report (in addition to the drafting options set out above) Ms Spalding recommended an additional amendment to the introduction text to clarify that in some instances contact should be made with HNZPT prior to works beginning. Having considered the submission and evidence, we accept Ms Spalding's assessment and recommendations on this matter and consider Ms Bisnar's concerns have been appropriately addressed.

4.2 Decision

31. We adopt Ms Spalding's assessment and recommendations as our reasons and decisions.
32. The Introduction to the Historic Heritage is amended as shown in Appendix 1.

5. Historic Heritage – Objectives

5.1 Assessment

33. HNZPT (27.10) sought a new objective to promote the identification of heritage items and to provide clear overarching direction for the policies and rules. We accept Ms Spalding's assessment and recommendation to reject this submission, noting that the existing provisions already achieve the relief sought. In particular, HH-O1 and HH-P1 together provide for the identification and protection of historic heritage and establish a clear policy framework to manage potential adverse effects. We also note that no further evidence was presented at the Hearing to support the need for a new objective.

5.2 Decisions

34. We adopt Ms Spalding's assessment and recommendations as our reasons and decisions.
35. No amendments are required to the Historic Heritage Objectives.

6. Historic Heritage – Policies

6.1 Assessment

36. We accept Ms Spalding's assessment and recommendations in regard to HH-P2, HH-P5, HH-P6 and HH-P8 in response to HNZPT's submission. We agree with Ms Spalding's recommended amendments and find that the concerns of the submitter have been appropriately addressed, noting we received no evidence to the contrary from HNZPT at the Hearing.
37. HNZPT (27.04) and (27.14) supported enabling appropriate subdivision but requested that a definition is provided for heritage 'setting' and that Policy HH-P4 includes reference to 'setting' to ensure adequate protection for the heritage item and its identified setting. Ms Bisnar explained at the Hearing that in her view, identifying the 'setting' for scheduled heritage items in a District Plan is important because the context surrounding a heritage item significantly contributes to its overall heritage. We acknowledge the merit in recognising the concept of 'setting' as an aspect often associated with heritage values. However, having considered the submission and evidence on this matter, we find that it is unnecessary to introduce a definition for heritage 'setting' in the Plan or amend Policy HH-P4. We agree with Ms Spalding that:
- the MDPR process did not propose to add heritage settings for existing or new heritage items. With a large number of items in the existing and proposed list, it is not practical or feasible to re-assess each item and include an identified 'setting';
 - the introduction of such a definition and policy approach raises a question of scope and procedural fairness given the Plan was notified without the identification or definition of heritage settings;
 - the proposed heritage overlays for the Church of the Good Shepherd and TKO/BP provide an appropriate level of protection for the settings in these locations, along with a bespoke set of provisions; and
 - further inclusion of additional overlays for other heritage items can be considered in future plan review processes if warranted in specific circumstances.
38. Given our finding above with regard to heritage 'settings' we also accept Ms Spalding's assessment and recommendations on Policy HH-P7 in response to the submission of HNZPT and agree that the provision be retained as notified.

6.2 Decision

39. We adopt Ms Spalding's assessment and recommendations as our reasons and decisions.
40. Historic Heritage policies HH-P5, HH-P6 and HH-P8 are amended as set out in Appendix 1.

7. Historic Heritage – Rules

7.1 Assessment

41. We accept Ms Spalding's assessment and recommendations in response to submissions on HH-R1 and HH-R3.
42. With respect to HH-R2, the Telcos (35.12) sought that, where the permitted parameters are not achieved for customer connections to historic heritage items, the activity should have a controlled activity status as opposed to restricted discretionary activity status (using the same matters of discretion as matters of control). At the Hearing, Tom Anderson (planner for the Telcos) shared his view that a controlled activity pathway would provide certainty to the owner/occupier of the heritage item that they will be able to connect to an infrastructure network, while also providing certainty to the Council that effects on the scheduled

heritage item can be appropriately avoided, remedied or mitigated. In response to questions, Mr Anderson confirmed that in his view this amendment would give effect to HH-O1, HH-P2 and HH-P3 and explained that customer connections are typically small utility boxes attached either at ground level or roof level (depending on whether the service is underground or overhead), and enable the building to connect to telecommunications fibre. Mr McCarrison (representative for Spark) described the physical scale and nature of the customer utility boxes as being approximately the size of a laptop screen, and explained that wherever possible an effort is made to avoid additions to the primary feature or the front façade of the heritage buildings. However, in certain circumstances, the connection point corresponds to the existing location of the historic copper line connections.

