

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**Decision No. [2026] NZEnvC 21**

IN THE MATTER of the Resource Management Act 1991

AND an application by Robin Max McCarthy  
seeking relief on matters in the review  
of the Mackenzie District Plan

BETWEEN ROBIN MCCARTHY

(ENV-2025-CHC-25)

Appellant

AND MACKENZIE DISTRICT  
COUNCIL

Respondent

Court: Environment Judge J J M Hassan

Hearing: 12 November 2025

Appearances: R M McCarthy for himself  
M Garbett for the respondent

Last case event: 12 November 2025

Date of Decision: 13 February 2026

Date of Issue: 13 February 2026

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**DETERMINATION OF THE ENVIRONMENT COURT  
OF STRIKE OUT APPLICATION**

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A: MDC's application for strike out of the appeal is allowed in part.



- B: The remainder of MDC's strike out application is adjourned to be considered in light of the court's further directions in due course.
- C: Mr McCarthy has leave to file within 30 working days of this decision an amended notice of appeal.
- D: Leave is reserved to parties to seek further or amended directions within 35 working days of the date of this decision, including for MDC in response to any amended notice of appeal filed by Mr McCarthy.
- E: A short-notice judicial telephone conference will be convened for the purposes of discussing any appointment of any special advisor.
- F: Costs are reserved and a timetable will be directed, if need be, in due course.

## REASONS

### Introduction

[1] Mackenzie District Council (MDC) is progressing a staged review of the Mackenzie District Plan (Plan). ‘Stage 4’ included notification of proposed Plan Change 30 (PC30) on ‘Special Purpose Zones’. The appellant, Mr McCarthy, made a submission on it. However, MDC’s independent hearings panel (IHP), in their delegated capacity, declined to hear or consider that submission, ruling it beyond jurisdictional scope. On the IHP’s recommendations, MDC’s decisions on PC30 took no account of Mr McCarthy’s submission.

[2] In those unusual circumstances, Mr McCarthy filed an appeal. However, the notice of appeal incorrectly specified that it was made under s357 of the Resource Management Act 1991 (RMA), a provision that does not confer any appeal right.<sup>1</sup> The appeal sought an order that restored the submitter’s right to be heard by MDC. In the alternative, it sought orders with a view to giving Mr McCarthy access to the local aviation industry and, more particularly, to the privately-owned Tekapo airport (together with an order for costs).

[3] The court invited parties to make submissions as to whether the court had jurisdiction to determine the appeal.<sup>2</sup>

[4] MDC identified cl 14(1) Sch 1, RMA as conferring jurisdiction. That is by reason that Mr McCarthy was a submitter and his appeal pertained to matters excluded from PC30. That is in the sense that whatever Mr McCarthy pursued as a submitter was excluded by MDC’s decision to refuse to consider his submission. However, MDC submitted that the court should either not accept the appeal for processing or strike it out under s279(4) RMA. That was on the grounds that the

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<sup>1</sup> Section 357 RMA specifies rights to object back to a planning authority against certain planning authority decisions. Section 358 confers associated appeal rights from objection decisions.

<sup>2</sup> Minute dated 29 May 2025.

notice of appeal and associated documents do not disclose a reasonable or relevant case.<sup>3</sup>

[5] The court then made timetabling directions for Mr McCarthy to file his evidence-in-chief and MDC either to file evidence in response or apply for strike out of the appeal.<sup>4</sup>

[6] In light of the evidence Mr McCarthy filed, MDC made an application under s279(4) RMA for strike out of the appeal on the grounds that it:<sup>5</sup>

- (a) disclosed no reasonable or relevant case; and
- (b) would otherwise be an abuse of process to allow the case to be taken further.

[7] Submissions and representations on MDC's application were filed and parties were heard by telephone.<sup>6</sup> The following are my reasons for granting the application in part and reserving the remainder.

### **Statutory framework and principles**

[8] An Environment Judge can order the striking out of the whole or part of a person's case on appeal "... on such terms as the Judge thinks fit" if satisfied that:<sup>7</sup>

- (a) the appeal discloses no reasonable or relevant case in respect of the proceedings; or
- (b) it would be an abuse of the process of the Environment Court to allow the case to be taken further.

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<sup>3</sup> Memorandum of counsel for MDC dated 24 June 2025.

