



TO THE MAYOR AND COUNCILLORS OF THE MACKENZIE DISTRICT COUNCIL

Membership of the Planning and Regulation Committee:

Cr Murray Cox (Chairman)
Claire Barlow (Mayor)
Cr Noel Jackson
Cr Evan Williams
Cr Russell Armstrong
Cr James Leslie
Cr Graham Smith

Notice is given of the Meeting of the Planning and Regulation Committee to be held on Thursday, July 24, 2014, following the completion of the Asset and Services Committee meeting.

VENUE: Council Chambers, Fairlie.

BUSINESS: As per agenda attached

WAYNE BARNETT
CHIEF EXECUTIVE OFFICER



PLANNING AND REGULATION COMMITTEE

Agenda for Thursday, July 24, 2014

APOLOGIES – An apology has been received from Cr Murray Cox.

DECLARATIONS OF INTEREST

MINUTES:

Confirm and adopt as the correct record the minutes of the Planning and Regulation Committee Meeting held on Thursday, June 12, 2014, including those parts taken in public excluded.

REPORTS:

1. Planning and Regulation Manager's Activity Report (attached).
2. Memorandum of Understanding with Ecan (attached).
3. Annual Plan submission from McNeilly (attached).
4. Standing Reports – Verbal reports from the Water Zone committees.
(Noted that Cr Cox is away and Cr Williams has just returned from leave so these standing reports may be postponed)

PUBLIC EXCLUDED:

Resolve that the public, be excluded from the following part of the proceedings of this meeting namely:

1. Discussion on the previous minutes of the Planning and Regulation committee on June 12, 2014.
2. Plan Change 13 Second High Court Appeal (attached).
3. Building Practitioners Board Complaint (attached).

| General subject of each matter to be considered | Reason for passing this resolution in relation to each matter | Ground(s) under section 48(1) for the passing of this resolution |
|---|---|--|
| Discussion of previous minutes June 12. | Maintain legal professional privilege | 48(1)(a)(i) |
| Plan Change 13 Second High Court Appeal | Maintain legal professional privilege | 48(1)(a)(i) |
| Building Practitioners Board Complaint | Protect the privacy of natural persons | 48(1)(a)(i) |

This resolution is made in reliance on Section 48(1)(a)(i) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public are as follows: *Discussion of previous minutes June 12, and Plan Change 13 Second High Court Appeal under section 7(2)(g). Building Practitioners Board Complaint under section 7(2)(a).*

RESOLUTION TO RESUME OPEN MEETING

MACKENZIE DISTRICT COUNCIL

MINUTES OF A MEETING OF THE PLANNING AND REGULATION COMMITTEE HELD IN THE COUNCIL CHAMBERS, FAIRLIE, ON THURSDAY, JUNE 12, 2014, AT 1.05pm

PRESENT:

Cr Murray Cox (Chairman)
 Claire Barlow (Mayor)
 Cr Graham Smith
 Cr James Leslie

IN ATTENDANCE:

Wayne Barnett (Chief Executive Officer)
 Nathan Hole (Planning and Regulation Manager)
 Toni Morrison (Planning and Regulation)
 Arlene Goss (Committee Clerk)
 Andrew Feierabend (Meridian Energy)
 Jim Walker (Meridian Energy)
 Rebecca Larking (Genesis Energy)

APOLOGIES:

Resolved that an apology be received from Cr Evan Williams and Cr Noel Jackson.

Graham Smith/Russell Armstrong

DECLARATIONS OF INTEREST:

There were no declarations of interest.

VISITORS:

Andrew Feierabend and Jim Walker from Meridian Energy, and Rebecca Larking from Genesis Energy attended at 1pm for a discussion regarding Plan Change 13.

PUBLIC EXCLUDED:

Resolved that the public, be excluded from the following part of the proceedings of this meeting namely a discussion with Meridian Energy and Genesis Energy regarding Plan Change 13.

| General subject of each matter to be considered | Reason for passing this resolution in relation to each matter | Ground(s) under section 48(1) for the passing of this resolution |
|--|---|--|
| Discussion with Meridian Energy and Genesis Energy | Maintain legal professional privilege | 48(1)(a)(i) |

regarding Plan
Change 13.

This resolution is made in reliance on Section 48(1)(a)(i) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public are as follows: *Discussion with Meridian Energy and Genesis Energy regarding Plan Change 13 under section 7(2)(g).*

Claire Barlow/Russell Armstrong

The Planning and Regulation Committee continued in open meeting.

MINUTES:

Resolved that the minutes of the meeting of the Planning and Regulation Committee held on April 29, 2014, be confirmed and adopted as the correct record of the meeting.

Graham Smith/Russell Armstrong

REPORTS:

PLANNING AND REGULATION MANAGER'S ACTIVITY REPORT:

Nathan Hole said resource consents are at a lower level but still in the same numbers as council has seen previously. A subdivision consent at Manuka Tce was declined due to the number of lots connected to a right-of-way. This subdivision wanted to add three extra lots to an already existing 15 lots. The more permissions you get on a right-of-way the harder it is to turn it into a road at a later date, so there are good reasons for restricting the number of lots using a right-of-way.