43. We asked Ms Spalding to provide us with a drafting option for HH-R2 that would provide a permitted activity rule defaulting to a controlled activity pathway where compliance could not be achieved (including a limited number of matters of control) and an assessment of the merits of this activity pathway. In her Reply, Ms Spalding advised that she had reconsidered her initial s42A assessment and conclusion and now agreed with the submitter that amending the activity status to controlled is appropriate to ensure the continued sustainable use of heritage items and provide certainty that heritage items can continue to be connected to infrastructure. We agree, noting that this approach is consistent with other District Plans. We therefore accept Ms Spalding's recommendation to amend HH-R2 to enable a controlled activity pathway.
44. HNZPT (27.24 & 27.25) opposed HH-R6 which makes demolition of a Category 2 heritage item a discretionary activity and sought its deletion. Ms Bisnar confirmed at the Hearing that she remains of the view that demolition of all historic heritage items scheduled in HH-SCHED2 should fall within a non-complying activity category and on this basis requested an amendment to Rule HH-R7 to this effect. Following the Hearing we asked Ms Spalding to consider how other Councils have approached this matter to determine if a two-tiered approach in activity status is justified in the Mackenzie District context. In her s42A Reply, Ms Spalding advised that having considered the evidence presented by HNZPT, she now agrees that the RMA does not distinguish between levels of historic significance when identifying heritage protection as a matter of national importance.⁴ On this basis she recommended that all items within HH-SCHED2 should be afforded equal protection under the District Plan given they have been assessed as historically significant within the Mackenzie District. We accept Ms Spalding's assessment and recommendation and find the amendments to HH-R6 and HH-R7 to be appropriate.

7.2 Decision

45. We adopt Ms Spalding's analysis and recommendation as our reasons and decision.
46. Rule HH-R6 is deleted and Rules HH-R1, HH-R2 and HH-R7 are amended as set out in Appendix 1.

8. Historic Heritage – Matters of Discretion

8.1 Assessment

47. We accept Ms Spalding's assessment and recommendations in response to submissions on Matters of Discretion HH-MD1, MD2 and MD3, noting we received no evidence to the contrary.

8.2 Decision

48. We adopt Ms Spalding's analysis and recommendations as our reasons and decisions.
49. Amendments to HH-MD1, MD2 and MD3 are set out in Appendix 1.

9. Historic Heritage – Schedules

9.1 Assessment

50. The FDRRS (36.05) sought that the notified additions to the historic heritage list (HH-SCHED2) should be abandoned, and a public education and incentive-based approach be used instead. We heard from Simon Abbot (Chair) who expressed his concern that the compulsory categorisation of peoples' homes as heritage

⁴ Noting that the national heritage list serves primarily as an informational resource rather than a regulatory tool.

items without consultation with the owners is a violation of property rights. He stated that the listing of buildings imposes an increased financial burden on homeowners.