<sup>4</sup> Minute dated 14 July 2025.

<sup>5</sup> According to s279(4)(b), (c), RMA.

<sup>6</sup> Memorandum of counsel for MDC dated 25 August 2025; memorandum of the appellant dated 4 September 2025.

<sup>7</sup> RMA, s279(4)(b), (c).

[9] The discretion is exercised cautiously. I must be satisfied I have all requisite material to determine the question and then only make an order if satisfied the claim (in this case the appeal) is beyond repair and could not possibly succeed.<sup>8</sup>

[10] In the context of an appeal in a plan review process, I bear in mind well-established principles concerning participatory plan-making. Those principles acknowledge that plan reviews can affect many, often competing, interests within any given community.

[11] As an aspect of that, plan appeal relief must be fairly and reasonably within the general scope of an original submission, the proposed plan as notified or somewhere in between.<sup>9</sup> The qualifiers “fairly and reasonably” allows a degree of flexibility in seeking appeal relief within those noted parameters. However, in terms of principles of procedural fairness, it remains an appellant’s responsibility to fairly disclose to those eligible to join an appeal under s274 what is being sought by way of planning outcomes.

### **Overview of Mr McCarthy’s PC30 submission and appeal relief**

#### ***The PC30 submission***<sup>10</sup>

[12] Using MDC’s standard ‘form 5’ submission form, Mr McCarthy’s PC30 submission stated that he opposed the “Replacement of [the] existing Aviation Strategy with Special Purpose Zones/Special Purpose Airport Zones”. His submission explained his position that “The proposed Special Airport Purpose Zone does not address the long-standing problem where [MDC] has granted one aviation operator a monopoly in perpetuity to operate both fixed wing and rotary wing aircraft from Tekapo”. The submission specified that Mr McCarthy sought

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<sup>8</sup> *Coldway Installation Ltd v North Shore City Council* ENC Auckland W118/96, 28 August 1996 at p 3.

<sup>9</sup> Sch 1, cl 14, RMA, *Vivid Holdings Ltd (Re an application)* (1999) 5 ELRNZ 264, [1999] NZRMA 467.

<sup>10</sup> This discussion draws from the copy of the submission attached to the notice of appeal.

that MDC makes the following “decision”:

1. Provision in the District Plan for the submitter being able to operate competing fixed wing and rotary wing aviation services from Tekapo.
2. Council acquisition of Tekapo Airport as a requiring authority under the Public Works Act for infrastructure as required for both the current Aviation Strategy and the proposed Tekapo [AIRPZ].
3. Prosecution of Richard Rayward.
4. Compensation in the sum of \$20,000,000.
5. Public Apology.

[13] Mr McCarthy also included in his PC30 submission an extensive document seeking to provide background to his position on those matters. That is particularly his position that he has been deliberately and unfairly shut out of the district’s commercial aviation economy.

***The relief in the notice of appeal***

[14] Mr McCarthy’s notice of appeal, dated 22 May 2025, seeks by way of relief:

- (a) “Restoration of his submission to be heard by the Hearings Panel without prejudice”; and
- (b) in the alternative:
  13. That the respondent resolves the ongoing issue where the appellant has been kept out of the aviation market at Tekapo for 29 years.
  14. That the respondent negotiates with Air Safaris to secure access for the appellant to have his own freehold area on Tekapo Airport from which he can operate commercial fixed wing and rotary wing aircraft.
  15. Costs of, and incidental to this application.

## Overview of the relevant Plan and notified PC30 provisions

### *The purposes of the Aviation Strategy in Appendix L of the Plan*

[15] The Plan includes several appendices. Appendix L (App L) is a four page document headed “Mackenzie Basin Aviation Strategy – Final Draft” (Strategy). It is dated “January 1996”, i.e. several years prior to the Plan becoming operative on 24 May 2004.<sup>11</sup>

[16] App L explains that the Strategy “evolved from a consultation exercise facilitated by the Council”. The only name recorded in App L is “MJ Foster” (which appears just above the date on the last page). I infer that Mr Foster, a senior planning consultant at that time, must have helped to facilitate preparation of the Strategy.

[17] App L explains that it is a “summary” of the Strategy and lists its “key provisions”.

