

**BEFORE THE HEARINGS PANEL**

**IN THE MATTER** of Schedule 1 of the Resource Management  
Act 1991

**AND**

**IN THE MATTER** of the Proposed Plan Change 18 to the  
Mackenzie District Plan

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**SUBMISSIONS OF COUNSEL ON BEHALF OF THE ENVIRONMENTAL DEFENCE SOCIETY  
INCORPORATED**

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Environmental Defence Society Inc  
PO Box 91736  
Victoria Street West, Auckland  
1142  
C Woodhouse  
[cordelia@eds.org.nz](mailto:cordelia@eds.org.nz)

## INTRODUCTION

- 1 These submissions are presented on behalf of the Environmental Defence Society Incorporated (**EDS**) in support of its submission and further submission on Plan Change 18 to the Mackenzie District Plan (**PC18**).
- 2 EDS is a national public interest environmental organisation established in 1971. Its membership is largely comprised of resource management professionals. EDS seeks to achieve good environmental outcomes through improving the quality of New Zealand's legal and policy frameworks and participating in statutory decision-making processes. EDS has been active in assessing the effectiveness of the Resource Management Act 1991 (**RMA**) and statutory planning documents in addressing key environmental issues. New Zealand's biodiversity is in a state of crisis and continuing to decline.<sup>1</sup>
- 3 The Mackenzie District is home to important indigenous biodiversity values which are nationally and internationally unique. Those values are fragile and currently under immense pressure from land use intensification, with substantial ecosystem loss occurring in the Mackenzie Basin, primarily as a result of intensive agricultural development.<sup>2</sup> These ecosystems have changed from a unique, complex matrix of indigenous cushion and mat vegetation, shrub, and grasslands to an artificial, exotic, and alien monoculture. Once the Basin's ecosystems, flora, and fauna are lost they are lost globally, forever.
- 4 PC18 is cognisant of these issues and acknowledges the need to address matters relating to the ongoing loss or potential loss within the District. The impacts of farm intensification on indigenous vegetation are noted. PC18 seeks to avoid additional loss of valued indigenous vegetation through clearance within the District, and in particular, in the Mackenzie Basin.<sup>3</sup>
- 5 EDS sought a suite of changes to the PC18 to ensure that the Mackenzie District's biodiversity will be adequately protected. The s 42A report recommendations have incorporated some of EDS's suggested amendments and EDS is generally supportive of those recommendations. However, EDS remains of the view that the PC18 provisions are still inadequate to safeguard the District's indigenous biodiversity. Where no comment is made, EDS supports the recommendation made in the s42A report. EDS's submission focuses largely on the Mackenzie Basin portion of the District, except where otherwise indicated.
- 6 These submissions focus on seven key issues:
  - Indigenous biodiversity in the Mackenzie District
  - Definitions for Vegetation Clearance and Indigenous Biodiversity
  - Improved Pasture
  - No net loss and the use of offsetting

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<sup>1</sup> See generally: *Vanishing Nature: facing New Zealand's Biodiversity Crisis* (2014), Brown M, Stevens T, Peart R.

<sup>2</sup> Head at [13.5]