51. Two submitters, John Elliot (28.01) and Julie Hadfield (61.01) opposed specific listings in HH-SCHED2 including the Burkes Pass School House and the Opawa Homestead, respectively. Ms Hadfield owns the Homestead and operates a commercial Bed and Breakfast onsite. She attended the Hearing and shared her summary statement with us. Her primary concerns about the listing of the Opawa Homestead included:
- Lack of due diligence and integrity in the process;
 - Lack of clarity about central Government requirements;
 - Inequitable treatment over historic items based on the example of a similar homestead on Mt Nessing Road which has been removed from HH-SCHED2;
 - Waiving of private property owner rights; and
 - Regulatory reform indicated by the Government that signals a different regulatory framework;
52. Having considered the submissions and evidence, we do not share the submitters' concerns. It is clear from the evidence⁵ that MDC undertook an appropriate level of community engagement on the identification of heritage items that are proposed to be added to HH-SCHED2 via PC28 Part B, which then informed Mr Knott's historic heritage assessments. PC28 Part B was then notified, enabling any person, (including landowners of proposed listed heritage buildings) to make a submission and attend the hearings to present their submissions. We also note and accept Mr Knott's evidence where he states:
- "I understand that informal consultation or survey responses received prior to notification were able to be provided anonymously, and this could include identification of suggested heritage items to be added to the schedule. Many Cities and Districts across New Zealand add heritage buildings/items to their schedule without owners' approval, s6 of the RMA obligates Councils to identify such buildings. The process of submissions and the hearing provide an opportunity for owners to raise concerns with the Independent Commissioners. There are therefore no natural justice issues from the process which has been followed".*
53. We consider that HH-SCHED2 has a very clear purpose and is an important tool for the identification of the District's historic heritage and its protection from inappropriate use, development or subdivision in accordance with s6(f) of the RMA. The scheduling of historic heritage items is an accepted and valid planning approach adopted by local authorities across New Zealand to achieve the requirements of the RMA. We do not consider the rule framework to be overly onerous and note that it is generally consistent with other rule frameworks in the region and nationwide. It will enable scheduled heritage items to be used, maintained and repaired where works do not detract from the heritage values of the item.
54. In respect to the Opawa Homestead, the expert evidence of Mr Knott clearly demonstrates that the Homestead has high historical and social, cultural and spiritual, architectural and aesthetic, archaeological and scientific values, is well maintained and is in good condition. Ms Hatfield did not dispute these values, and in response to our questions, signalled she would look at registering the building with the NZHPT in the future. While we acknowledge Ms Hatfield's clear ongoing commitment to the protection of the historic heritage values of the Homestead, we are concerned that any future listing of the heritage item with the NZHPT in and of itself would not provide sufficient regulatory protection, especially if the ownership circumstances were to change. Put simply, without protection in the District Plan, heritage items have no statutory protection from demolition or alteration.
55. In terms of Ms Hadfield's view that the listing of the Homestead is inequitable when compared to other items in the area, we note that Mr Knott's evidence clearly establishes the context and history of the Mt Nessing Homestead. In that case, affected party approval was given by NZHPT as they recognised the current building is not the original homestead and the values for which it is listed are not embodied in that building.

⁵ Section 32 Report Part B: Historic Heritage and Notable Trees, 5 November 2024; MDC Historic Heritage Report -Response to Submissions by Richard Knott, 7 April 2025.

They also indicated that they understood the building had sustained earthquake damage. The application included details of the expected costs to repair the earthquake damage and to bring the building into good condition. We have received no similar evidence that would apply to Opawa House, and on that basis, there is a clear distinction between the context of the two homesteads. It is therefore unsurprising to us that there would be two distinct regulatory responses that align with the facts and contexts of these respective cases. We note also that HNZPT supports the new listings proposed, including Opawa House.

56. As explained to Ms Hatfield at the Hearing, we are unable to speculate on what hypothetical future regulation may or may not be imposed on landowners. We must work within the framework of the existing RMA system which treats historic heritage as a matter of national importance. We have a clear mandate to retain provisions in the District Plan that protect historic heritage values and in our view the identification and scheduling of historic heritage items are to be primarily determined by expert assessment that has probative merit.
57. We accept Ms Spalding's assessment and recommendations in response to submissions on HH-SCHED1 and HH-SCHED2. We agree that HH-SCHED1 should be retained as notified and find the minor amendments to HH-SCHED2 to be appropriate.

9.2 Decision

58. We adopt Ms Spalding's analysis and recommendation as our reasons and decisions.
59. The amendments to HH-SCHED2 are set out in Appendix 1.