[18] Insofar as there are any other parts of the Strategy not included in App L, those do not form part of the Plan.

[19] App L explains the Strategy’s intentions for specified airport facilities and aircraft operations in the district.

[20] It explains that the Tekapo facility is one of a group of airports “recognised as lower level feeder airports handling operations much as they are now servicing both fixed and rotary wing aircraft”.

[21] In contrast to Tekapo, App L describes the Pukaki facility as “an open airport where the full range of fixed and rotary wing aircraft facilities would be provided for”. It also specifies that, for Pukaki, MDC “will undertake a facilitation

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<sup>11</sup> This is taken from the online copy of the Plan available on MDC’s website.

role in ensuring that this facility is developed as a public open airport”. There is no equivalent commitment made by MDC concerning the operation of Tekapo Airport.

[22] For Tekapo and other so-termed “lower level feeder airports”, App L specifies that “provision for and protection” of airport facilities “will involve”:

- Precision surface protection
- Compliance with ICAO standards
- Night and day operations
- Main runway length of 1,200m to 1,400m (Mt Cook 1,512m)
- Main runway strip width of 400m
- Landside space for passenger facilities, hangers etc
- Airport zoning and policies and rules in the District Plan
- Prohibition of noise sensitive activities within 500m of each airport without commensurate acoustic treatment

[23] App L refers to “Type 1 Helicopter Staging Areas” and “Type 2 Helicopter Staging Areas” without offering any definition of those terms. However, it specifies that Type 2 Helicopter Staging Areas are to be zoned and provided for in the Plan at locations that are in addition to the airports and include Tekapo B in the vicinity of the salmon farm and “Tekapo Army camp”. For those stand-alone helicopter operations facilities (including adjacent to a fixed wing airport), App L specifies that the “following size requirements and District Plan rules” shall apply:

- Principle [*sic*] purpose is as a customer pick up and set down facility for those wishing to flight see or visit snow landing sites
  - Sufficient land area to cater for up to four independent rotary wing operators (3.6ha total area)
  - Between two and four landing pads (90m x 90m each) allowing for FATO approach and take-off fans for each operator
  - Office and customer reception areas, 20m x 20m per operator
  - Aircraft refuelling area 10m x 10m per operator
- Note: Hangarage for maintenance is not allowed*
- Carparking for 10 cars, four buses and five staff parking for each occupancy

[24] App L adds that the following “rules” will also apply to Type 2 Helicopter Staging Areas (as they do for Type 1 areas):

- CAA Approval
- Controlled activity approval subject to submission of a concept development plan showing location of all proposed facilities including car-parking
- Transit NZ site access approval
- Site landscaping
- Outdoor storage areas to be screened and landscaped
- All yards and access to be formed, metalled and weather proofed
- Refuelling facilities to comply with the Dangerous Goods Regulations
- Design and appearance of buildings to comply with District Plan design guidelines, e.g. colour palate
- Signage as per District Plan provisions
- Residential and other noise sensitive activities to be prohibited within a 500m radius of the Type 1 Staging Area unless commensurate acoustic treatment of the noise sensitive activity is provided.

[25] For Type 1 and Type 2 Helicopter Staging Areas, App L records that:

If necessary the Mackenzie District Council will undertake a facilitation role in ensuring that such facilities are provided as demand requires.

[26] App L includes a number of statements about how the Strategy will be fulfilled outside and beyond the role of the Plan itself. Its prefacing note explains that “it should be appreciated that some elements, such as the anticipated development at certain sites, are not matters the District Plan can require”. Examples of that are requirements in App L that facilities or operations comply with “ICAO” and “NZ CCA standards”, “CAA Approval”, “Transit NZ site access approval” and, in some localities, “Department of Conservation approval”.

***Does App L have any policy or regulatory purpose in the Plan?***

[27] Submissions on the strike out application do not address whether App L is

purely an informational provision or has any effective policy or regulatory role in the Plan.

[28] In addition to explaining that parts of the Strategy are matters beyond the auspice of the Plan, App L explains that other elements of it “have been amended through the District Plan preparation and public submission process.” In various places, App L refers the reader to “zoning and policies and rules in the District Plan”.

[29] All of that would suggest that App L is largely included as background information rather than fulfilling any policy or regulatory purpose in the Plan.