Council had a civil defence exercise involving staff and using EMIS – Emergency Management Information System. The benefit of EMIS is that the software is nationally consistent. This gives us access to help at a national level.

The Albury Fire Tanker has been commissioned and is operational. Rob Hands is due to speak to council at a future meeting.

The Mayor suggested highlighting to the public the fact that our building inspectors are very restricted in what they can allow. They are not as flexible as they used to be.

Nathan Hole spoke about the building consent process being enduring and about protecting building owners of the future, rather than just about the current owner wanting to overcome an obstacle.

Resolved that the report be received.

Claire Barlow/Graham Smith

PROPOSED ROAD NAME – RM050060

Resolved:

1. That the report be received.

Claire Barlow/James Leslie

2. That the committee agrees to “The Terrace” being the name of the road to vest from RM050060.

Claire Barlow/Graham Smith

REPORT FROM UPPER WAITAKI WATER ZONE COMMITTEE

Cr Cox said the Upper Waitaki Water Zone Committee is still looking at catchment load limits to meet the targets of the Canterbury Water Management Plan. Public workshops will be held in Tekapo on July 30 and Omarama on July 31. Councillors are invited to attend.

**THERE BEING NO FURTHER BUSINESS THE
CHAIRMAN DECLARED THE MEETING CLOSED AT 2.37pm**

CHAIRMAN: _____

DATE: _____

MACKENZIE DISTRICT COUNCIL

REPORT TO: PLANNING AND REGULATION COMMITTEE

SUBJECT: GROUP MANAGER'S ACTIVITY REPORT

MEETING DATE: 24 JULY 2014

REF: PAD 4/1

FROM: NATHAN HOLE, MANAGER PLANNING AND REGULATIONS

PURPOSE OF REPORT:

To provide the Committee with an activity report for planning and regulations for the period 5 June 2014 to 16 July 2014.

STAFF RECOMMENDATIONS:

1. That the report be received.

WAYNE BARNETT
CHIEF EXECUTIVE OFFICER

ATTACHMENTS

Ministry of Business, Innovation and Employment (MBIE) determination 2014/023
(Heslip – State Highway 8, Fairlie)

RESOURCE CONSENT ACTIVITY:

| Applications Received | Applications Granted | Applications Declined |
|-----------------------|----------------------|-----------------------|
| 5 | 5 | 1 |

Applications received:

Land use

- 140033 H Lane
Locate dwelling and shed within 20m from paper road boundary, Nixons Road, Fairlie
- 140036 P Rive
Erect second residential unit on site in the Residential 4 Zone, The Drive, Twizel
- 140038 M & K Prosser
Locate helicopter hanger within 50m from State Highway boundary, Fairlie
- 140039 Pukaki Tourism Holdings Ltd
Farm building within Mackenzie Basin Subzone, State Highway 80

Certificate of compliance

- 140034 High Country Rosehip Orchards Ltd
Certificate of compliance: farming, pastoral intensification, dairying, commercial livestock, fencing, tracks/roads, underground pipe network, oversowing & topdressing, shelter belts, Twizel

Applications granted:

Land use

- 140025 The Kowhais Ltd
Earthworks to construct a 50,000m³ water storage dam for irrigation, Middle Valley Road, Fairlie
- 140031 S Peterson
Locate shed within setback from internal boundary, Residential 4 Zone, Glen Lyon Road, Twizel
- 140033 H Lane

Locate dwelling and shed within 20m from paper road boundary, Nixons Road, Fairlie

140037 R Smith
Relocate dwelling within rural zone, Hamilton Road, Fairlie

140038 M & K Prosser
Locate helicopter hanger within 50m from State Highway boundary, Fairlie

Applications declined:

Certificate of compliance

140034 High Country Rosehip Orchards Ltd
Certificate of compliance: farming, pastoral intensification, dairying, commercial livestock, fencing, tracks/roads, underground pipe network, oversowing & topdressing, shelter belts, Twizel

BUILDING CONSENT ACTIVITY

| Applications Received | Applications Granted |
|-----------------------|----------------------|
| 40 | 36 |

The total value of granted building consents was \$2.96M.

LIM ACTIVITY

15 LIMs processed

OTHER MATTERS

1. A Notice to Fix under the Building Act 2004 was issued on 16.7.14 to Glen and Phillipa Heslip for unconsented building work in relation to the construction of an outbuilding at their State Highway 8 property. This was in accordance with the attached MBIE determination 2014/023.
2. Ashburton District Council regulatory staff have agreed to provide Hazardous Substances and New Organisms (HSNO) Act cover for our district. This enables the Council access to warranted staff who can investigate a HSNO accident should one occur. Previously this Council (like many others) has not met the requirements of the HSNO Act.