10. Historic Heritage – Te Kopi-o-Ōpihi / Burkes Pass Overlay

10.1 Assessment

60. In his opening legal submissions, MDC's legal counsel Michael Garbett explained that the development of the TKO/BP Overlay has been through an extensive public consultation process resulting in a high level of engagement from submitters on this issue with a range of views. The MDC initially consulted the community on the TKO/BP Overlay in July 2024 (the 'July 2024 consultation version'). However, when it approved the Stage 4 Plan changes for notification, the Elected Members of Council preferred a reduced overlay which became the 'November 2024 notified version'. Key reasons provided by the Elected Members of MDC include:
 - The historic heritage overlay is intended to provide protection for historic heritage;
 - The notified version places the overlay on sites that do contain historic heritage structures, and this is an appropriate response to manage the values present;
 - The consultation version of the overlay applies to a number of vacant sites. Elected Members consider it nonsense and unnecessary bureaucracy to add the heritage overlay over sites that are currently bare land because this may impede future use of this land; and
 - Elected Members considered these options before notifying the Plan Change and adopted the notified version of this overlay. Elected Members consider weight should be placed on this position.
61. Three submitters⁶ supported the notified TKO/BP Overlay and sought that it is retained as notified. These submitters noted that permanent residents and most holiday-homeowners that expressed concerns during the Plan review process are in favour of the revised overlay plan for Burkes Pass. The submitters note that the previous overlay restricted what property owners could do on their own property and would affect any future sale. We did not hear from these supporting submitters at the Hearing.

⁶ Heather Capstick (16.01), John Capstick (17.01) and the BPRA (34.01).

62. Numerous submitters⁷ (including HNZPT) opposed the notified TKO/BP Overlay and sought a return to the July 2024 consultation version, as recommended by Mr Knott during earlier consultation processes.
63. We heard from Jane Batchelor, Chair of the Burkes Pass Heritage Trust (BPHT). She spoke to us about the Trust's strong opposition to the November 2024 notified version of the TKO/BP Overlay, and shared her knowledge on the history and significance of the Te Kopi-o-Opihi/Burkes Pass township and associated historic heritage sites and items. She requested that the July 2024 consultation version be reinstated to achieve the aim of legibility of the high heritage values of the township, and its identity in the Mackenzie District, Canterbury Region and nationally.
64. Mr Batchelor presented a PowerPoint in support of his submission as a local resident and owner of two heritage cob cottages. He supported the reinstatement of the July 2024 consultation version of the Overlay along with all the heritage items recommended by Mr Knott on HH-SCHED2. He requested a non-complying activity status be applied to inappropriate alterations as viewed from the road, and for any structures erected that may compromise the view of the heritage item from the road. Further, he considered that sections in the heritage overlay should have a minimum size appropriate to given an open space feel.
65. Having considered the submissions and evidence of the submitters, and the evidence of Mr Knott, we accept Ms Spalding's recommendation to amend the TKO/BP Overlay to the July 2024 'Consultation Version' and the recommended amendments to the notified rules. Based on the evidence we find that:
- without the Overlay providing continuity along the road frontage of sites within Burkes Pass, there would be greater potential for unsympathetic buildings to be constructed close to the road, which would undermine the heritage values of the listed items, and the legibility of the heritage values of the township as a whole;
 - the July 2024 Consultation Version of the heritage Overlay will assist with maintaining visibility of existing heritage items from State Highway 8, and ensure that any new buildings are of an appropriate scale and character, consistent with the existing heritage buildings and the character of the township's existing built form;
 - the July 2024 Consultation Version will provide a continuous area which better recognises and protects the contextual history and significance of the heritage items within this area and better recognises the overall contextual significance of the heritage items;
 - the recommended amendments to the notified rules will ensure that the scale, design and location of buildings within the overlay can be managed to reduce potential effects on the heritage values of TKO/BP, without placing onerous consenting requirements on property owners;
 - a non-complying activity status for new buildings or extensions to existing buildings (if permitted standards are not complied with) is not justified and would not deliver any particular benefit when implemented. A restricted discretionary pathway for these activities provides appropriate scope to consider all relevant matters listed in the Matters of Discretion; and
 - a minimum lot size within the overlay is not required because sites within the Overlay are either zoned LDR or Mixed Use. Both of these zones have a 400m² minimum lot size, and each site must contain a 15m by 15m building square. In combination with the 5m minimum yard setbacks required within the TKO/BP Overlay, this would result in a section width of 25m, which is adequate to ensure an open space feel.
66. While we acknowledge the concerns raised by some Elected Members and the importance they place on this matter, we note that our decision-making role as a Panel is independent and based on our consideration of all the evidence and submissions presented to us. We have carefully considered the concerns of