[30] On the other hand, App L states that it includes “District Plan rules”. However, none of its provisions appear to be framed to have the force and effect of a regulation in the nature of a rule. For example, none of the provisions state with any clarity any relevant land use activity classifications, standards or matters of control or matters for discretionary consideration in consenting processes.

[31] For the most part, therefore, I find that App L serves to simply record background information (as is within the permissible scope of a district plan).<sup>12</sup>

[32] However, it would at least appear arguable that some confined provisions in App L may serve a policy purpose. That is in the sense of assisting the implementation and achievement of Plan objectives through the Plan’s rules.<sup>13</sup> In particular, it would appear arguable that, to some extent, App L is intended to express principles pertaining to the exercise of discretion in the making of consenting and other decisions under Plan rules so as to assist the implementation of Plan objectives. That somewhat enhanced purpose of App L would appear to be arguable, for example in regard to what it describes as:

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<sup>12</sup> RMA, s75(1), (2).

<sup>13</sup> RMA, ss 75(1), 76(4)(b)(i).

- (a) the size “requirements” of facilities for Tekapo Airport, as specified above;
- (b) the intention to provide for Helicopter Staging Areas, including Type 2 Areas that are adjacent to fixed wing airports (including, for example, at Tekapo Army camp);
- (c) “rules” for intended Type 2 Helicopter Staging Areas; and
- (d) the expressed commitment that MDC will, if necessary, undertake “a facilitation role” to help ensure that Type 2 Helicopter Staging Area facilities are provided as demand requires.

[33] The true extent, if any, to which App L expresses policy on those matters has significance in the consideration of Mr McCarthy’s appeal. In particular, it has some bearing on his position that MDC has not exercised due care in its response to the Strategy.

***PC30 as notified***

[34] In addition to removing App L, PC30 would include in the Plan a new ‘Airport Special Purpose Zone’ (AIRPZ) to govern each of the various airports of the district, including Tekapo Airport.

[35] The proposed AIRPZ is intended to provide for “the efficient use and development of airport zoned land and facilities to support the economic and social well-being of Te Manahuna/the Mackenzie District” (Zone Purpose). It is essentially designed to enable and protect the operation of various district airports (including Tekapo Airport) for commercial and recreational purposes, such as by fixed and rotary wing (e.g. helicopter) aircraft. One aspect of that is the enablement of airport and airport support activities as permitted activities (subject to standards) and the assignment of non-complying activity status to other activities.

## **Legal submissions and representations**

[36] For MDC, Mr Garbett submits that Mr McCarthy's submission and appeal documents predominantly concern irrelevant matters. That is particularly as to Mr McCarthy's long-running commercial dispute with Air Safaris and his perspective that MDC is culpable and can be properly pressured to intervene in that dispute. Overall, MDC's position is that Mr McCarthy's PC30 submission, notice of appeal and evidence fail to reveal a case on PC30, leaving MDC unable to respond with planning or other evidence.

[37] In speaking to his position, Mr McCarthy dwelt at some length on those commercial frustrations. The dominant focus of his evidence was about his many efforts, all unsuccessful, to secure access to Tekapo Airport and so gain a foothold in the district's aviation industry.

[38] In light of his comment that he was "not happy with the Aviation Strategy", I asked him whether or not he sought that the Strategy remain in the Plan. He answered that, while he could see problems with the Strategy, his position would be made more difficult if it did not remain in the Plan.

[39] In reply, Mr Garbett observed that Mr McCarthy's claimed wish to keep the Strategy in the Plan was only indirectly and obliquely referred to in his PC30 submission and appeal. He explained that a procedural consequence of this was that MDC did not cover this relief in its published Summary of Submissions, thereby meaning that statutory notice document failed to fairly alert others with potential interests to this aspect of Mr McCarthy's relief. As such, MDC's case is that this aspect of his relief was not fairly and reasonably raised such that it should be struck out.

[40] With leave, Mr McCarthy replied to the effect that his PC30 submission specified that he opposed PC30 in relevant respects. He explained that his position was that the proposed AIRPZ would not address an existing problem in terms of his lack of access to the aviation industry.

[41] In his right of final reply, Mr Garbett essentially reiterated MDC's position on these matters.

