

SECTION 2 – POLICY AND LEGAL FRAMEWORK

1 Statutory Purpose And Principles

The Mackenzie District Council is required by the Resource Management Act 1991 to have a District Plan for its District. This Act sets out the Council's resource management functions and the matters which this Plan must and can address. The purpose of this District Plan is to assist the District Council to carry out its functions under the Resource Management Act, in order that it may achieve the purpose of the Act which is to **"promote the sustainable management of natural and physical resources"**. Section 5 of the Resource Management Act (set out below) sets out in full the purpose of the Act. It is this purpose which provides the **overall goal or guide** for this District Plan.

"Section 5

5.

Purpose

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while–*
- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems;*
- (c) *Avoiding, remedying, or mitigating any adverse effects on the environment."*

In achieving this purpose the District Plan and its administration must also **recognise and provide for** the following matters of national importance listed in Section 6 of the Act.

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands,*

- and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;*
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;*
 - (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
 - (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers;*
 - (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
 - (f) The protection of historic heritage from inappropriate subdivision, use, and development."*

Particular regard shall be had in the District Plan to the following matters in Section 7 of the Act.

- "(a) Kaitiakitanga (exercise of guardianship);*
- (aa) The ethic of stewardship;*
- (b) The efficient use and development of natural and physical resources;*
- (ba) The efficiency of the end use of energy;*
- (c) The maintenance and enhancement of amenity values;*
- (d) Intrinsic values of ecosystems;*
- (e) Repealed;*
- (f) Maintenance and enhancement of the quality of the environment;*
- (g) Any finite characteristics of natural and physical resources;*
- (h) The protection of the habitat of trout and salmon.*
- (i) The effects of climate change;*
- (j) The benefits to be derived from the use and development of renewable energy."*

In addition the District Plan and its administration shall **take into account** the **principles of the Treaty of Waitangi (Te Tiriti o Waitangi)** (Section 8 of the Act).

It is against this background of the Resource Management Act's purpose and principles that the resources of the District and the wellbeing of its people have been assessed to determine the significant resource management issues of the District.

2 Obligation To Comply

No person may use land in a manner that contravenes a rule in the District Plan, unless they have existing use rights or a resource consent granted by the Council (Ss 9 and 10). In the context of the Resource Management Act such use includes the use of the surface of lakes and rivers (S 10A). No person may subdivide land in the District unless expressly allowed by a rule in the District Plan or a resource consent (S 11).

3 Existing Use Rights

Sections 10 and 10A of the Act specify the circumstances when existing and continued use of land and the surface of water in a manner which contravenes a rule in the District Plan are permitted to continue. Section 10 of the Resource Management Act 1991 states:

- 10. Certain existing uses in relation to land protected –*
- (1) Land may be used in a manner that contravenes a rule in a district plan or a proposed district plan if –*
- (a) Either –*
- (i) The use was lawfully established before the rule became operative or the proposed plan was notified; and*
- (ii) The effects of the use are the same or similar in character, intensity, and scale to those which existed before the rule became operative or the proposed plan was notified:*
- (b) Or –*
- (i) The use was lawfully established by way of a designation; and*
- (ii) The effects of the use are the same or similar in character, intensity, and scale to those which existed before the designation was removed.*
- (2) Subject to sections 357 and 358, this section does not apply when a use of land that contravenes a rule in a district plan or a proposed district plan has been discontinued for a continuous period of more than 12 months after the rule in the plan became operative or the proposed plan was notified unless –*
- (a) An application has been made to the territorial authority within 2 years of the activity first being discontinued; and*
- (b) The territorial authority has granted an extension upon being satisfied that –*