<sup>3</sup> Section 32 evaluation

- Vegetation clearance rules
- Farm Biodiversity Plans
- Waitaki Power Scheme

## SUMMARY OF LEGAL FRAMEWORK

- 7 The RMA requirements of Council in respect of the Mackenzie District’s biodiversity are clear and directive. Council must (*inter alia*):
- Safeguard the life-supporting capacity of air, water, soil, and ecosystems (s5(2)(b)).
  - Recognise and provide for the protection of significant indigenous vegetation and significant habitats of indigenous fauna (s6(c)).
  - Have particular regard to the intrinsic values of ecosystems, maintenance and enhancement of the quality of the environment, and any finite characteristics of natural and physical resources (ss7(d), (f), (g)).
  - Control the use of land for the purpose of maintaining and enhancing ecosystems in water bodies (s30(1)(c)(iia)).
  - Maintain indigenous biodiversity (s31(1)(b)(iia)).
- 8 PC18 must also “give effect” to the objectives and policies in the Canterbury Regional Policy Statement (RPS).<sup>4</sup> Indigenous biodiversity is addressed in section 9 of the Canterbury RPS and the key elements of that section are:
- Ongoing loss and degradation of ecosystems and indigenous biodiversity and difficulties with identification of significant areas are identified as significant regional resource management issues (Issues 9.1.1 and 9.1.2).
  - Dual objectives of halting biodiversity decline and restoring and enhancing ecosystems and biodiversity (Objectives 9.2.1 and 9.2.1).
  - The protection of significant indigenous vegetation and habitats (Objective 9.2.3). This is achieved through identifying significant areas and then ensuring their protection to ensure no net loss of indigenous biodiversity values from land use (Policy 9.3.1). District plans must include provisions to provide for identification and protection of significant areas (method 3, Policy 9.3.1). This must include rules which trigger case-by-case assessment of indigenous vegetation clearance to allow for identification of significance areas (method 4, Policy 9.3.1).
  - Priorities for protection are set out, to which district plans must give effect (Policy 9.3.2). These include land environments where less than 20% of original indigenous vegetation cover remains, wetlands, originally rare ecosystem types, and habitats of

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<sup>4</sup> s 62(3) RMA

threatened or at risk species. All of these priority areas are found across large tracts of the Mackenzie Basin, in particular in the remaining area of ecological and landscape connectivity.

- An integrated approach is required across catchments where connectivity is an issue for sustaining habitats and ecosystem function (Policy 9.3.3). The Mackenzie Basin is one of those areas. Policy 9.3.4 is complementary, promoting enhancement and restoration to improve functioning and long term sustainability. The need for action to restore fragmented, degraded, or scarce natural habitats to restore ecosystem functioning is a key driver for those policies (explanation, Policy 9.3.4).
- A key anticipated environmental result is that the “overall functioning and intrinsic value of Canterbury’s existing ecosystems and indigenous biodiversity are protected from adverse effects of land use and development”.

PC18 is identified as a “significant step towards better giving effect to the CRPS” compared to the status quo.<sup>5</sup>

- 9 The proposed National Policy Statement for Indigenous Biodiversity (**proposed NPSIB**) is also relevant (although it is not yet a statutory document and therefore is of limited weight). The proposed NPSIB will set out how to give effect to the s 6(c) obligation to protect indigenous biodiversity. It will also require the mandatory identification and mapping of significant natural areas. This will provide certainty to landowners, resource users, and the wider community.

## INDIGENOUS BIODIVERSITY IN THE MACKENZIE DISTRICT

- 10 As mentioned above, Council has directive functions under ss 5(2)(b), 6(c) and 31(b)(iii) specifically relating to the management of indigenous biodiversity.
- 11 Protection of indigenous biodiversity is a core part of safeguarding the life-supporting capacity of ecosystems<sup>6</sup> and is the primary responsibility of local authorities when exercising their functions in relation to indigenous biodiversity.<sup>7</sup>
- 12 The protection of significant indigenous vegetation and significant habitats of indigenous fauna (herein referred to as significant indigenous vegetation) is required under s 6(c). This is a strong directive, imposing a duty on Council to keep its significant indigenous vegetation “safe from harm, injury, or damage”.<sup>8</sup> The protection of significant areas is a core element of sustainable management<sup>9</sup> and is integral to maintenance of indigenous biodiversity.
- 13 Maintenance of other areas of indigenous biological diversity is required under s 31(b)(iii). This is a core outcome for local authorities.<sup>10</sup> “Maintain” has been held to mean both “cause

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<sup>5</sup> Willis at [5.1]

<sup>6</sup> *Oceana Gold (New Zealand) Ltd v Otago Regional Council* [2019] NZEnvC 41 at [133].

<sup>7</sup> *Director-General of Conservation v Invercargill City Council* [2018] NZEnvC 84 at [80].

<sup>8</sup> *Royal Forest & Bird Protection Society of NZ Inc v New Plymouth District Council* [2015] NZEnvC 219 at [63].