### **Evaluation**

[42] Much of the relief expressed in the notice of appeal must fall away as beyond jurisdictional scope. Specifically, it is not open to the court to make an order or direction that MDC enter negotiations with Air Safaris or otherwise to procure that Mr McCarthy secure any freehold area at Tekapo Airport, a privately-owned facility, or any other means of access so that he can operate commercial fixed wing and rotary wing aircraft there.

[43] In addition, in terms of the request for resolution of "the ongoing issue where the appellant has been kept out of the aviation market at Tekapo for 29 years", a plan appeal can fulfil only a limited role. That is, within jurisdictional scope principles, to pursue any associated appropriate district plan provisions.

[44] Potentially, there may be circumstances in which a court on appeal makes direction for a first-instance planning authority to take procedural steps. However, in circumstances in which there is a live right of appeal in a plan review, the more usual approach is to hear and determine the appeal. That is on the basis that the appeal is heard *de novo*, as provided under Sch 1 cl 14 and ss 290 and 290A, RMA.

[45] I interpret the remaining relief pursued in cl 13 of the notice of appeal in light of the originating PC30 submission. That is in terms of the principle that plan appeal relief must be fairly and reasonably within the general scope of an original submission, the proposed plan as notified or somewhere in between.

[46] Although cl 13 of the notice of appeal is far from clear as to what Mr McCarthy pursued by way of planning relief, the notice attaches for context a copy of the originating PC30 submission. I take that to effectively incorporate what that submission pursued including to:

- (a) oppose the replacement of the Strategy with the special purpose AIRPZ; and
- (b) seek provision in the Plan for the submitter to be able to operate competing fixed wing and rotary wing aviation services from Tekapo.

[47] By reading the notice of appeal as a whole, therefore, I find that Mr McCarthy effectively pursues the following potentially available planning relief:

- (a) retention in the Plan of the Strategy in App L;
- (b) rejection of the AIRPZ in its entirety and inclusion in the Plan of provisions that somehow better enable him than the existing Plan to have a competitive operation from Tekapo Airport of fixed wing and rotary wing aviation services (but whose nature and extent are entirely unclear on the face of the notice of appeal).

[48] I say that was “potentially available” relief because I find that, to a large extent, Mr McCarthy has failed to fairly and reasonably enunciate what he seeks by way of planning outcomes in his appeal. That is except for his opposition to the deletion of the Strategy (i.e., as is included in App L of the Plan).

[49] That failure to fairly and reasonably set out what he seeks as planning relief in his appeal is mirrored in the evidence.

[50] His 4 August 2025 statement (4 August statement) provides relevant contextual background to his opposition to the deletion of the Strategy from the Plan. That includes a record of a January 1996 workshop hosted by MDC “to consider the district plan review – aviation strategy”.<sup>14</sup> The record indicates that attendees to the workshop included the then mayor and chair of MDC’s planning committee, consultants and various landowners and others with relevant interests. It records both Mr McCarthy (of “Skyview Helicopters”) and Mr Rayward (of Air

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<sup>14</sup> McCarthy, 4 August 2025 statement, pp 27, 28.

Safaris).

[51] The 4 August statement also offers Mr McCarthy's perspective that the Strategy has not been workable for other "Tekapo based joint fixed-wing and rotary-wing commercial aviation operators other than Air Safaris" because MDC has not adhered to a "duty of care" to assist to give effect to the Strategy.

[52] However, nothing is offered on the substance of Plan provisions pursued in the appeal.

[53] The remainder of the 4 August statement and its several attachments dwell at length on Mr McCarthy's longstanding and unsuccessful dealings with many parties to secure property and commercial arrangements to enter the aviation industry at Tekapo. It includes correspondence with various government agencies, Defence Force personnel, members of Parliament, former Ministers of the Crown and a Prime Minister, the Environment Court, Air Safaris as owner of Tekapo Airport, and MDC.<sup>15</sup>

[54] Beyond opposing deletion of App L the only further insight Mr McCarthy gives concerning what he pursues in opposition to PC30 is a statement that characterises the key issue in the appeal as:<sup>16</sup>

... where and how the appellant can operate a joint fixed wing and rotary operation at Tekapo.

