

BEFORE THE HEARINGS PANEL

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

AND

IN THE MATTER of Proposed Plan Changes 23-27 to the
Mackenzie District Plan

LEGAL SUBMISSION ON BEHALF OF THE ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED
10 MAY 2024

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INTRODUCTION

1. The Environmental Defence Society Incorporated (EDS) has extensive history advocating for improved environmental outcomes in the Mackenzie Basin. It was heavily involved in Plan Change 13 (PC13) and is currently engaged in Environment Court appeals on Plan Change 18 (PC18). It is also currently involved in two applications for solar arrays in the Mackenzie Basin.
2. These legal submissions relate to the latest round of plan changes on the Mackenzie District Plan (Plan), namely Plan Changes 23 (PC23) and 26 (PC26).¹
3. EDS's primary interest in the Mackenzie District has been to ensure that the outstanding landscape values of the Mackenzie Basin and its internationally and nationally significant indigenous biodiversity values are appropriately recognised, maintained and protected.
4. In that regard, EDS recognises the measurable shifts that Council has made towards improving landscape and biodiversity outcomes in the Mackenzie Basin.
5. EDS supports PC23 insofar as it seeks to retain key outcomes from PC13, especially the Outstanding Natural Landscape designation over the Basin and associated regulatory controls, and its efforts to better manage wilding conifers. However, EDS considers that PC23 requires further amendment to refine the use of pastoral intensification to address wilding conifer control and management.
6. EDS also supports PC26 insofar as it relates to the provision of infrastructure within ecological limits. EDS has outstanding concerns with the REG provisions of PC26 which do not appropriately maintain and protect indigenous biodiversity.

WILDING CONIFER PROVISIONS

7. EDS's submission on PC23 relates to provisions which seek to control and manage wildling conifers: NFL-P11, NFL-R6, NFL-R7, NFL-R8, NFL-MD2, GRUZ-P7.
8. In general, EDS supports the Council's efforts to better control and manage wilding conifers in PC23. As succinctly summarised in Mr Young's report, *Post Harvest Wilding Conifer Management*,² wilding conifers pose a serious threat to (among other things) the high landscape and biodiversity values of the Mackenzie Basin. Tens of millions of dollars have been invested into their eradication and more needs to be done if existing outbreaks and future incursions are to be adequately controlled and managed.
9. PC23 has the potential to be an effective tool in the battle against these 'space invaders'. It seeks to do so by relaxing controls on land use change required under PC13 to encourage and enable wilding conifer control and management more readily. Specifically, PC23 provides for the use of stock grazing as a means of limiting the spread of wilding conifers.
10. This approach is spatially limited by two overlays: the Wilding Conifer Removal Overlay and Wilding Conifer Management Overlay. EDS's support for PC23's approach to controlling and managing wilding conifers is contingent on the continued use of these overlays. Spatially mapping areas where stock grazing can occur to control and manage wilding conifers provides

¹ EDS did not submit on Plan Changes 24, 25 or 27

² Referred to at para 211 of PC23 s42A Report and attached as Appendix 4 to the PC23 s32 Report

certainty of where this land use can occur and limits the potential for intensification beyond areas of concern. Mr Boyes supports the continued use of the wilding conifer overlays in his s42A Report.³ Their retention is a bottom line for EDS.

11. EDS accepts Mr Young's assessment that stock grazing is an effective control method for wildings that are invading new areas and for managing areas post removal of wildings.⁴ However, it is widely acknowledged, including by Mr Young, that higher stocking rates than normal are required.⁵ Therein lies the rub.
12. EDS is concerned that the PC23 wilding conifer provisions do not adequately safeguard against pastoral intensification, agricultural conversion, or inappropriate clearance of indigenous vegetation, undertaken in the name of wilding conifer control and management.
13. The impact of these activities on landscape and biodiversity values has been well traversed in decade long litigation on PC13, PC17 and currently PC18. PC23 needs to be carefully crafted to ensure that the pursuit of wilding conifer control and management does not undo progress made in those plan changes.
14. In response to submissions by EDS and others, Mr Boyes has proposed amendment to some of the wilding conifer provisions. They include:
 - a. Amending NFL-P11 to clarify that stock grazing can be used to control wilding conifer spread only where adverse effects can be appropriately managed and in areas limited to the Wildling Control Removal and Management Overlays.
 - b. Amending NFL-R6(2) to ensure that harvesting closed canopy wilding conifers also retains significant habitat of indigenous fauna (i.e., the other component of section s6(c) of the RMA).
 - c. Amending NFL-MD2(a) to better reflect Council's s31(1)(b)(iii) function to maintain "indigenous biodiversity", not just to protect significant indigenous vegetation.
 - d. The addition of a new subsection to NFL-MD2 to clarify that mobstocking is to be prevented.
15. EDS supports these proposed amendments. They go some way to addressing its concerns.
16. They do not, however, address all of EDS's concerns in relation to NFL-R7, NFL-R8 and GRUZ-P7 and they only partially address EDS's concerns in relation to NFL-MD2. Put simply, PC23 needs further amendment to ensure that its wilding conifer provisions do not provide a pathway for more intense land use than is absolutely necessary to keep wildlings under control.
17. In that regard, EDS submits that:
 - a. NFL-R7 should be a restricted discretionary activity (not controlled).
 - b. NFL-R8 should be deleted or, alternatively, NFL-R8 should be a restricted discretionary activity.
 - c. NFL-MD2(c) should be amended as follows:

³ PC23 s42A Report, paras 214 and 215

⁴ Mr Young's report, section 5.2

⁵ Mr Young's report, section 10.3.4

“The frequency and rate of direct drilling, topdressing and oversowing required to support an increased stocking rate sufficient to remove emergent wilding conifer seedlings in the short to medium term whilst retaining landscape and ecological values.”

- d. GRUZ-P7 should be amended as follows (to align with Mr Boyes’ proposed amendment to NFL-P11):

“2. Promoting land use activities that contain or eradicate wilding conifers in Te Manahuna / the Mackenzie District where adverse effects can be appropriately managed.”

18. Mr Boyes states that changes of this nature would hark back to PC13 and defeat the ability of PC23 to better control and manage wilding conifers.⁶ With respect, EDS disagrees. The changes proposed above strike the right balance between encouraging and enabling wilding conifer control and management and maintaining and protecting indigenous biodiversity.
19. After all, control and management of wilding conifers is in large part to maintain and protect indigenous biodiversity. It would make no sense if those control and management measures undermined that outcome.

REG PROVISIONS

20. EDS’s submission on PC26 relates to provisions which seek to enable and provide for Renewable Electricity Generation (**REG**): REG-P4, REG-P5, REG-P6 and REG-MD4.
21. EDS understands that the PC26 REG provisions are designed to fill a gap in the Plan with respect to new REG activities. EDS seeks to ensure that this new consenting pathway appropriately maintains and protects indigenous biodiversity in accordance with sections 6(c) and 30(1)(b)(iii) of the RMA.
22. With respect to REG-P4, Ms White’s proposed amendments limit investigation activities and small-scale REG activity (both defined terms) to situations “where they do not compromise the values of the area in which they are located”.⁷ This proposed amendment, coupled with confirmation that Section 19 (except Policies 2 and 3) applies to the REG Chapter, satisfies EDS’s concern with REG-P4.
23. With respect to REG-P5 and REG-P6, EDS considers that these provisions should include environmental limits for indigenous biodiversity akin to the approach adopted by INF-P7. Ms White rejects that premise in her s42A Report on the basis that the National Policy Statement on Indigenous Biodiversity 2023 (**NPS IB**) does not apply to REG. However, this overlooks sections 6(c) and 31(1)(b)(iii) of the RMA. Failure to appropriately manage effects of new REG on indigenous biodiversity means that the PC26 does not accord with Part 2 of the RMA or Council’s functions (as required by section 74 of the RMA).
24. Finally, with respect to REG-MD4, EDS continues to assert that it should include a matter of discretion requiring consideration of effects on indigenous biodiversity.

⁶ PC23 s42A Report, para 228

⁷ PC26 s42A Report, para 210

INFRASTRUCTURE PROVISIONS

25. For completeness, EDS's submission in relation to INF-P5 and INF-MD1 are resolved in Ms White's s42A Report on PC26 without the need for amendment. EDS is satisfied that:
- a. It is clear that INF-P7 applies in addition to INF-P5.
 - b. INF-MD1 is sufficiently limited in application such that consideration of indigenous biodiversity is not required and, in any event, changes to the introduction of the Infrastructure Chapter make it clear that all provisions in Section 19 (except Policies 2 and 3) apply to the Infrastructure Chapter.
26. EDS continues to support INF-P7 as it appropriately gives effect to the NPS IB and accords with sections 6(c) and 31(1)(b)(iii) of the RMA.

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