<sup>9</sup> *Environmental Defence Society Inc v New Zealand King Salmon* [2014] NZSC 38 at [28].

<sup>10</sup> In the context of regional authorities see: *Attorney-General v Trustees of the Motiti Rohe Moana Trust* [2017] NZHC 1429 at [127].

or enable (a condition or situation) to continue” and “provide with the necessities for life or existence”.

- 14 This provides support for the ‘two limbs’ framework sought by EDS and recommended in the s42A report, whereby significant indigenous vegetation is protected, and adverse effects on its values avoided, and other indigenous vegetation maintained through the application of the effects management hierarchy.
- 15 The categories of land set out in Dr Walker’s evidence<sup>11</sup> are strongly supported. This approach clearly delineates between significant areas of indigenous vegetation (which must be protected), other indigenous vegetation (that must be maintained) and improved pasture. Mapping of these land categories will improve clarity for plan users, plan regulators, and the public; and will reduce complexity of monitoring as outcomes on the ground can be cross-checked against those expected and visually represented under the spatial plan.

#### *Mapping of significant indigenous vegetation*

- 16 The list of sites of natural significance (**SONS**) in Appendix 1 is inadequate, out of date and incomplete.<sup>12</sup> This was acknowledged by the Environment Court and Council during PC13. In order for Council to fulfil its functions under s 6(c) RMA and Section 9 of the Canterbury RPS amendments are required to ensure that other areas that meet the criteria for significant indigenous biodiversity are identified and protected.
- 17 “Significant” is not defined in the RMA. The question of whether an area of indigenous vegetation or habitat is significant is an objective one, based on expert ecological opinion<sup>13</sup> and commonly guided by criteria.<sup>14</sup>
- 18 The Environment Court has found that that the Mackenzie Basin ONL is a significant natural area based on Policy 9.3.1 criterion 4 of the Canterbury RPS.<sup>15</sup> This was not a policy determination but was instead a determination of fact based on the evidence before the Court.<sup>16</sup> Assertions that the Mackenzie Basin’s indigenous vegetation is not significant are not justified.<sup>17</sup>
- 19 Most undeveloped land on depositional landforms in the Mackenzie Basin contains significant ecological values.<sup>18</sup> The landforms support distinct indigenous ecosystems which are not replicated elsewhere to the same extent anywhere else in the country, and several of the ecosystems are naturally uncommon (such as outwash gravels, ephemeral wetlands, braided rivers and more). The Mackenzie Basin also contains a high degree of threatened species (including 91 species of threatened plants), thereby satisfying criteria 4 of the Canterbury RPS significance criteria. For many species the Mackenzie Basin is their stronghold.<sup>19</sup>

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<sup>11</sup> See Walker at [39] – [43]

<sup>12</sup> Harding evidence at [13]

<sup>13</sup> See *West Coast Regional Council v Friends of Shearer Swamp* [2012] NZRMA 45 (HC).

<sup>14</sup> For example, the criteria for significant indigenous biodiversity in the Canterbury RPS

<sup>15</sup> Walker at [16]; 11<sup>th</sup> decision at [236]- [237]

<sup>16</sup> PC13 11<sup>th</sup> decision at [236]

<sup>17</sup> See Espie at [12] – [15]

<sup>18</sup> Harding at [44]

<sup>19</sup> Harding at [29] – [31]

- 20 Dr Walker notes in her evidence that many less developed places across the floor of the Mackenzie Basin will also meet other criteria for determining significant indigenous vegetation in Appendix 3 of the Canterbury RPS.<sup>20</sup> These include occurrence within an originally rare ecosystem<sup>21</sup> and contributing to an important ecological linkage or network or proving an important buffering function.<sup>22</sup>
- 21 The large size of the remaining sequences of undeveloped outwash and moraine contributes to the significant ecological values of the Mackenzie Basin by ensuring connectivity. Maintenance of the scale and intactness of dryland ecosystems is required to provide for the protection of these values under s6(c).<sup>23</sup>
- 22 EDS considers that, given its significant ecological values, all unconverted land on depositional landforms, the remaining corridor of connectivity in the Mackenzie Basin, should be identified as significant indigenous vegetation and mapped as part of PC18. This will provide certainty for landowners and the community that those areas will be managed appropriately and provided protection as required under s 6(c).<sup>24</sup> This will also give effect to Objective 9.2.3 of the Canterbury RPS which requires that areas of significant indigenous vegetation will be identified and their values and ecosystem functions protected.