- (i) *The effect of the extension will not be contrary to the objectives and policies of the district plan; and*
 - (ii) *The applicant has obtained approval from every person who may be adversely affected by the granting of the extension, unless in the authority's opinion it is unreasonable in all the circumstances to require the obtaining of every such approval.*
- (3) *This section does not apply if reconstruction or alteration of, or extension to, any building to which this section applies increases the degree to which the building fails to comply with any rule in a district plan [or proposed district plan].*
- (4) *For the avoidance of doubt, this section does not apply to any use of land that is –*
- (a) *Controlled under section 30(1)(c) (regional control of certain land uses); or*
 - (b) *Restricted under section 12 (coastal marine area); or*
 - (c) *Restricted under section 13 (certain river and lake bed controls).*
- (5) *Nothing in this section limits section 20 (certain existing lawful activities allowed).*
- (6) *In this section, "use of land" has the same meaning as in section 9(4)(a) to (e) (except (da) and "land may be used" has a corresponding meaning.*

4 Status Of Activities

Within the context of this District Plan, "activity" shall be the use and subdivision of land (and the surface of water), and/or the erection and/or use of buildings or structures thereon.

Within each zone, these activities are further classified according to their status under the Act, being either: permitted; controlled; restricted discretionary, discretionary; non-complying; or prohibited.

- **Permitted activities** are allowed by the Plan without a resource consent, providing they comply in all respects with the standards specified in the Plan.
- **Controlled activities** require a resource consent. They shall comply with any standards and terms specified in the Plan and will be assessed according to those matters in the District Plan over which the Council has reserved control. The Council must grant its consent to a controlled

activity, but in granting its consent the Council may impose conditions relating to those matters specified.

- **Restricted Discretionary activities** require a resource consent and may be subject to standards and terms specified in the Plan. The Plan specifies the matters over which the Council has restricted its discretion. The Council's power to grant or refuse consent to a restricted discretionary activity and impose conditions are restricted to the matters over which the Council has restricted its discretion.
- **Discretionary activities** require a resource consent, and may be subject to standards and terms specified in the Plan. Some Activities have been afforded such status where there is potential that they may not be suitable in all locations in a zone; or where the effects of the activity on its environment are so variable that it is not possible to prescribe appropriate standards and terms to cover all circumstances in advance of an application. Alternatively, activities may be listed as permitted activities but cannot meet all the standards specified in the Plan in which case they shall be discretionary activities or controlled activities. The Plan may indicate matters over which the Council will limit its discretion in considering a discretionary activity. The Council may grant or refuse consent to a discretionary activity and, if granting consent, may impose conditions.
- **Non-complying activities** are those which contravene a rule in the District Plan. A resource consent is required for a non-complying activity. The Council may grant or refuse consent to a non-complying activity and, if granting consent, may impose conditions.
- **Prohibited activities** are those which a rule in the Plan expressly prohibits in the District or a particular zone. No application may be made for such activities and no resource consent will be granted.

Where the Plan specifies two or more standards or terms relating to an activity or effect the most stringent of those standards or terms shall apply.

In some zones buildings and activities have been separately controlled e.g. the Rural zone. Where this occurs buildings associated with a listed activity shall also comply with the building controls. Activities have in some standards been grouped according to their common characteristics, based on the premise that there is no need to distinguish between activities of similar environmental effects.

For example, "residential activity" includes a range of uses from detached dwellings to apartments.

5 Resource Consents

5.1 Types of Resource Consents

The District Plan provides for two types of resource consent: land use and subdivision. Discharge, water permits and land use resource consents are issued by the Canterbury Regional Council.

A resource consent from the Mackenzie District Council is required by any person proposing to undertake an activity or subdivision classified in the District Plan as:

- a controlled activity;
- a restricted discretionary activity;
- a discretionary activity; or
- a non-complying activity.

An application for resource consent must be made in accordance with the Resource Management Act. Forms for land use and subdivision consent applications are available from the Mackenzie District Council offices, accompanied by an explanation of the information to be submitted with the application. This includes an Assessment of Effects on the Environment prepared in accordance with the 4th Schedule of the Act.

5.2 Notification of Resource Consents

Section 94 of the Resource Management Act prescribes when applications need not be publicly notified. In many situations this requires the written approval of affected persons. The District Plan in the Rules specifies those resource consents which shall be non-notified.

