



**TO THE MAYOR AND COUNCILLORS OF THE
MACKENZIE DISTRICT COUNCIL**

MEMBERSHIP OF THE PLANNING COMMITTEE

John Bishop (Chairman)
Claire Barlow (Mayor) Peter Maxwell
Annette Money Graeme Page
Graham Smith Evan Williams

*Notice is given of a meeting of the Planning Committee
to be held on Tuesday 1 February 2011
following the Finance and Projects and Strategy Committee meetings.*

VENUE: Council Chambers, Fairlie

BUSINESS: As per Agenda attached

**GLEN INNES
CHIEF EXECUTIVE OFFICER**

27 January 2011



PLANNING COMMITTEE

Agenda for Tuesday 1 February 2011

I APOLOGIES

II DECLARATIONS OF INTEREST

III MINUTES

Confirm and adopt as the correct record the Minutes of the meeting of the Planning Committee held on 25 November 2010, including such parts as were taken with the Public Excluded.

ACTION POINTS

IV REPORTS:

1. Fencing of Swimming Pools Act – Request for Exemption

MACKENZIE DISTRICT COUNCIL**MINUTES OF A MEETING OF THE
PLANNING COMMITTEE HELD IN THE COUNCIL CHAMBERS, FAIRLIE,
ON TUESDAY 25 NOVEMBER 2010 AT 9.50 AM****PRESENT:**

John Bishop (Chairman)
Claire Barlow (Mayor)
Annette Money
Peter Maxwell
Graeme Page
Evan Williams
Graham Smith

IN ATTENDANCE:

Glen Innes (Chief Executive Officer)
Nathan Hole (Manager – Planning and Regulations)
Toni Morrison (Senior Planner)
Rosemary Moran (Committee Clerk)

II DECLARATIONS OF INTEREST:

Cr Page declared his interest in the *Mackenzie Properties Ltd – Right of Way Request, Ostler Road, Twizel* report.

The Chairman John Bishop noted his earlier involvement in the *Mackenzie Properties Ltd – Right of Way Request, Ostler Road, Twizel* report. He said that although he had been a member of the Twizel Community Board which had resolved to support the application by Mackenzie Properties Ltd for right of way access across Council owned land zoned REC P, for traffic management purposes, he did not have a pecuniary interest in the matter on which he considered he retained an open mind.

The Chief Executive Officer advised that if Cr Bishop chose to take part in the Committee's consideration of the report it could call into question the validity of any Council decision because of his earlier public declaration of support for the application as a member of the Twizel Community Board. He noted that it was up to the individual elected members to take responsibility for the judgements that they made on such matters. He advised that with regard to matters of pecuniary interest there was the potential for individual consequences for elected members if they failed to comply with the Local Government (Members' Interests) Act 1968; with respect to non-financial matters, failure to declare an interest could leave a Council decision open to challenge. He suggested it would be appropriate for Cr Bishop to vacate the Chair and for the Deputy Chairman to take over while the Committee considered the report.

Cr Bishop said that while he had been party to the Community Board's decision which had expressed a definite view, he would gain no advantage in the matter. He announced that he would remain in the Chair when the Committee considered the report and would decide at the time whether he would vote.

Cr Maxwell declared his interest in the report *Tekapo Eco Café*. He said the issue had been considered by the Tekapo Community Board of which he was a member.

II MINUTES:

The Minutes of the previous meeting of the Planning Committee held on 10 September 2010, including such parts as were taken with the Public Excluded, were confirmed as the correct record on the recommendation of the former Mayor and the Chief Executive Officer.

IV REPORTS:

8. MACKENZIE PROPERTIES LIMITED – RIGHT OF WAY REQUEST, OSTLER ROAD, TWIZEL

The Chairman welcomed Andrew Hocken and invited him to address the Committee regarding his request for right of way access across Council owned land in Twizel.