#### *Consideration of landscape values*

- 23 PC18 fails to address the overlap between s6(b) and (c) values. Biodiversity values and landscape values are intimately intertwined in the Mackenzie Basin. The Basin landscape and geomorphology are the source of, and sustain, the indigenous biodiversity present.<sup>25</sup> This has been acknowledged by the Environment Court in PC13.<sup>26</sup>
- 24 The entire Mackenzie Basin has been identified as an ONL to be protected under s6(b) RMA. Clearance of vegetation can have significant adverse effects on these values. EDS considers that in order for Council to fulfil its obligations under s6(b) RMA and under the District Plan's landscape objectives and policies (introduced by PC13) it is necessary for this overlap to be recognised in the provisions relating to vegetation clearance and discretion reserved to consider adverse effects on landscape values. This will also ensure consistency with the landscape provisions in Section 7 of the Mackenzie District Plan.

## **DEFINITIONS**

### *Definition of indigenous biodiversity*

- 25 EDS supports the definition of 'indigenous biodiversity' as recommended in the s42A report.
- 26 The proposed definition includes indigenous species in partially converted areas of the Mackenzie District, as well as those in unconverted areas (which are likely to be significant).<sup>27</sup>

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<sup>20</sup> Walker at [16]

<sup>21</sup> Canterbury RPS, Appendix 3, Criterion 6

<sup>22</sup> Canterbury RPS, Appendix 3, Criterion 8

<sup>23</sup> Walker at [18] – [22], Head at [4.3] – [4.4]

<sup>24</sup> Ching at [43]

<sup>25</sup> Walker at [15.3]

<sup>26</sup> PC13 11<sup>th</sup> decision

<sup>27</sup> Harding at [87] – [89]

This enables vegetation clearance to be controlled across all areas of indigenous vegetation, fulfilling the dual objectives of Council in regard to indigenous biodiversity under ss 6(c) and 31(b)(iii) RMA. The definition also aligns with the definition in the proposed NPSIB.

- 27 A definition of indigenous vegetation that excludes a percentage of indigenous vegetation (such as only applying to indigenous vegetation with over 30% coverage by indigenous species)<sup>28</sup> is not supported. Not only will this not “maintain” indigenous biodiversity as required under the RMA, but it is also not ecologically appropriate. Many Basin-floor plant communities are degraded and are likely to include a high component of exotic species and/or bare ground.<sup>29</sup>

#### *Definition of vegetation clearance*

- 28 The Mackenzie District has experienced widespread loss of indigenous vegetation. In the Mackenzie Basin a number of activities have contributed to this loss and degradation.<sup>30</sup> EDS supports a definition that encompasses all activities that can result in the clearance or modification of vegetation.<sup>31</sup>
- 29 The Environment Court in PC13 confirmed that fire, pests, weeds, application of herbicides, oversowing, topdressing, direct drilling and irrigation have all contributed to the modification of natural ecosystems in the Mackenzie Basin.<sup>32</sup> In particular, much of the complete loss or conversion of ecosystems that has occurred in recent years has been largely due to the increase in irrigated land.<sup>33</sup> EDS supports reference to all of these methods.
- 30 Intensive grazing, such as mobstocking, can also significantly affect indigenous vegetation, especially if designed to assist with the establishment of exotic grasses<sup>34</sup> Mobstocking is also included within the definition of clearance in the proposed NPSIB.
- 31 EDS supports reference in the definition of vegetation clearance to intensive grazing, such as mobstocking and agrees with the Department of Conservation that reference to ‘mobstocking’ rather than ‘intensive grazing’ may address some of the concerns raised in the s42A report.<sup>35</sup>
- 32 EDS also supports the inclusion of edge effects within the definition of vegetation clearance. As set out in Dr Walker’s evidence, there is evidence that intensive land development and increased exotic grass cover is leading to the progressive invasion into adjacent indigenous dryland vegetation.<sup>36</sup> These effects are resulting in ecological fragmentation and further ecosystem degradation and loss of indigenous biodiversity.<sup>37</sup> Many of the rare and threatened species present on the depositional landforms of the Mackenzie Basin are particularly sensitive to edge-effects.<sup>38</sup>