Determination 2013/030

Regarding the authority's exercise of its powers of decision in respect of a refusal to amend a building consent for Restricted Building Work carried out to a relocated house at Talbot Road, Fairlie

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ ("the Act") made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to this determination are
 - the owners of the property, G and P Heslip ("the applicants")
 - P Nickalls, the Licensed Building Practitioner who supervised the building work ("the LBP")
 - Mackenzie District Council, carrying out its duties and functions as a territorial authority or building consent authority ("the authority").
- 1.3 The determination arises from the authority's refusal to apply an owner-builder exemption² to all the work contained in a building consent, in circumstances where the consented work was underway and the foundations had already been supervised by the LBP. The owner-builder exemption was sought by the applicants as an amendment to the building consent ("the exemption amendment"). The refusal of the exemption arose because the authority is of the view that a Record of Work in respect of the foundations must be supplied by the LBP.
- 1.4 I therefore consider the matter to be determined³ is whether the authority correctly exercised its powers of decision in refusing to amend the building consent. In considering this matter, I must consider the grounds on which the refusal was made.
- 1.5 In making my decision I have considered the submissions of the parties and the other evidence in this matter. I emphasise that each determination is considered on a case-by-case basis.
- 1.6 Relevant sections of the Act referred to in this determination are set out in Appendix A.

¹ The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.dbh.govt.nz or by contacting the Ministry on 0800 242 243.

² As set out in section 90D of the Act

³ Under sections 177(1)(b) and 177(2)(a) of the Act

2. The background

- 2.1 The detached three bedroom house has an area of 72m² and was originally constructed in the 1980s. It was relocated to the Talbot Road site in August 2012.
- 2.2 The work to relocate the building on the site was detailed in building consent No. 120150 issued by the authority on 6 August 2012. The consent included a drainage plan, foundation plan and sections, and a PS1 from an engineer. The consent was in respect of
- Completion of a concrete pad for placement of garage and pad
Housing – detached
- 2.3 The consented building work related to the construction of the pile foundations and the placement of the house onto these foundations and is Restricted Building Work⁴. I have not seen any information that advised the authority that the LBP would be carrying out the restricted building work; though I note the LBP produced an invoice for the 'supply [of] LBP number for building consent'. From the information provided it appears the removal company was to undertake the consented work under the supervision of the LBP.
- 2.4 The first inspection carried out by the authority, covering the pre-pour construction of the pile holes, was carried out on 26 September 2012. The authority noted that the building work had been completed as per the consent and the Building Code, and the work was 'approved to progress'.
- 2.5 On 1 October 2012, the LBP invoiced the applicants; the description of work was 'to supply LBP number for building consent'.
- 2.6 On 17 October 2012, the applicants emailed the authority
- to request that the LBP's name and registration number be removed from all consent documentation
 - voicing their concerns that the LBP had conducted only one site visit, at the same time as the authority's inspection, to sight the pile holes and that the LBP was paid directly by the removal company for this task
 - stating that they had no prior knowledge that they would have to pay to have the LBP's details on the consent documentation and that their contract with the removal company covered the whole process of placing the house on the site, including all piling work.
- 2.7 The applicants requested a meeting with the authority and this was held on 24 October 2012. During this meeting, the applicants reiterated their views and offered to sign a waiver stating that they took full responsibility for all building work to date and requesting that the LBP's name 'be removed from the consent'. The authority declined the request.

⁴ As defined in the Building (Definition of Restricted Building Work) Order 2011

- 2.8 A pre-pour slab inspection was carried out on 7 November 2012. The following notes were made on the Inspection Notification
- the work was approved to progress once the engineer's drawings were received for the link alteration
 - the house bearers were approved
 - the garage may be relocated
 - the work had been completed as per the building consent.
- 2.9 The applicants and LBP on 14 November 2012. The applicants responded to the LBP's email on 17 November 2012 disputing the payment noting the agreement the applicants believed they had with the removal company to carry out the consented work.
- 2.10 On 27 November 2012, the applicants emailed an officer of the Ministry to ask for advice on how to proceed with their building consent. The applicants stated that they would complete the appropriate amendment form to declare their owner-builder status. The email summarised the background information and asked the officer of the Ministry if it was possible for the building consent to be amended to remove all references to the LBP.
- 2.11 The officer of the Ministry responded to the applicant on 29 November 2012, stating that any Restricted Building Work that had been completed must be accompanied by a Record of Work from an LBP.
- 2.12 On 29 November 2012 the applicants applied for an amendment to the building consent to 'continue project as per building consent under the "owner-builder" status'.
- 2.13 The applicants emailed the authority on 13 December 2012, asking for confirmation that the amendment to the consent (applying the owner-builder exemption) had been approved, and whether the applicants could continue with the project under the owner-builder exemption.
- 2.14 The authority responded on 17 December 2012, stating that no further Restricted Building Work (work on the pile foundations or the house) could commence until a Record of Work had been supplied for the completed work.
- 2.15 The authority also advised that building work that was not Restricted Building Work (the construction of the garage and car port) could continue; however, as there had been some changes to the consented plans the applicants would need to apply for an amendment to include these new structural changes before this work could proceed.
- 2.16 The Ministry received the application for determination on 8 February 2013.

3. The submissions

- 3.1 The applicants made a submission in an email accompanying the application for determination. The submission set out the background to the dispute and the

applicants' view on the matter. The applicants noted that they felt that they had informed the authority of the situation throughout, and that the authority was being inflexible by refusing to allow the project to continue under the owner-builder exemption until the Record of Work for the Restricted Building Work completed by the LBP was supplied.