In determining those persons that may be adversely affected by the granting of a resource consent, the Council will consider the Plan's objectives and policies and reasons for the rules, and (where appropriate) the effects on:

- Those persons living in residential properties adjacent or near to any application site;

- Those persons who own or lease land that is adjacent or near to any application site, and whose use of that land could be detrimentally affected by that application;
- Those Takata Whenua of an area whose cultural values could be adversely affected by any application;
- Those persons or organisations whose use or enjoyment of an area could be adversely affected by any application;
- Any Minister of the Crown with statutory responsibilities in respect of the application site or any adjacent area; and
- Any other person who the Council considers relevant in the circumstances.

In determining whether there is more than a minor adverse effect on the environment through the granting of a resource consent, the Council will consider the Plan's objectives and policies and reasons for the rules, and (where appropriate):

- The degree of non-compliance with any rule in the Plan and the environmental outcome sought by that rule:
- The frequency of any effect;
- The area influenced by any effect;
- The timing of any effect;
- The sensitivity of surrounding uses to that effect; and
- Any other aspect of the effect considered relevant in a particular circumstance.

5.3 Consideration of Resource Consents

Section 104 sets out those matters to which the Council must have regard, in considering a resource consent application:

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—
 - (a) any actual and potential effects on the environment of allowing the activity; and
 - (b) any relevant provisions of—
 - (i) a national environmental standard;
 - (ii) other regulations;
 - (iii) a national policy statement;
 - (iv) a New Zealand coastal policy statement;
 - (v) a regional policy statement or proposed regional policy statement;
 - (vi) a plan or proposed plan; and
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

(2A) When considering an application affected by section 124, the consent authority must have regard to the value of the investment of the existing consent holder.

(3) A consent authority must not,—

o (a) when considering an application, have regard to—

- (i) trade competition or the effects of trade competition; or
- (ii) any effect on a person who has given written approval to the application:

o (b) [Repealed]

o (c) grant a resource consent contrary to—

- (i) section 107, 107A, 107E, or 217;
- (ii) an Order in Council in force under section 152;
- (iii) any regulations;
- (iv) a Gazette notice referred to in section 26(1), (2), and (5) of the Foreshore and Seabed Act 2004;

o (d) grant a resource consent if the application should have been notified and was not.

(4) A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.

(5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.

(6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.

(7) In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.

~~(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—~~

~~(a) any actual and potential effects on the environment of allowing the activity; and~~

~~(b) any relevant provisions of—~~

~~(i) a national policy statement;~~

~~(ii) a New Zealand coastal policy statement;~~

~~(iii) a regional policy statement or proposed regional policy statement;~~

~~(iv) a plan or proposed plan; and~~

~~(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.~~

- ~~(2) — When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.~~
- ~~(3) — A consent authority must not—~~
- ~~(a) — have regard to trade competition when considering an application:~~
 - ~~(b) — when considering an application, have regard to any effect on a person who has given written approval to the application:~~
 - ~~(c) — grant a resource consent contrary to the provisions of section 107 or section 217, any Order in Council in force under section 152, or under any regulations:~~
 - ~~(d) — grant a resource consent if the application should have been publicly notified and was not.~~
- ~~(4) — Subsection (3)(b) does not apply if a person has given written approval in accordance with that paragraph but, before the date of the hearing (if a hearing is held) or otherwise before the determination of the application, that person gives notice in writing to the consent authority that the approval is withdrawn.~~
- ~~(5) — A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.~~

The District Plan includes assessment matters which the Council may have regard to when considering resource consents. Section 106 specifies circumstances whereby the Council shall not grant subdivision consent, this being for any land, structure on that land or subsequent use of the land subject to or likely to cause or accentuate material damage by erosion, falling debris, subsidence, slippage or inundation from any source.

The Council may impose conditions on consents in accordance with Sections 108 and 220 of the Act, in restricting or prohibiting certain aspects of the proposal to ensure it complies with the Resource Management Act and the District Plan.

6 Designations

A designation is a provision made in the District Plan to give effect to a requirement made by a **Requiring Authority**. These requirements apply to a public work or a particular project or utility operation.

Any Minister of the Crown, the Mackenzie District Council and any other local authority is automatically a requiring authority. Other network utility operators

(as defined in Section 166 of the Resource Management Act) may apply to the Minister for the Environment for approval as a requiring authority. A requiring authority may give notice to the Council in respect of a requirement. Although the Council has called for such notices in preparing the District Plan, the Act makes provision for similar procedures throughout the life of the operative District Plan.