[55] The court's direction to Mr McCarthy to file his evidence-in-chief was made in light of the preliminary concerns that MDC expressed about these deficiencies in the notice of appeal. Those directions allowed Mr McCarthy opportunity to set out and clarify what he pursued, by way of planning outcomes, beyond simply

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<sup>15</sup> McCarthy, 4 August statement, pp 23-26, 31-36, 49-63, 68-71, 80-81, 111-135, 153-157, 159-161, 163-197.

<sup>16</sup> McCarthy, 4 August statement, at [7].

retention in the Plan of the Strategy. He failed to do so.

[56] Full abandonment of the AIRPZ of PC30 plainly would have significant and wide-ranging implications for MDC and the interests of many other participants in the Plan review. Depending on what Mr McCarthy intended by resolution of “the ongoing issue where the appellant has been kept out of the aviation market at Tekapo for 29 years”, significant implications could arise at least for the owner and other users of Tekapo Airport. In particular, they could stand to be significantly impacted by any change to the Plan that Mr McCarthy may seek to pursue to resolve that issue but which neither his originating submission nor notice of appeal gives any indication of.

[57] Therefore, with the exception of Mr McCarthy’s opposition to the deletion of the Strategy from the Plan and his related wish to enhance MDC’s accountability for the Strategy, I find that:

- (a) the appeal fails to disclose any reasonable or relevant case in respect of the proceedings and is beyond repair; and
- (b) it would be an abuse of process to allow the case to be taken further.

## **Outcomes**

### ***All parts of appeal other than concerning the Strategy in App L struck out***

[58] For those reasons, I grant MDC’s application to the extent that I order the strike out of all parts of the appeal other than with respect to Mr McCarthy’s opposition to the deletion of the Strategy (i.e. App L to the Plan) as I set out later in this decision.

[59] There is also an unsatisfactory lack of clarity concerning Mr McCarthy’s position on the Strategy as it is included in App L. In particular:

- (a) at least to some extent, as I have discussed, App L refers to then

extant Plan zoning and other provisions that will be superseded by PC30. Nothing in the notice of appeal or Mr McCarthy's evidence elucidates how he sees App L being refined and updated in those terms so as to duly cross-reference to the Plan as would be updated by PC30; and

- (b) Mr McCarthy gives evidence that MDC has failed in its duty of care as to giving effect to the Strategy with respect to Tekapo Airport. I have noted that, in some related respects, the expression of App L is unclear as to whether it is to operate in a policy role under the Plan or simply in an informational role. In the absence of legal submissions on this aspect, I have not reached any firm conclusions on the proper statutory interpretation of App L in those terms. Moreover, at least in substance it is arguable that Mr McCarthy is essentially seeking some refinement of parts of App L potentially so as to supplement it with policy as to relevant requirements and MDC's role and responsibilities concerning those in order to give the Strategy expressed in App L better effect. If that is part of what Mr McCarthy would seek to pursue as to App L he has an associated responsibility to satisfy the court in both statutory interpretation and policy terms that this is an appropriate refinement to App L.

[60] Rather than striking out this part of the appeal, I find that the fairer and more appropriate course is to allow Mr McCarthy one further opportunity to satisfactorily clarify what he is seeking concerning App L. In essence, I stop short of finding at this time that this part of his appeal is beyond repair.

[61] Therefore, in regard to Mr McCarthy's opposition to deletion of the Strategy from the Plan, I reserve determination of MDC's strike out application.

[62] As an aspect of that, I leave alive at this stage the potential for Mr McCarthy to pursue refinements to the expression of relevant existing provisions in App L so as to give them better effect according to their purpose. That may include re-

expressing some provisions, including potentially as policies.

[63] That is in a context in which I have not heard argument on whether the noted aspects of App L are in their nature policies or simply informational. I leave that open for further submission.

[64] However, I emphasise that the directions I make below on these matters do not open opportunity to Mr McCarthy to pursue any relief that is not within jurisdictional scope according to the principles I set out earlier in this decision. The directions I make do not give opportunity to seek to relitigate the substance of any duty or commitment or other aspect of the Strategy that was derived in 1996 and whose key provisions are now expressed as App L.

[65] At this stage, I leave open capacity for my further direction giving leave to at least the owner/operator of Tekapo Airport to join the appeal under s274 RMA. Whether or not that is considered at some stage will be influenced by how Mr McCarthy may choose to clarify his relevant relief concerning opposition to deletion of the Strategy as it is specified in App L.