- 3.2 The applicants provided copies of
- the building consent application and supporting documentation
 - correspondence between the parties
 - an application form for a code compliance certificate relating to the consent.
- 3.3 The authority acknowledged the application for determination and responded on 11 February 2013, submitting the following (in summary):
- The consent was 'issued under the LBP scheme'. The authority carried out a pre-pour inspection of the pile holes while the 'supervising LBP was on site'. Whether an owner-builder exemption was considered appropriate was considered 'but it was eventually agreed that it was able to proceed under exemption with the required declarations received'.
 - The applicants asked the authority to consider the whole project under the exemption, including the pile foundations which had already been constructed under the supervision of the LBP.
 - As the LBP was employed for his services, rather than an unpaid friend or family member as required under an exemption, the authority considered that this part of the building work could not be included in the exemption. The authority requested that all work associated with the piles (including the provision of a Record of Work from the LBP) be completed, and then the rest of the project could then be completed under the exemption.
 - The applicants asked the authority to let them take responsibility for the whole project, including the work completed before the exemption was in place.
 - The plans for the garage and car port are significantly different from what was consented, and the applicants were asked to submit an application for amendment.
 - The authority believes that the Record of Work has not been issued due to a contractual dispute. The authority does not consider this to be a good reason for a Record of Work to not be issued by the LBP.
 - The authority stands by its decision to 'not proceed the job until an amended plan has been received', and the authority will not issue a Code Compliance Certificate until the Record of Work has been received.
 - In summary, the authority believes there are two separate issues, being:
 - the LBP must supply a Record of Work for the part of the project that was completed before the owner-builder exemption was confirmed.
 - the applicants must submit an application for amendment to the building consent before work can continue on the garage and car port.

- 3.4 On 26 February 2013 the applicants provided further information about the consent application and supplied copies of the following:
- Building consent No. 120150
 - Drainage Plan, foundations plans and sections, and a Producer Statement (PS1) Design from a civil engineering firm
 - Inspection notices 2325 dated 26 September 2012 and 2386 dated 7 November 2012
 - An invoice from the LBP
 - Application for amendment to building consent to continue project under owner-builder exemption
- 3.5 A draft determination was issued to the parties for comment on 11 April 2013.
- 3.6 The authority and the applicants both accepted the draft without further comment in responses received on 29 and 30 April respectively. No response was received from the LBP.

4. Discussion

- 4.1 The matter for determination is whether the authority correctly exercised its powers of decision when it refused the exemption amendment. In considering this matter, I must consider the provisions relating to Restricted Building Work, and the relationship between Restricted Building Work and the provisions of the Act that prescribe the establishment of code-compliance.
- 4.2 **Restricted Building Work**
- 4.2.1 Restricted Building Work includes the design, construction or alteration of the primary structure or external moisture management system of a house or a small-to-medium apartment building, including the design, construction or alteration of foundations work.
- 4.2.2 If the application for a building consent involves Restricted Building Work it should state the name of the LBP who will be involved in carrying out or supervising that Restricted Building Work.
- 4.2.3 The building work related to the construction of the pile foundations for the house, and the placement of the house onto these foundations, is Restricted Building Work. Section 84 of the Act states that all Restricted Building Work must be carried out or supervised by an LBP who is licensed to carry out or supervise the work. Before Restricted Building Work is carried out, an owner is required to advise a building consent authority of the name of every LBP who is engaged to carry out or supervise the Restricted Building Work, and must advise if the LBP ceases to be engaged or another LBP is engaged (section 87).
- 4.2.4 As noted in paragraph 2.3 I have not been provided with any information that established that the Restricted Building Work was to be undertaken by the LBP.

- 4.2.5 Section 90 of the Act states that the purpose of an owner-builder exemption is to enable homeowners to build and alter their own homes. A person who is an owner-builder in relation to Restricted Building Work may carry out that Restricted Building Work without being supervised by a Licensed Building Practitioner.
- 4.2.6 Section 86 of the Act states that if an owner-builder exemption is in place, the owner may engage unpaid family members or friends to help carry out the Restricted Building Work.
- 4.2.7 If an owner-builder carries out Restricted Building Work under the owner-builder exemption, section 87A of the Act applies. This requires that a statutory declaration as to the owner-builder status be submitted with the building consent application, or the owner-builder must give a notice to the authority that they intend to carry out the Restricted Building Work themselves. This notice must be given before the building work begins. The owner must also give the authority notice as soon as is practicable if the owner-builder who is carrying out the Restricted Building Work changes, or if the owner-builder ceases to carry out the Restricted Building Work.
- 4.2.8 Section 88 of the Act requires that each LBP who carries out (other than as an owner-builder) or supervises Restricted Building Work under a building consent must provide, on completion of the work, the owner and the relevant territorial authority with a Record of Work stating what Restricted Building Work the LBP has carried out or supervised.
- 4.3 **The Issue of a code compliance certificate**
- 4.3.1 Section 92 of the Act states that the owner must include with a code compliance certificate application, any Records of Work provided by the LBP.
- 4.3.2 Section 94 of the Act outlines the matters which the building consent authority must consider in deciding to issue a code compliance certificate. A building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds, that the building work complies with the building consent.
- 4.3.3 Section 94 lists a number of other matters that a building consent authority must have regard to before issuing a code compliance certificate. The absence of a Record of Work is not one of them. Further, the Record of Work simply records the name of the LBP who carried out or supervised the Restricted Building Work and thus supports the licensing and Restricted Building Work provisions of the Act that aim to ensure construction work that is critical to the integrity of a residential building is only carried out or supervised by people who have been independently assessed as competent to carry out that work. The Record of Work has nothing to do with the code-compliance of the work and whether the work that has been carried out complies with the building consent.
- 4.3.4 I note that the Ministry's Guide to Restricted Building Work⁵ is a guidance document for Building Officials. It advises that a lack of Restricted Building Work documentation does not play any part in whether the building consent authority is satisfied on reasonable grounds that the building work complies with the building