Designations are shown on the Planning Maps, with an indication of the work that is designated and the requiring authority which has the benefit of the designation. The underlying zone indicates the purposes for which the land may be used for other than the designated work.

All legal roads are deemed to be designated and shall have the underlying zones of the land adjacent to that road. Designations are not the only means of providing for public works or utility operations. The District Plan contains general rules for utilities not designated, providing for these in a manner similar to other general activities (refer Section 15 Utilities).

7 Heritage Protection Orders

A heritage order is a provision in the District Plan to give effect to a requirement made by a heritage protection authority (Section 187, Resource Management Act 1991). Similar provisions apply as for requiring authorities, except that this authority extends to the New Zealand Historic Places Trust.

A heritage order is issued to protect features or places of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the takata whenua, and such area of land surrounding these places as is necessary to protect and afford reasonable enjoyment of them. No person may undertake work in a manner contrary to the heritage order.

8 Interpretation Of Planning Maps

The Planning Maps form part of this District Plan, and contain Planning Maps plus an index sheet. All of these maps cover the whole district and contain the following zones and notations:

Zones ——— Rural zone (RUR)
 _____ [Twizel Rural Residential 1 \(RR1\)](#)
 _____ [Twizel Rural Residential 2 \(RR2\)](#)

[Hocken Lane Rural Residential Zone](#)

[Manuka Terrace Rural Residential Zone](#)

Residential 1 (RES 1)

[Residential 2 \(RES 2\)](#)

[Residential 3 \(RES 3\)](#)

[Residential 4 \(RES 4\)](#)

Village Centre (VC)

Service

Industrial

Tourist

Tourist G (Glentanner)

Recreation A

Recreation B

Open Space – Heritage

Open Space – Glentanner

Pukaki Village

Airport

Travellers Accommodation

[Special Travellers Accommodation Zone \(STAZ\)](#)

[Ruataniwha Rowing Zone \(RRZ\)](#)

Opuha Dam

Notations – Designation
Sites of Natural Significance
Scenic Viewing Areas
Lake Protection Area
Heritage Items

In addition there are maps identifying flood risk areas and flight protection areas.

Refer clause 6 of the Section for a description of the designations identified on the planning maps.

The Council holds a series of 1:50,000 topographical maps which identify Sites of Natural Significance. The Planning Maps' Sites of Natural Significance are based on this series of topographical maps. These maps are available to assist in determining the location of boundaries of Sites of Natural Significance.

9 Enforcement

The Mackenzie District Council has powers under Part XII of the Resource Management Act to require persons to cease or not commence an activity which is or is likely to:

- contravene the Act, any regulations, a rule in the District Plan, or any resource consent; or
- be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment.

Any person may apply to the Environment Court for a declaration or enforcement order to, among other things, obtain compliance with District Plan provisions or resource consent conditions, or require adverse effects on the environment to be remedied or mitigated.

10 Changes To The Plan

The Council is committed to a Plan that is current and relevant and which addresses issues and concerns as they arise. Therefore, the provisions of the Plan may be varied as necessary. Such changes may be in response to revised or up-dated National or Regional Policy Statements or Regional Plans. Further, as the development of the District takes place, the Plan will be subject to continuous review by the Council, in consultation with the local community, so that the on-going and evolving resource management requirements of the community may be acknowledged and provided for.

Any person may formally request the Council to change the Plan. The procedure is set out in the First Schedule to the Act. Applications must clearly define the proposed change, so that it can be readily understood, and describe the environmental results anticipated from the implementation of the change.

11 Regional Rules

The Council holds copies of the Canterbury Regional Council's regional rules affecting land within Mackenzie District. These rules may also be relevant, in addition to the rules in the District Plan, to land use activities undertaken within the boundaries of Mackenzie District.

In respect to further interpretation and clarification of the regional rules, inquiry should be made to the offices of the Canterbury Regional Council, 58 Kilmore Street, Christchurch (Phone 365-3828, Fax 365-3194).