⁷ HNZPT(27.41) (Laura Batchelor (06.01), Dan Richards (07.01), Alex Lusby (10.01), Morris James Hall (11.01), Elizabeth Angelo-Roxborough (15.02), BPHT (18.01), Warren and Maree Frost (19.01), Michael Lawrence Bunckenburg (20.01), Graham Batchelor (21.01), Joyce and John Kelly (22.01), Peter & Janine Donohue (24.01), Philip Quelch (38.01), Jim Allan (40.01), Janette Kear (44.01), John Emery (49.01), Caroline Thomson (51.01), Robyn Thomson (54.01) and Julie Greig and Jan Zyzalo (62.01)).

submitters who support the notified TKO/BP Overlay along with the concerns expressed by Elected Members. We find, based on the evidence, that the November 2024 notified version of the TKO/BP would neither achieve the purpose of the RMA, nor achieve the objectives of the District Plan.

10.2 Decision

67. We adopt Ms Spalding's analysis and recommendation as our reasoning and decisions, other than a minor correction we have made to HH-S1.1 to make it clear that the TKO/BP overlay rules (HH-R10 and HH-R10A) apply to buildings but not structures (as defined), and a correction of the name of HH-S1 in HH-R10 and HH-R10A.
68. The amendments to the rules and standards are set out in Appendix 1.
69. We have amended the TKO/BP Overlay to return to the July 2024 'Consultation Version' as set out in Appendix 2.

11. Historic Heritage Overlay – The Church of the Good Shepherd

11.1 Assessment

70. In response to the submission by the Church Property Trustees (CPT), Ms Spalding (relying on Mr Knott's evidence) recommended a change to the south western boundary of the Church of the Good Shepherd Historic Heritage Overlay (the Overlay) to enable the Church to establish some small public and/or staff facilities as a permitted activity in the vicinity of the Church. CPT sought that the Overlay be reduced in extent to exclude Area A in its entirety (the area on the landward side of Pioneer Drive).
71. We heard from Mr Holley, General Manager for CPT who provided an overview of how the Diocese operates, the trustee obligations of CPT, information on CPT's attempts to reach an agreeable solution with MDC, CPT's view of the improper extent of the proposed heritage overlay and its impact on CPT, the Mackenzie Cooperating Parish (Parish) and the future of the Church. He explained the primary concern being that the inclusion of Area A within the Overlay is disproportionate to the heritage values it is seeking to protect and could severely limit development, increase compliance costs and affect the land's value and development potential. He expressed concern that this, in turn, could jeopardise the Parish's financial sustainability and the Church's future. Jo Appleyard in her legal submissions for CPT submitted that, based on an expert valuation prepared by Colliers, if the land in Area A is included within the proposed Overlay, this would result in a \$2.17 million loss in land value.
72. CPT's requested relief was supported by expert heritage evidence presented by Mr David Pearson. Mr Pearson concluded that Area A does not need to be included within the Heritage Overlay to ensure that the heritage values of the Church and the statue and their surrounds are sufficiently protected, as the existing zoning controls offer sufficient oversight to ensure any future development does not detract from the heritage values of the area. In particular, Mr Pearson considered that the existing boundary setback rules will allow the Church to remain visible when approaching it along Pioneer Drive from either direction. Overall, he was of the view that the objectives of the Overlay can still be achieved without the inclusion of Area A. In response to our questions, we note that Mr Pearson advised that he had not visited the site in person for the purposes of his assessment.
73. On our site visit, we walked along Pioneer Drive and observed the Church and Area A and surrounding areas. We considered the extent and impact of the proposed Overlay from the main viewpoints as presented by Mr Pearson and Mr Knott in their respective evidence statements and observed that the fencing around Area A did not appear to align with aerial photographic references. Our observation is consistent with Mr Knott's additional assessment provided to us following the Hearing where he noted that in places the fences are set well within the site. This is particularly the case along the southeast boundary; the boundary with the existing dwelling at 24 Pioneer Drive and the empty lot to the front of this, 23 Pioneer Drive.
74. In response to Mr Pearson's assertion that existing zoning controls offer sufficient protection to ensure future development in Area A would not detract from the heritage values of the Church, we asked Ms Spalding, in consultation with the submitter, to confirm the permitted development standards applicable to

Area A of the Overlay. Following the Hearing we received an agreed Permitted Development Assessment of Area A. We have interpreted the key points of the assessment to include:

- The relevant subdivision standards would mean that Area A (if both sites were subdivided simultaneously) could be subdivided into 10 allotments via a restricted discretionary or discretionary activity pathway (depending on the nature of the subdivision activities and the specific rule triggered).
- The relevant residential activity standards would mean that a total of nine residential units would be permitted in Area A (subject to compliance with a range of standards in the LRZ Zone and Takapō/Lake Tekapo Precinct).