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<sup>28</sup> See evidence for Simons Pass Station Limited and Meridian Energy Limited.

<sup>29</sup> Harding at [87]

<sup>30</sup> See [57] – [64]

<sup>31</sup> White at [522]

<sup>32</sup> At [119]

<sup>33</sup> Harding at [38]

<sup>34</sup> PC13 11<sup>th</sup> decision at [255]

<sup>35</sup> Ching at [74]

<sup>36</sup> See Walker [23] – [28]

<sup>37</sup> Head at [7.3]

<sup>38</sup> Head at [7.5]

- 33 Mobstocking and edge-effects both result in the modification, clearance or loss of indigenous vegetation, and their inclusion within the definition of vegetation clearance will prevent large scale clearance of indigenous vegetation by these means.

### **IMPROVED PASTURE**

- 34 The concept of ‘improved pasture’ creates considerable difficulties. ‘Improved pasture exists on a spectrum from wholly exotic grass species, to mixed exotic-indigenous grasslands, or exotic grasslands interspersed within indigenous shrublands. As a result, improved pasture may have no, or anywhere from low to high, indigenous ecological value’.<sup>39</sup> The notified definition did not address these difficulties and was both uncertain and ambiguous.
- 35 Clearance of indigenous vegetation within an area of improved pasture is provided for as a permitted activity, and as such Council has no control over clearance within these areas. In order to prevent the potential wide-scale loss of indigenous vegetation this exception needs to be tightly formulated.
- 36 EDS strongly supports the mapping of improved pasture as recommended by Mr Harding. The use of the proposed definition and map will avoid the ambiguity associated with the notified definition and will remove the contestability that has led to considerable loss of the Mackenzie Basin’s indigenous biodiversity in recent years.<sup>40</sup> Mapping provides clarity and certainty to plan users and decision-makers alike and will enable the proper maintenance and protection of indigenous biodiversity in the Mackenzie District.
- 37 EDS considers the process for preparing maps of converted and partially converted land in the Mackenzie Basin is sound. These are draft maps and are subject to confirmation through more detailed checking and ground-truthing. This will enable consultation with landowners affected. Identification of areas of converted and partially converted land in the Eastern Mackenzie District can be identified through a similar process using aerial imagery and ground-truthing.<sup>41</sup>
- 38 EDS does not consider this definition to be ‘unworkable’<sup>42</sup> nor does it support the assertion by other parties that the May 2020 date included in the definition will make it impossible to prove.<sup>43</sup> It is not unusual for rules to include a cut-off date, and the May 2020 date is appropriate as it lines up with the date of the satellite images on which the maps are based.

### **NO NET LOSS AND THE USE OF OFFSETTING**

- 39 EDS does not support Policy 2 as recommended in the s42A report and considers the report writer has conflated the concepts of “no net loss” and “protection”. Protection and no net loss are separate and distinct concepts.<sup>44</sup>
- 40 ‘No net loss’ is a technical term associated with the use of biodiversity offsetting.