Mr Hocken distributed copies of a letter he had written to the Chairman of the Planning Committee dated 25 November 2010 which was accompanied by five attachments relating to his application.

He addressed the points he had made in his letter and explained the attachments.

The Chairman thanked Mr Hocken. He advised him that the Committee would consider the issue later in the day. Mr Hocken left the meeting at 9.50 am.

1. DRAFT REGIONAL POLICY STATEMENT:

This report from the Senior Planner advised the Committee about the draft Regional Policy Statement (RPS) for Canterbury and sought comment on any feedback to be made to Environment Canterbury on the draft document. Two maps of the Canterbury Region were distributed. The first identified Outstanding Natural Landscapes in the Region and the District. The second identified the different types of Outstanding Natural Landscapes.

Resolved that the report be received.

Graeme Page/Evan Williams

The Senior Planner referred to her document dated 25 November 2010 which accompanied the report. She guided the Committee through the document, answered questions and provided clarification as requested.

The meeting was adjourned at 10.40 am for morning tea and reconvened at 10.55 am.

VI VISITORS:

The Chairman welcomed Rob Hand, South Canterbury Principal Rural Fire Officer, and Alistair Munro, Chairman of the South Canterbury Rural Fire Committee.

The Manager – Planning and Regulations said that in light of the Council's responsibility to make an appointment to the South Canterbury Rural Fire Committee, he had felt it would be useful for the Committee to meet with Messrs Hand and Munro.

Mr Munro gave a brief outline of how the South Canterbury Rural Fire Committee had come to be established. He explained the makeup of the Committee and its roles and responsibilities.

Mr Hand presented a power point presentation on the *how* and *why* of the Rural Fire Structure.

A copy of the presentation is attached to this record as Appendix A.

The visitors left the meeting at 11.45 am.

IV REPORTS:

1. DRAFT REGIONAL POLICY STATEMENT (Continued):

The Senior Planner continued her presentation.

Resolved that the Committee submits feedback to Environment Canterbury in the form of submission to the Draft Regional Statement.

Graham Smith/Evan Williams

The Senior Planner undertook to circulate a draft submission to the Committee members for approval.

2. APPLICATIONS TO HERITAGE PROTECTION FUND:

This report from the Manager – Planning and Regulations was accompanied by an application from the Burkes Pass Heritage Trust, invoices for work undertaken on the Mt Nessing homestead entrance gates and a copy of the Council's Heritage Fund policy.

Resolved that the report be received.

Annette Money/Claire Barlow

Resolved:

1. That the Committee allocates Burkes Pass Heritage Trust \$2,500.00 from the Heritage Protection Fund to contribute to the reinstatement of leadlight windows for St Patricks Church.
2. That the Committee allocates Peter Simpson of Mt Nessing Station \$2,411.93 from the Heritage Protection Fund to contribute to the restoration of Mt Nessing homestead entrance gates.

Annette Money/Graeme Page

3. DELEGATION TO APPOINT HEARING COMMISSIONERS:

This report from the Manager – Planning and Regulations sought the approval of a specific delegation to enable the appointment of a hearing commissioner or a hearing panel to hear and decide notified resource consent applications.

Resolved that the report be received.

Peter Maxwell/Evan Williams

Resolved that the pursuant to section 34A of the Resource Management Act 1990, the Committee delegates the authority to the Planning Committee Chairman and the Mayor to jointly appoint a hearing commissioner or hearing panel to hear and decide notified resource consent applications. In the absence of the Committee Chairman or the Mayor, their deputies or another elected member may fulfil the role.

Annette Money/Graham Smith

4. PROPOSED TWIZEL DOG POUND SITE:

This report from the Manager – Planning and Regulations sought the approval of a new dog pound site in Twizel.

Resolved that the report be received.

John Bishop/Claire Barlow

Resolved that the Committee agrees to the relocation of the Twizel dog pound to a new site at the eastern end of the Twizel Resource Recovery Park.