75. We asked Mr Knott to consider the effects of altering the proposed Overlay by removing Section 15 Block II Tekapo VILL (Section 15) in its entirety and invited Ms Spalding to revisit her recommendation based on the outcome of Mr Knott's assessment. Mr Knott subsequently provided an assessment of the potential suitability of an Overlay with Section 15 removed from the two main viewpoints, including from the south of the Church (close to the eastern end of the pedestrian bridge) and from the east of the Church (from Pioneer Drive). He provided plans illustrating viewpoints and associated annotated photography to support his conclusions that in his view it is not necessary for the whole of Area A to be within the Overlay to provide the impression of openness and space around the Church and to ensure that it is viewed within a natural environment, and so maintain its heritage values i.e. a narrower view from these locations could achieve this. However, based on the Permitted Development Assessment, he considered that any future buildings constructed within viewshafts labelled C-E and H-J could potentially significantly impact heritage values of the Church and on this basis these areas should remain within the Overlay. Overall, he considered that an alternative scenario whereby the majority of Section 15 could be removed from the Overlay while maintaining the impression of openness and space around the Church. That would ensure it is viewed within in a natural environment, and therefore maintain its heritage values.

76. Mr Pearson, in response to Mr Knott's additional evidence, was critical of the methodology underpinning his diagrams and considered that in reality the view from the viewpoints would be much wider and would take in more of the surrounding area. He concluded that:

Viewed from both directions, the church can just be seen amongst a clutter which includes the roadway, parked cars and other vehicles and various buildings. As a result, the church is not prominent when viewed from either direction. Some elements, in particular, the carparks and vehicles parked thereon, in my opinion, actively detract from the heritage values of the church.

In reality, a view of the church that is uncluttered by other elements in the landscape such as the carparks and buildings cannot be fully obtained until one is half way around the bend in the road. The church is then seen as it was originally conceived in isolation on its elevated mound against a background of the sky, the lake and the mountains.

At this point, the area of land known as Area 'A' is behind the viewer and does not contribute significantly to the visitor experience and in fact is unlikely to even feature in the viewers' consciousness. I believe this would still be the case if Area 'A' was developed in accordance with the development controls contained within the 'low density' zoning.

Objective HH02 in the Proposed District Plan aims to ensure that the historic heritage values of the Church of the Good Shepherd and the sheepdog statue are maintained. In my evidence given at the hearing I stated at paragraph 48 that "In my opinion, Objective HH02 would still be satisfied without the inclusion of Area 'A'". I remain of that opinion.

77. Having considered the submissions and evidence of the submitters, we agree with Ms Spalding's assessment that fully removing Section 15 (the rear site) from the Overlay would not maintain the historic heritage values of the Church, due to the potential impact on key viewshafts when approaching the Church from either direction on Pioneer Drive. We find the alternative option provides an appropriate level of protection for the heritage values of the Church, by ensuring that the impression of openness and space around the Church is maintained when viewed from the two key viewing locations to the South and East.

This also enables the majority of Section 15 to be used in accordance with its underlying zoning in a manner that does not adversely affect the historic heritage values of the Church. We consider this represents a fair and robust outcome which addresses the key concern of the submitter appropriately. We therefore accept Ms Spalding's recommendation to amend the Overlay to exclude a portion of Section 15 Block II Tekapo VILL as illustrated in her s42A Reply Report.

- 78. Ms Spalding recommended some minor amendments to Rule HH-R8 which we consider are appropriate.
- 79. For completeness, in respect of the Collier valuation presented by Ms Appleyard as evidence, we asked Mr Garbett to comment on the relevance of that evidence, and the weight we should place on it in our decision. He advised that as set out in various Court decisions, the physical effects of an activity on the environment are the primary consideration, and any effect on property prices essentially represents a 'proxy' to quantify an environmental effect. He cautioned that considering both the physical effects on the environment as well as any indirect effect on property prices would risk "double-weighting" our assessment on effects on the environment.