⁵ *Guide to Restricted Building Work (RBW)* published by the then Department of Building and Housing, January 2012.

consent. Therefore a lack of the required Record(s) of Work is not grounds to refuse a code compliance certificate.

- 4.3.5 I also note that the authority advised the applicant on 17 December 2012 that no further Restricted Building Work could be carried out until a Record of Work had been supplied for the completed work. The authority was wrong to issue such an instruction. Restricted Building Work that is covered by a building consent and carried out or supervised by an LBP or an owner under an owner-builder exemption may be carried out and a building consent authority has no basis for preventing such work being carried out unless, of course, the building work is contrary to the building consent.

4.4 **The refusal to include completed work in the owner-builder exemption**

- 4.4.1 Applications for building consent (including amendments under section 45(4)(b)) are to be considered under section 49(1) which states:

A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

- 4.4.2 The building work related to the construction of foundations and connecting the relocated house to the foundations is Restricted Building Work. This is not disputed.
- 4.4.3 The authority granted the amendment to the building consent in allowing the project to continue under the owner-builder exemption. The authority refused to amend the consent retrospectively by removing the LBP's name from all records and allowing the owner-builder exemption to be effective from the date of the original consent. In my view, the authority was correct to refuse to amend the building consent retrospectively to apply the owner-builder exemption to Restricted Building Work that had already been carried out.
- 4.4.4 An owner who carries out Restricted Building Work in the absence of an owner-builder exemption contravenes a number of provisions of the Act and such contraventions should not be the subject of a subsequent retrospective exemption as that would defeat the purpose of requiring the exemption to be obtained before the work is carried out.
- 4.4.5 The authority has also stated that work may continue on the parts of the project that are not Restricted Building Work; however there have been significant changes made to the consented garage and carport design and the authority has therefore requested that the applicants lodge another application for amendment to the consent to take these structural changes into account. The authority has stated that building work on the carport and garage cannot proceed until this is addressed.
- 4.4.6 I consider the authority was correct in its decision to refuse to amend the building consent to apply the owner-builder exemption retrospectively to Restricted Building Work that had already been carried out.

5. What happens next?

- 5.1 Taking account of the findings of this determination, the applicants should request a Record of Work from the LBP, covering the construction of the pile foundations for the house and any other Restricted Building Work that the LBP carried out or supervised.
- 5.2 If a Record of Work is not forthcoming from the LBP then that will not be a reason for the authority to refuse to issue a code compliance certificate. I consider the failure of the LBP to provide a Record of Work would be grounds for a complaint to the LBP Board about the conduct of the LBP.
- 5.3 The authority cannot prevent the applicants from continuing with the Restricted Building Work required to complete the foundations and the house under the owner-builder exemption, regardless of whether a Record of Work has been supplied by the LBP.
- 5.4 Similarly, a lack of a Record of Work from the LBP is not reason refusing to issue a code compliance certificate.
- 5.5 According to the authority's submission, the applicants had altered the plans for the garage and concrete pad after the consent was issued. It appears that an amendment to the consent is necessary to take these changes into account. It is recommended that the applicants submit an application for such an amendment to the authority so that building work can continue.

6. Decision

- 6.1 In accordance with section 188 of the Act, I hereby determine that the authority correctly exercised its power of decision when it refused to amend the building consent retrospectively to apply the owner-builder exemption to all the work contained in the original consent, and I confirm that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 28 May 2013.

John Gardiner
Manager Determinations and Assurance

Appendix A

A.1 The relevant legislation

Restricted building work must be carried out or supervised by licensed building practitioners

84 Licensed building practitioner must carry out or supervise restricted building work

All restricted building work must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise the work.

86 Offence to engage another person to carry out or supervise restricted building work if person is not licensed building practitioner

...

- (1B) This section does not apply in the case of any unpaid friend or family member of an owner-builder who is engaged to assist the owner-builder in carrying out restricted building work.