Annette Money/Claire Barlow

5. PROPOSED ECO-CAFÉ TEKAPO DOMAIN:

This report from the Manager – Planning and Regulations referred to a proposal by Anthony Alderson to occupy a site within the Tekapo Domain on land zoned VC2 to operate a mobile café for a period of three months over summer.

Resolved that the report be received.

Graeme Page/Graham Smith

Resolved that the Committee declines Anthony Alderson’s proposal to occupy land within the Tekapo Domain on land zoned VC2 to operate a mobile café for a period of three months over summer.

Graham Page/Graeme Smith

The meeting was adjourned at 12.57 pm for lunch and reconvened at 1.30 pm.

6. DELEGATION TO ALLOW PLANNING MANAGER TO DECIDE MACKENZIE LIFESTYLE LTD LAND USE CONSENT APPLICATION:

This report from the Manager – Planning and Regulations sought specific delegation to enable the Manager – Planning and Regulations to determine the land use consent application for Mackenzie Lifestyle Ltd (RM 100013).

Resolved that the report be received.

Graham Smith /Graeme Page

Resolved that pursuant to Section 43a of the Resource Management Act 1990 authority be delegated to the Manager – Planning and Regulations to decide resource consent RM 100013.

Graeme Page /Evan Williams

7. EVERSLEY RESERVE SEWER CONNECTION CHARGE:

This report from the Manager – Planning and Regulations sought a decision on the charge to be made to residents for obtaining a building consent to physically connect to the Eversley Reserve sewer.

Resolved that the report be received.

Evan Williams/Claire Barlow

Resolved that a fixed building consent fee of \$150.00 be charged for the building consent required for individual properties to connect to the Eversley Reserve reticulated sewer.

Graham Smith /Annette Money

8. MACKENZIE PROPERTIES LIMITED – RIGHT OF WAY REQUEST, OSTLER ROAD, TWIZEL (Continued):

This report from the Manager – Planning and Regulations sought consideration of a request from Mackenzie Properties Ltd for a right of way easement over Council owned REC P land in Twizel.

Resolved that the report be received.

Peter Maxwell/Evan Williams

The Manager – Planning and Regulations noted that some of the comments made by Mr Hocken when he spoke earlier in the meeting were not accurate.

The Manager – Planning and Regulations said the Industrial zoning on the land enabled most uses. He noted that Plan Change 15 had proposed rules for that parcel of land to avoid developments that would have detrimental effects on Market Place. Plan Change 15 would not address the problem of current developments, but could capture future developments. He said that part of Plan Change 15 had been the subject of an appeal by Mackenzie Properties Ltd which meant there was no guarantee that it would become part of the final decision.

The Manager – Planning and Regulations said expert advice had been sought from Matt Bonis of Planit Associates during the drafting of Plan Change 15. In developing his recommendations, Mr Bonis had applied a model based on Turangi, a very similar small town to Twizel. He noted that while Mr Hocken was entitled to have his point of view regarding the effect on Market Place of development on the land, his views were not supported by the professional advice Council had received. No contrary professional advice been received.

The Manager – Planning and Regulations said it was over to the Council to consider all the options in granting or not granting the access. In terms of the REC P zoning, a resource consent was required to form an access way and this had been granted. The Hearing Commissioner had been able to consider only what was provided for in the District Plan. He had not been able to take into account the commercial issues which were the subject of Matt Bonis' advice.

He said that while Mr Hocken had cited a couple of examples where rights of way had been granted under section 348 of the Resource Management Act 1991, they were rights in perpetuity. The Manager – Planning and Regulations said that a right in perpetuity might not be an issue as long as the land was being used for the current proposed purposes; however Council's intentions in the future were unknown. He said the resource consent was for a period of 25 years; if the Council was of a mind to grant an easement for a right of way, he considered a lease for a term no greater than 25 years could be an appropriate instrument. A lease would enable a fee to be charged which would recognise that the Council had relinquished control of the land and could recover the associated costs.