11.2 Decision

- 80. We adopt Ms Spalding's analysis and recommendation as our reasoning and decision.
- 81. We have amended Rule HH-R8 and the Church of the Good Shepherd Overlay as set out in Appendix 2.

12. Variations

12.1 Assessment

- 82. We accept Ms Spalding's assessment and recommendations in response to submissions and agree with the minor amendment to SUB-R9.

12.2 Decisions

- 83. We adopt Ms Spalding's analysis and recommendations as our reasons and decisions.
- 84. The amendment to SUB-R9 is shown in Appendix 1.

13. Notable Trees

13.1 Assessment

- 85. We accept Ms Spalding's assessment and recommendation in response to submissions on TREE-P3, TREE-R2, and TREE-R3, noting that we received no further evidence from Transpower (31.12), NZTA (45.05) or The Telcos (35.15) on their respective matters of concern.
- 86. Meridian sought amendments to TREE-P2 and TREE-P5 to reflect the national significance of renewable electricity generation activities and noted that such activities can have functional needs and operational needs that may mean the protection of trees listed in TREE-SCHED1 may not be appropriate when the benefits of the activity outweigh the residual adverse effects. In response to our questions, Ms Ruston (planner for Meridian) confirmed that of the listed Trees in TREE-SCHED1, none are in locations that would affect Meridian's current functional and operational needs in the District. She explained that the concern is a general one, especially for the potential future requirements of REG in the District.
- 87. In her s42A Reply Report, Ms Spalding provided further assessment on the merits of the relief sought. She helpfully provided a scenario which demonstrated that if a consent application for infrastructure or renewable generation activities required the removal of a notable tree, the policies within the Infrastructure and Renewable Electricity Generation chapters would form part of the consideration for the decision-making process (as well as the objectives and policies in the TREE chapter). In her view, the functional and operational needs of the infrastructure or renewable electricity generation activity can be appropriately considered, without inclusion of further reference to these matters within the TREE chapter provisions.
- 88. We agree with Ms Spalding that the provisions give adequate certainty to infrastructure and renewable energy providers that the functional needs and operational needs can be adequately taken into account

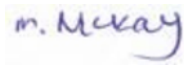
when considering any adverse effects associated with their activities, including when considering any effects on notable trees. On this basis, we accept her recommendation that no change is required to TREE-P2 or TREE-P5.

13.2 Decision

89. We adopt Ms Spalding's analysis and recommendation as our reasoning and decision.
90. Amendments to TREE-P3 and TREE-R2 are shown in Appendix 1.



Rob van Voorthuysen (Chair)



Megen McKay



Ros Day- Cleavin

24 July 2025

Appendix 1: Amended Provisions

Appendix 2: Amended Heritage Overlays

Appendix 3: Appearances

Sub. Ref	Submitter Name	Name	Role
PC28.18, PC28FS01	Burkes Pass Heritage Trust	Jane Batchelor	Chair
PC28.21	Graham Batchelor	Graham Batchelor	Self
PC28.27, PC28.FS09	Heritage New Zealand Pouhere Taonga	Mitzie Bisnar	Planner
PC28.35	Telecommunication Companies	Tom Anderson	Planner
PC28.36	Fairlie Residents and Ratepayers Association	Simon Abbott Elizabeth Mackenzie	Chair Secretary
PC28.39	Meridian Energy Limited	Ellie Taffs	Legal Counsel
		Sue Ruston	Planner
PC28.46	Genesis Energy Limited	Richard Matthews	Planner
PC28.43, PC28.FS07	The Church Property Trustees	Jo Appleyard David Pearson Gavin Holley	Legal Counsel Heritage Expert CPT Representative
PC28.50	Canterbury Regional Council	Rachel Tutty Marie Dysart	Planner Legal Counsel
PC28.61	Julie Hadfield	Julie Hadfield	Self
PC28.64	Opuha Water Limited	Lucy O'Brien	Legal Counsel

Tabled Evidence

	Submitter	Name	Role
PC28.31	Transpower New Zealand Limited	Rebecca Eng	Technical Lead – Environmental Policy
PC28.42	Director-General of Conservation	Di Finn	Manager Operations
PC28.45	New Zealand Transport Authority	Jeremy Talbot	Planner