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<sup>39</sup> Biodiversity Collaborative Group (2018) *Report of the Biodiversity Collaborative Group* at 32

<sup>40</sup> Walker at [38]

<sup>41</sup> Walker at [42]

<sup>42</sup> See Valentine at [25]

<sup>43</sup> See evidence for Simons Pass Station Limited and Federated Farmers

<sup>44</sup> See also discussion: Walker at [44]



- 41 Biodiversity offsetting must achieve no net loss (of species abundance, habitat structure and ecosystem function) and the effects must be offset on a like-for-like basis. ‘No net loss’ envisages the loss or degradation of one area on the basis of gains in another.<sup>45</sup> This does not achieve “protection” which requires the resource affected to be “*kept safe from harm, injury, or damage*”.<sup>46</sup>
- 42 The goal of no net loss is consistent with Council’s obligation to maintain indigenous biodiversity across the District. Protection of significant sites is a key tool to achieving no net loss of indigenous biodiversity more broadly. This is consistent with the direction in Policy 9.3.1(3) of the Canterbury RPS that “*areas identified as significant will be protected to ensure no net loss of indigenous biodiversity*”.
- 43 No net loss will not achieve protection of significant sites. Significant sites are not areas where the ‘unders and overs’ approach that can be connected with the no net loss concept applies. For the significant indigenous ecosystems in the Mackenzie Basin, there are no realistic remediation, mitigation or offsetting options and instead a strict avoidance approach is required to protect those values.<sup>47</sup>
- 44 It is also now well understood that biodiversity offsets are in some cases inappropriate and that some elements of biodiversity are so irreplaceable or vulnerable that the risk of their not being successfully offset is too high.<sup>48</sup> Due to their rarity, threat, habitat complexity and distinctiveness, the depositional ecosystems of the Mackenzie Basin fall within these categories.<sup>49</sup>
- 45 The remaining significant indigenous ecosystems and plant communities in the Mackenzie Basin are irreplaceable: they cannot be recreated. Any reduction in the extent of these ecosystems will cause permanent loss that cannot be offset. This will not achieve protection and will not fulfil Council’s obligations under s6(c) RMA.

## VEGETATION CLEARANCE RULES

### *Permitted activity rules*

- 46 EDS supports provision for some permitted clearance. However, as currently worded EDS considers the rules will enable the wide-scale clearance of significant indigenous vegetation.
- 47 A number of the permitted activities contain an exclusion for locations identified in Rule 1.3.2. However, the specific exclusion in Rule 1.3.2(1) is limited to indigenous vegetation within a SON. As discussed above, the identified SONs are inadequate, and all un-converted land on depositional landforms is likely to meet criteria for significance. To ensure protection of these other significant areas it is required that all other areas meeting the criteria for significance in

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<sup>45</sup> And as set out in Walker at [46]: a policy requiring no net loss of significant areas would need to result in a negative rate of development to encompass the impacts of edge effects.

<sup>46</sup> *Royal Forest & Bird Protection Society Inc v New Plymouth District Council* [2015] NZEnvC 219.

<sup>47</sup> See Walker at [45]

<sup>48</sup> See discussion in *Oceana Gold (New Zealand) Ltd v Otago Regional Council* [2019] NZEnvC 41 at [89] – [95] upheld on appeal in *Oceana Gold (New Zealand) Ltd v Otago Regional Council* [2020] NZHC 436.

<sup>49</sup> Head at [12.2]

the Canterbury RPS be included in Rule 1.3.2(1). This could also be achieved by reference to Dr Walker's categories of land.<sup>50</sup>

- 48 Amendment to provide a maximum clearance cap in Rule 1.1.1.1 is also required. Permitted clearance can be extensive and as Rule 1.1.1.1 is not subject to the exclusions in Rule 1.3.2 parameters are required to control the extent of clearance for the maintenance and report of existing fence lines, vehicle tracks etc in significant areas. A maximum clearance of 100m<sup>2</sup> is advisable.<sup>51</sup>

#### *Restricted discretionary activity rules*

- 49 EDS has serious concerns about the provisions for Farm Biodiversity Plans (FBPs) as an exception to the other vegetation clearance rules. These concerns are addressed in detail below. EDS recommends that Rule 1.2.1 be deleted in its entirety, and instead that reference to FBPs be included in the matters of discretion in Rule 1.2.2.