87A Notices to building consent authority when owner-builder carries out restricted building work

- (1) This section applies when, under the owner-builder exemption, an owner-builder carries out restricted building work under a building consent.
- (2) If the building consent application was not accompanied by a statutory declaration as to owner-builder status, the owner must give the building consent authority a notice that the owner-builder is to carry out restricted building work.
- (3) The owner must give the building consent authority a notice—
- (a) if there is a change in the owner-builder carrying out the restricted building work; or
 - (b) when the owner-builder ceases to carry out the restricted building work.
- (4) A notice under this section must—
- (a) be in the prescribed form; and
 - (b) if it is a notice required under subsection (2) or (3)(a), be accompanied by a statutory declaration as to owner-builder status; and
 - (c) be given—
 - (i) before the building work begins, if it is a notice required by subsection (2);
 - (ii) as soon as practicable, if it is a notice required by subsection (3).

...

88 Licensed building practitioner to provide record of work in respect of restricted building work

- (1) Each licensed building practitioner who carries out (other than as an owner-builder) or supervises restricted building work under a building consent must, on completion of the restricted building work, provide the persons specified in subsection (2) with a record of work, in the prescribed form, stating what restricted building work the licensed building practitioner carried out or supervised.
- (2) The persons are—
- (a) the owner; and
 - (b) the territorial authority for the district in which the restricted building work is situated.

...

Subpart 4 – Restricted building work carried out by owner-builders

90A Purpose of this subpart

The purpose of this subpart is to enable homeowners to build and alter their own homes.

90D Owner-builder exemption

- (1) A person who is an owner-builder in relation to restricted building work may carry out that restricted building work without being supervised by a licensed building practitioner.
- (2) Subsection (1) does not apply if the restricted building work in question is low-risk building work under a low-risk building consent, simple residential building work under a simple residential building consent, or commercial building work under a commercial building consent

92 Application for code compliance certificate

- (1) An owner must apply to a building consent authority for a code compliance certificate after all building work to be carried out under a building consent granted to that owner is completed.

...

- (2A) If applicable, the owner must include with the application any memoranda provided by licensed building practitioners under section 88(1)(a).

...

94 Matters for consideration by building consent authority in deciding issue of code compliance certificate

- (1) A building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds,—
 - (a) that the building work complies with the building consent; and

...

MACKENZIE DISTRICT COUNCIL

REPORT TO: PLANNING AND REGULATIONS COMMITTEE

SUBJECT: MEMORANDUM OF UNDERSTANDING WITH ECAN

MEETING DATE: 24/7/2014

REF:

FROM: TONI MORRISON
SENIOR POLICY PLANNER

PURPOSE OF REPORT:

To seek ratification of a proposed Memorandum of Understanding between Environment Canterbury and the Mackenzie District Council on planning matters.

STAFF RECOMMENDATIONS:

1. That the report be received, and
2. That the attached Memorandum of Understanding between Environment Canterbury and Mackenzie District Council in relation to Collaborative Planning is ratified by the Committee.

WAYNE BARNETT
CHIEF EXECUTIVE OFFICER

ATTACHMENTS:

Memorandum of Understanding between Mackenzie District Council and Canterbury Regional Council in relation to Collaborative Planning.

BACKGROUND:

There are a number of areas where the Council works closely with Environment Canterbury on matters affecting or involving both Councils. Environment Canterbury sought a more formal acknowledgment of this arrangement in relation to this Council's District Plan review process, similar to arrangements it has with some other Canterbury Councils that are presently involved in District Plan review.

A closer relationship between the Councils was discussed earlier this year at a meeting between Ecan Commissioners and Councillors, and support for such a proposal was expressed at that meeting. Initial work was then undertaken on a draft MOU by Ecan staff, and MDC staff and the Planning Committee Chair and Deputy Chair have reviewed the MOU and provided comment on it. Following that consultation the MOU has been widened to include other areas of planning where both Councils have an interest and could usefully work together.

Attached is the final draft for the consideration of the committee. Ecan staff are presently obtaining sign-off on the draft MOU and are keen to adopt the document as soon as possible. This paper seeks formal ratification of the MOU by the committee on MDC's behalf.

POLICY STATUS:

N.A.

SIGNIFICANCE OF DECISION:

There are some implications for the way the Council undertakes its work (see below), but the decision to ratify the document itself is not considered significant.

ISSUES & OPTIONS:

The MOU is a high-level document which records principles for engaging with Ecan in planning and resource consent matters where the two authorities have similar or overlapping interests. It will be of significance in terms of requiring the Council to focus more closely on work areas Ecan is involved in, seeking opportunities and actively undertaking engagement with those processes, and working more closely with Ecan in this Council's own planning and consenting areas. This change in focus is intended to result in improved efficiencies for stakeholders and ratepayers, through better coordination of effort and alignment of planning documents and processes.

Option 1: The Committee ratify the MOU.

Option 2: The Committee decline to ratify the MOU.

ASSESSMENT OF OPTIONS:

Option 1 is preferred given the Council's previous discussions with Ecan and the potential for benefits to both authorities from signing the MOU.

CONCLUSION:

The attached proposed MOU reflects earlier discussions held with Ecan Commissioners, and its ratification would formalise the general agreement reached regarding a closer working relationship between the Councils on planning matters. If the Committee ratifies the MOU then it will be enacted by the Chief Executive Officer signing the document.