In response to a question from Cr Williams, the Manager – Planning and Regulations clarified that it was in order for the Council to take into account the effect on Market Place of granting of a right of way over the land. Council as landowner didn't have to provide reasons for declining the application.

Cr Maxwell noted that the Twizel Community Board had supported the application. He noted that when asked, Mr Hocken had advised that development of the site had begun in 2006;

obviously in the knowledge of the access ways to the site.

The Manager – Planning and Regulations said the proposed right of way would enhance access to the Mackenzie Properties Ltd site and would be to the advantage of the company. Despite there being no opposition to the resource consent application, the Council still needed to consider the impact of the proposal on Market Place; advice was that it would have a negative impact.

In response to a question from Cr Smith, the Manager – Planning and Regulations said that the land was part of the REC P land set aside for Twizel’s greenways network. It was not land that would be developed by the Council. Cr Smith noted again that there was alternative access to the Mackenzie Properties Ltd site.

Resolved that a decision on the request from Mackenzie Properties Ltd for a right-of-way easement over Council owned REC P land in Twizel be deferred until the Committee members had inspected the site.

Graham Smith /Evan Williams

**THERE BEING NO FURTHER BUSINESS
THE CHAIRMAN DECLARED THE MEETING CLOSED AT 2.20 PM**

CHAIRMAN

DATE

MATTERS UNDER ACTION PLANNING COMMITTEE

25 November 2010

Draft Regional Policy Statement

Submit feedback to Environment Canterbury in the form of submission to the Draft Regional Statement and circulate draft submission to Committee members for approval. *Completed*

Applications to Heritage Protection Fund:

1. Allocate Burkes Pass Heritage Trust \$2,500.00 from the Heritage Protection Fund to contribute to the reinstatement of leadlight windows for St Patricks Church.
2. Allocates Peter Simpson of Mt Nessing Station \$2,411.93 from the Heritage Protection Fund to contribute to the restoration of Mt Nessing homestead entrance gates.

Completed

Twizel Dog Pound Site:

Relocate Twizel dog pound to a new site at the eastern end of the Twizel Resource Recovery Park.

Underway

Proposed Eco-Café Tekapo Domain:

Decline Anthony Alderson's proposal to occupy land within the Tekapo Domain on land zoned VC2 to operate a mobile café for a period of three months over summer. *Applicant advised.*

Eversley Reserve Sewer Connection Charge:

Charge a fixed building consent fee of \$150.00 be charged for the building consent required for individual properties to connect to the Eversley Reserve reticulated sewer.

MACKENZIE DISTRICT COUNCIL

REPORT TO: MACKENZIE DISTRICT COUNCIL
SUBJECT: REQUEST FOR SPECIAL EXEMPTION FOR FENCING A SPA POOL IN TWIZEL
MEETING DATE: 1 FEBRUARY 2011
REF: REG 2/1/11
FROM: BUILDING MANAGER AND PLANNING & REGULATIONS MANAGER
ENDORSED BY: CHIEF EXECUTIVE OFFICER

PURPOSE OF REPORT:

To inform Council of a letter received from Kylie Wakelin in Twizel requesting a Special Exemption not to erect a barrier for a spa pool at 234 Glen Lyon Road, Twizel, and to seek a decision on the matter.

RECOMMENDATIONS:

1. That the report be received.
2. That the request be declined.

DICK MARRYATT
BUILDING MANAGER

NATHAN HOLE
PLANNING & REGULATIONS MANAGER

BACKGROUND:

A request has been received from Kylie Wakelin for an exception to the requirements of the Fencing of Swimming Pools Act 1987.

The Act requires that all pools (including spa pools) are to be fully fenced or for the top of the pool to be a minimum of 1.2m above ground level.

The Act does provide for Territorial Authorities to make exceptions to the fencing and height requirements of the Act (section 6) and this is described below.