#### *Non-complying activity rules*

- 50 Rules 1.3.1 and 1.3.2 are supported (provided the amendment proposed in [47] above is made). Stringent control and regulatory oversight are appropriate in respect of the listed environments.

### **FARM BIODIVERSITY PLANS**

- 51 EDS supports the concept of FBPs and agrees that a holistic, long term planning approach to farm management is a positive step. However, it does not support the inclusion of Rule 1.2.1 which provides an exception to the vegetation clearance rules on the basis that a FBP has been prepared. As currently worded, Rule 1.2.1 will create loophole to continue to clear, degrade and fragment indigenous vegetation and indigenous fauna habitats in the Mackenzie Basin.<sup>52</sup>
- 52 Enabling development in accordance with FBPs is only acceptable if those FBPs are robust and ensure that biodiversity values are appropriately addressed. There is considerable uncertainty over the efficacy of FBP and there is currently no requirement for the FBP to be peer-reviewed by an ecologist to assess the accuracy and quality of it.<sup>53</sup> Council planning staff are instead given wide latitude to consent to further clearance of significant indigenous vegetation.
- 53 As such, the current approach will not give effect to the Council's obligations to maintain indigenous biodiversity and protect significant indigenous biodiversity. The only way to ensure these obligations are met is for FBP be required as part of the consenting process.
- 54 EDS considers that instead of allowing vegetation clearance on the basis of a FBP alone, FBP should be added to the list of matters of discretion in Rule 1.2.2. This enables FBPs to be considered but ensures that they can only be used within the confines of what extent of

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<sup>50</sup> See Walker at [51]

<sup>51</sup> Walker at [52]

<sup>52</sup> Walker at [53]

<sup>53</sup> Head at [11.4]

indigenous vegetation clearance indicated as acceptable under the Plan (as provided for in Rule 1.2.2).

## **WAITAKI POWER SCHEME PROVISIONS**

- 55 EDS accepts the need for a bespoke approach to vegetation clearance for the Waitaki Power Scheme. However, it considers the proposed rule framework, as set out in the s42A report, is too lenient and will provide for extensive clearance of significant areas.
- 56 Rule 2.1.1 provides for clearance of indigenous vegetation associated with the operation and maintenance of the Waitaki Power Scheme as a permitted activity within the existing footprint, on core sites, and on areas covered by an operating easement associated with the Waitaki Power Scheme. The WPS core sites are not spatially extensive but may be ecologically significant.<sup>54</sup> However, clearance within these areas is unlikely to have major adverse effects on indigenous vegetation.<sup>55</sup>
- 57 Operating easements associated with the Waitaki Power Scheme on the other hand cover a considerable portion of land identified as SONS.<sup>56</sup> Most areas covered by the operating easements will also be ecologically significant, even if not already identified as a SONS.<sup>57</sup> Clearance of vegetation within the operating easements is very likely to result in adverse effects on significant indigenous vegetation.<sup>58</sup>
- 58 EDS submits that on the basis of the significant values contained in the operating easements, a discretionary activity for indigenous vegetation clearance for both the operation and maintenance and the refurbishment of these areas is required. This will enable decision-makers discretion to consider the effects of the proposal and make an informed decision on the activity.

## **CONCLUSION**

- 59 The Mackenzie District includes a diverse range of landforms and ecosystems, stretching from the main divide of the Southern Alps to lowland basins, hills and valleys. The Mackenzie Basin has been identified as having landscape and biodiversity values that are nationally significant under s6 RMA and the whole District is home to important indigenous biodiversity values which are nationally and internationally unique.
- 60 Council is under an obligation maintain its indigenous biodiversity and protect those parts of it that are significant. That obligation exists regardless of whether those objectives are easy or hard to achieve. The Mackenzie Basin has experienced a high degree of degradation, and to prevent any further loss the remaining extent and connectivity of unconverted indigenous vegetation must be protected from the effects of intensification.

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<sup>54</sup> Walker at [60]

<sup>55</sup> Harding at [85]

<sup>56</sup> Harding at [81]; Walker at [58].

<sup>57</sup> Harding at [82]

<sup>58</sup> Harding at [85]