ATTACHMENT 1

Memorandum of Understanding between Environment Canterbury and Mackenzie District Council in relation to Collaborative Planning

MEMORANDUM OF UNDERSTANDING

BETWEEN

MACKENZIE DISTRICT COUNCIL

AND

CANTERBURY REGIONAL COUNCIL

IN RELATION TO

COLLABORATIVE PLANNING

1.0 INTRODUCTION

- 1.1 Both the Mackenzie District Council and Canterbury Regional Council are engaged in a number of resource management activities and processes in the Mackenzie District. There is potential for significant benefit to the Mackenzie community from both organisations working jointly on issues and processes where both Councils have functional responsibilities.
- 1.2 Given that both organisations are funded through rate takes from the same community (albeit for differing statutory functions), it is a fundamental desire to deliver the most efficient and effective outcomes including social, environmental and economic benefits for the community, with regard to all issues that involve both authorities. This is best achieved if a collaborative and cooperative approach is adopted from the outset and maintained throughout the process. It is worth noting that taking a collaborative and cooperative approach is a statutory principle that both local authorities must act in accordance with under Section 14 of the Local Government Act 2002.
- 1.3 Areas with potential for integrated approaches and/or improved alignment include:
- Review of the Mackenzie District Plan
 - Development of the Waitaki Sub-Regional Catchment Plan
 - Implementation of the Land and Water Regional Plan
 - Development and implementation of non-regulatory approaches to resource management issues, for example biodiversity and water quality initiatives
 - Resource consent processes involving both authorities
- 1.4 The benefits of collaboration, including information and resource sharing between organisations and alignment in planning documents and processes, include increased efficiency for end-users and ratepayers, and more streamlined decision-making. With the principles of efficiency and effectiveness, and statutory consistency in mind, this document sets out an agreed approach to this collaboration.

2.0 MUTUAL RECOGNITION OF STATUTORY RESPONSIBILITIES AND RIGHTS

- 2.1 Both organisations recognise their responsibility under Section 14 Local Government Act 2002 to collaborate and co-operate with each other.
- 2.2 Both organisations understand and respect each other's statutory functions under the Resource Management Act 1991, and recognise that with these differing functions come differing perspectives and priorities.

- 2.3 Both organisations recognise that they have differing perspectives and priorities, and are committed to exploring collaboration and negotiation with a clear focus on achieving an outcome as a starting position.
- 2.4 Both parties recognise that there may be times where agreement cannot be reached and that more formal processes may be appropriate.
- 2.5 Both parties recognise that any agreed documents at staff level may need to be approved by each Council's formal decision-making process.

3.0 AGREED OBJECTIVE

- 3.1 Commitment to a way of working that is collaborative, cooperative, flexible, effective and efficient, and which will result in:
- a. effective and efficient Resource Management Act 1991 policy and planning functions for the people of Mackenzie District
 - b. the strengthening of both organisations working relationship;
 - c. “no surprises” to either organisation and early identification of points of difference or disagreement ;
 - d. alignment and consistency where either, or both organisations, are working with the community;
 - e. a wider understanding of each other's desired outcomes, issues and perspectives, drivers, and constraints to enable delivery of the “best outcome” for the community;
 - f. Canterbury Regional Council lodging a submission in support of the Proposed District Plan.

4.0 COLLABORATIVE PRINCIPLES

- 4.1 The following outlines the basic principles of the collaborative relationship between Mackenzie District Council and Environment Canterbury Staff:
- 4.1.1 No Surprises
Both organisations will endeavour to ensure that both organisations are aware of actions, plans, schedules and engagement opportunities which may impact on the other organisation.
 - 4.1.2 Openness and Transparency
Both organisations will work in an open and transparent manner, ensuring that information that can be shared is shared.
 - 4.1.3 Flexibility

Both organisations will understand the other organisation's work-programmes, statutory responsibilities and community expectations and be prepared to consider changes. Decisions as to the level and type of each Council's engagement in these processes are the responsibility of the individual Councils.

4.1.4 Ownership

Each Council will respect that the other's planning instruments involve statutory functions and final decision making ability will rest with the Council responsible for each Plan or process. It is also acknowledged that Mackenzie District Council has statutory responsibility to implement higher level statutory documents.

4.1.5 Pragmatic

Both organisations will work together to develop solutions to community concerns that achieve the purpose of the Resource Management Act 1991 and both Council's statutory responsibilities. This will be achieved utilising a solution focused mindset.

4.1.6 Integrated

Both organisations will work together to provide alignment between the regional and district plans, which goes further than the 'not inconsistent' in section 75(4)(b) of the RMA, and work jointly as appropriate on resource consent processes where applications are required from both authorities.

4.2 To deliver on the Core Principles the following Supporting Principles, which define how the Core Principles will be achieved:

4.2.1 Any issues will be resolved at the lowest possible level, and will not be escalated to a higher level in the organisation without discussing the approach with the other organisation. For example if Mackenzie District Council or Canterbury Regional Council Planners have a disagreement that cannot be resolved through discussion between them, then before referring the issue to the Planning & Regulations Manager or Regional Planning Manager the other party will be informed of the actions.