ATTACHMENT:

Letter from Kylie Wakelin.

POLICY STATUS:

The Council does not have a policy on this matter.

SIGNIFICANCE OF THE DECISION:

This is a significant decision. If a decision is made to grant the exemption then Council is essentially making its own assessment of what it considers to be an adequate barrier to the pool. While the Act does provide for exceptions to be made I am unsure what the legal liability may be if the barrier proved to be insufficient.

CONSIDERATIONS:

The pool owner has the option of either having the pool at a height of 1.2m above ground level, or providing a fence barrier that can be a glass barrier. So while the pool owner may not necessarily wish to have a glass (or other) barrier, this is an alternative to lowering the pool with a lockable lid.

In considering this application for a Special Exemption, Council must consider Section 6 of the Fencing of Swimming Pools Act 1987 which has been provided below:

Legislation:

Section 6 – Fencing of Swimming Pools Act 1987

Special Exemption:

1. A territorial authority may, by resolution, grant an exemption from some or all of the requirements of the Act in the case of any particular pool where the territorial authority is satisfied, having regard to the particular characteristics of the property and the pool, and any relevant circumstances, and any conditions it imposes under subsection (2) of this section, that such an exemption would not significantly increase danger to your children.
2. In granting an exemption under subsection (1) of this section, the territorial authority may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.

3. Any exemption granted or condition imposed under this section may be amended or revoked by a territorial authority, by resolution.

Clause F4.3.5 Barriers to Swimming Pools

New Zealand Building Code:

Barriers to swimming pools shall have in addition to performance F4.3.4:

- a) All gates and doors fitted with latching devices not readily operated by children, and constructed to automatically close and latch when released from any stationary position 150mm or more from the closed and secured position, but excluding sliding and sliding-folding doors that give access to the immediate pool surround from a *building* that forms part of the barrier, and
- b) No permanent objects on the outside of the barrier that could provide a climbing step.

Ms Wakelin has made a reasonable comment she resides next to the river which she considers is more danger to children than her spa pool. I would just comment that the Council is not responsible for drownings in rivers in terms of the legislation, but there is legislation that affects the Council in relation to pools. So while Ms Wakelin's comment is understandable I do not this to be a relevant consideration for the Council.

If the Council was minded to grant the request I would urge the Council (or delegates) to undertake a site inspection prior to confirming the decision.

CONCLUSION:

It is a matter for the territorial authority to either agree or not to agree to the request for a Special Exemption and if the exemption is agreed to, it must be passed by resolution as per Section 6 of the Fencing of Swimming Pools Act 1987 (above). The recommendation to decline the request is based on managing risk. If the Council adheres to the requirements of the Act then it cannot be accused as being responsible for any event that may occur if an exception is granted.



The Bulding Inspector
MacKenzie District Council
Fairlie

5/01/11

To Whom it May Concern

I wish to put countersink a spa pool into my pre-existing deck. While I was overseas my builder applied for and received consent to put the spa in but has put the spa pool in a place, which is a complete eyesore, dangerously high off the ground and not what I wanted.

I boundary the Fraser Stream and have over 100m of river frontage. I wish to apply for an exemption to have my spa pool higher than 1.2m off the ground and from having a fence around it on the condition that it has a lockable lid.

I realise the rules are put in place to prevent drownings. Firstly I don't have any kids and secondly there is a far greater chance of a child falling into the unfenced river than into a spa with a lockable lid.

Also, it seems that there is a high possibility that a public walkway will be passing across my backyard. To 'countersink' the spa below the level of my deck will give everyone more privacy – as it is, people will have to look at us and we at them as they pass. It will take decades for trees to grow higher than the spa's currently approved position.

I look forward to your consideration on this matter.

Kind Regards

A handwritten signature in cursive script, appearing to read "Kylie Wakelin".

Kylie Wakelin
PO Box 14
Twizel 7940
Tel 0274179003