[66] The peculiar history of this matter, most notably in MDC's initial decision to refuse to even entertain, let alone consider, Mr McCarthy's originating submission has exercised my mind on matters of procedural fairness.

[67] It was open to MDC to have engaged with Mr McCarthy to test more closely whether in any respect his submission traversed valid planning issues. Instead, MDC elected to refuse to hear him or even consider what his submission stated. That has certainly influenced what Mr McCarthy now pursues on appeal, including his request for direction that his original submission be heard by an independent first instance hearing body. Perhaps with the benefit of hindsight, MDC will reflect on whether its approach to the submission was wise.

[68] Given the history of this matter, I am minded to make a direction for the appointment of a senior respected planning consultant as special advisor under

s259 RMA. The potential role of that special advisor at this stage would be limited to:

- (a) helping Mr McCarthy understand this decision, and more particularly the directions herein;
- (b) guiding him on matters of process in response to any questions he may have as to how to properly respond to those directions. Mindful that Mr McCarthy is self-represented, I have in mind the potential for an appointed special advisor to also offer guidance in terms of a list of people who are qualified as planners and NZPI members that he may choose to approach to assist him professionally on planning matters and/or giving planning evidence; and
- (c) providing a brief report at the conclusion on those matters.

[69] Ultimately, however, Mr McCarthy is responsible for his own case on appeal, including in deciding whether and on what basis he seeks leave to file an amended appeal and, subject to that, whether he engages any professional assistance. It would not be the role of the special advisor to offer any assistance or advice on such matters of case strategy. Beyond offering Mr McCarthy a list of potentially available consultants, it would not be for the special advisor to recommend who might be suitable. That is all for Mr McCarthy to decide.

[70] As a potential appointee, I invite parties to consider Ms Vicki Jones. Ms Jones is a senior planning consultant with significant South Island and other experience, including for local authorities. In 2025, she was appointed a Deputy Environment Commissioner.

### **Result and directions**

[71] MDC's application for strike out of the appeal is allowed to the extent that I hereby strike out the parts of the appeal seeking:

- (a) rejection of PC30 or the AIRPZ, except insofar as relief concerning

App L remains alive in terms of the directions below;

- (b) direction to MDC to constitute a hearings panel to hear the PC30 submission;
- (c) orders that secure legal rights of access to Tekapo Airport and/or resolution to commercial impediments to Mr McCarthy's entry to the district's aviation market (except insofar as relief concerning App L remains alive in terms of the directions below);
- (d) orders for MDC to negotiate with Air Safaris for any purposes, including as to accessing Tekapo Airport for any purpose including the operation of commercial fixed wing and rotary wing aircraft;
- (e) orders that MDC notifies a requirement to designate Tekapo Airport and/or acquire it pursuant to the Public Works Act 1981 or by any other means;
- (f) orders for MDC to compensate Mr McCarthy;
- (g) orders for MDC to prosecute Richard Rayward; and
- (h) orders that MDC publicly apologises.

[72] The remainder of MDC's strike out application is adjourned to be considered in light of the court's further directions in due course.

[73] Mr McCarthy has leave to file **within 30 working days of this decision** an amended notice of appeal that:

- (a) must not traverse or seek relief concerning any of the matters that are struck out of his current appeal by the directions in [73];
- (b) must be confined to what he pursues by way of relief to achieve effective retention of those parts of the Strategy that are set out in App L to the Plan, but not so as to seek to substantially change the Strategy or to seek relief that is not fairly and reasonably within the general scope of an original submission, the proposed plan as notified or somewhere in between; and
- (c) within those limits, may pursue changes to the expression of any of

its provisions to bring it up to date with PC30 and/or allow it to be given clearer and better effect according to its intentions and/or assists its clarity of expression.

[74] Leave is reserved to parties to seek further or amended directions within 35 working days of the date of this decision, including for MDC in response to any amended notice of appeal filed by Mr McCarthy pursuant to the direction at [75].

[75] A short-notice judicial telephone conference (JTC) will be convened for the purposes of discussing any appointment of a special advisor.

[76] Costs are reserved and a timetable will be directed, if need be, in due course.



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**J J M Hassan**  
**Environment Judge**