4.2.2 Analysis will be undertaken to ensure that work programmes undertaken by Canterbury Regional Council or Mackenzie District Council do not duplicate work programmes being undertaken by the other organisation.

4.2.3 Each council will respect the decisions that the other Council makes with respect to their processes, and will inform the other Council prior to any action being taken which could be inferred as that Council taking a different position.

4.2.4 Both parties may also obtain legal advice by agreement on particular issue(s) that are not able to be resolved.

- 4.2.5 Each organisation shall bear their own staff time and associated costs, while both organisations will share equally the cost of any consultant or professional expertise commissioned as agreed between the organisations. Each organisation shall bear their own legal costs.

5.0 AGREEMENT

- 5.1 Support for this agreement shall be agreed by each organisation's Chief Executive.

Signed on behalf of Mackenzie District Council:

 Wayne Barnett
 Chief Executive
 Mackenzie District Council

Date: _____

Signed on behalf of Canterbury Regional Council:

 Bill Bayfield
 Chief Executive
 Canterbury Regional Council

Date: _____

Additional Provisions: Mackenzie District Plan Review

1. Mackenzie District Council is undertaking a review of the Mackenzie District Plan.
2. Canterbury Regional Council's Canterbury Regional Policy Statement is now operative. Section 75(3) of the Resource Management Act 1991 requires the District Plan to give effect to a Regional Policy Statement and not to be inconsistent with the Regional Plan. Accordingly, the Regional Policy Statement and Regional Plans will have a significant effect on the provisions of the District Plan. With this in mind, and as Section 31 of the Resource Management Act 1991 requires Canterbury Regional Council to implement the Regional Policy Statement, it is critical that Mackenzie District Council and Canterbury Regional Council leverage combined resources and perspectives to ensure the required consistency between the statutory documents.
3. All of the principles and provisions in the MOU in relation to Collaborative Planning apply to the process of district plan review. In addition, the following specific provisions are also agreed:
 - 3.1 The Mackenzie District Council's Senior Planner will be the single contact for information leaving Mackenzie District Council to Canterbury Regional Council or for information requests from Mackenzie District Council to Canterbury Regional Council – All correspondence will be directed through the Mackenzie District Council Senior Planner in the first instance, unless Mackenzie District Council Senior Planner has indicated that an alternate approach is appropriate.
 - 3.2 Canterbury Regional Council's Principal Planner will be the gatekeeper for information leaving Canterbury Regional Council to Mackenzie District Council or information provided to Mackenzie District Council – All correspondence will be directed through Canterbury Regional Council Principal Planner in the first instance, unless the Principal Planner has indicated that an alternate approach is appropriate.
 - 3.3 Canterbury Regional council will respect the decisions that Mackenzie District Council make with respect to the District Plan and will inform Mackenzie District Council prior to any action being taken which could be inferred as Canterbury Regional Council taking a different position to Mackenzie District Council.
 - 3.4 Both parties may also obtain legal advice by agreement on particular issue(s) that are not able to be resolved.
 - 3.5 If agreement cannot be reached through this process, Canterbury Regional Council reserves the right to make a submission against the Proposed District Plan, but if doing so, must fully inform Mackenzie District Council of the content of that submission.

MACKENZIE DISTRICT COUNCIL

REPORT TO: PLANNING AND REGULATION COMMITTEE

SUBJECT: ANNUAL PLAN SUBMISSION MCNEILLY

MEETING DATE: 24 JULY 2014

REF: PAD 4/1

FROM: ARLENE GOSS, COMMITTEE SECRETARY

PURPOSE OF REPORT:

To follow up a recommendation made by councillors during the Annual Plan submission hearing.

ATTACHMENTS

Email from Colin McNeilly.

BACKGROUND

Colin McNeilly submitted to the Draft Annual Plan by email. His submission was considered by councillors at a hearing on June 10.

At that hearing his submission was noted but no changes were made to the annual plan in response. This is because the subject he raised was related to planning regulations contained in the District Plan, rather than the Annual Plan.

Because of this councillors resolved to “refer his submission to the next meeting of the Planning and Regulation committee on July 24, for consideration in that forum”.

Catherine Johnson

From: Colin john Mcneilly <c.mcneilly@xtra.co.nz>
Sent: Saturday, 24 May 2014 3:59 p.m.
To: Mackenzie PA
Subject: Draft Annual Plan

10 Rowan Place
Mosgiel. 9024

24 May, 2014.

submissions@mackenzie.govt.nz

I wish to make a submission under the Draft Annual Plan regarding the close proximity of residential buildings to the boundary in Zone 1, Twizel.

I know of two properties in Lakeland Avenue, Mackenzie Park, Twizel where the buildings are within .300mm off the boundary when it is clearly stated in your Draft Annual Plan the distance requirements from a boundary. This is not a good look and why is it being allowed to happen?

My submission is that no part of any building, garage, spouting included, should be closer than 2m.

C.J. McNeilly

(03) 489-5368

c.mcneilly@xtra.co.nz