

MEMORANDUM

TO: the Independent Hearings Panel

FROM: Environmental Defence Society (EDS)

MEMORANDUM RESPONDING TO QUESTIONS RAISED IN REGARD TO PLAN CHANGE 18

DATE: 16 March 2021

1. Following EDS's oral submission on proposed Plan Change 18 (**PC18**) to the Independent Hearings Panel on Tuesday 9 March 2021, clarification on a number of points was sought. These are addressed in turn below.

Improved pasture

2. EDS was asked to consider the requirement for Mackenzie District Council to "give effect" to the National Policy Statement for Freshwater Management (**NPSFM**) under s 75(3)(a) RMA, and whether this obliged the use of the definition of 'improved pasture' contained in the NPSFM.
3. The NPSFM sets out a definition of improved pasture at Clause 3.21:

improved pasture means an area of land where exotic pasture species have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed for livestock grazing.
4. Notably, this definition sits within a section that applies specifically to wetlands and rivers.¹ The definition applies to Clause 3.22 – 3.24 which discuss the obligations specifically on *regional* councils in regard to wetlands and rivers.
5. PC18 is focused on indigenous biodiversity, and more specifically the clearance of indigenous vegetation. The purpose, and context, of PC18 is therefore different to that of the NPSFM.
6. The National Planning Standards 2019 contains guidance of the consistent use of definitions in regional and district planning documents. This provides that "*Where terms defined in the Definitions List are used in a policy statement or plan, and the term is used in the same context as the definition, local authorities must use the definition*".² Although, this standard relates to lower-level instruments, the argument can be extended to national direction also.
7. As PC18 is a different context to the NPSFM there is no obligation to use the definition. The use of a definition specific to wetlands, is not fit for purpose in the context of terrestrial vegetation clearance.³

¹ This is observed in the heading to Clause 3.21 and the chapeau of Clause 3.21(1)

² National Planning Standards, Standard 14.1

³ See Guidance for 14. Definitions Standard, p 3: any definition already contained within the RMA, a national policy statement, national environmental standard or regulation under the RMA, should be applied in the national planning standard where it is

8. In its oral submissions, EDS provided an alternative solution to prevent interference with the definitions of improved pasture in higher order documents such as the NPSFM. It submitted that the permitted activity rule 1.1.1(6) should instead refer to indigenous vegetation clearance in an area of 'fully agriculturally converted land'. The definition could then be amended to reflect this, and the reference to improved pasture removed.

Provision for Farm Biodiversity Plans in the restricted activity rules

9. As set out in EDS's legal submissions, its preference is that Rule 1.2.1 be deleted and Farm Biodiversity Plan (**FBPs**) instead be included as a matter of discretion in Rule 1.2.2.⁴ This is for the reasons set out in Dr Walker's evidence at [53] – [57].
10. However, EDS was also asked to consider whether, if its relief seeking deletion of Rule 1.2.1 in its entirety was adopted, whether the use of FBPs could be included in PC18 as an entry condition to Rule 1.2.2.
11. The rules in PC18 currently provide that any clearance of indigenous vegetation <5000m² requires resource consent as a restricted discretionary activity (with or without an FBP). Any clearance of indigenous vegetation >5000m² requires resource consent as either a restricted discretionary activity (if an FBP is submitted) or as a non-complying activity (if no FBP is submitted).
12. The inclusion of an FBP, or lack thereof, therefore determines the activity status for proposals to clear more than 5000m² indigenous vegetation. Given EDS's concerns about the effectiveness of FBPs, this is not appropriate.⁵
13. If Rule 1.2.1 was deleted, the requirement to include a FBP as a condition for achieving restricted discretionary activity status could be included in Rule 1.2.2. The wording in Condition 1 of Rule 1.2.1 would be appropriate for this purpose.
14. As a result of this change:
 - An application to clear indigenous vegetation less than 5000m² that includes a Farm Biodiversity Plan will require resource consent as a restricted discretionary activity pursuant to (current Rule 1.2.2).
 - An application to clear indigenous vegetation less than 5000m² that does not comply with the requirement to submit a FBP would be undefined under the current framework.⁶
15. Consequently, it is recommended that Rule 1.3 be amended to include an additional sentence along the lines of '*any indigenous vegetation clearance of up to 5000m² within a property within any continuous 5-year period that does not accord with an approved Farm Biodiversity Plan*'. This would ensure that this activity requires resource consent as a non-complying activity.

fit for purpose.

⁴ EDS legal submissions at [51] – [54]

⁵ See EDS legal submissions at [51] – [54] and evidence of Dr Walker at [53] – [57]

⁶ As Rule 1.3 strictly applies to any indigenous vegetation clearance of more than 5000m² within any site in any 5-year continuous period

16. Any application to clear more than 5000m² of indigenous vegetation within a property within any continuous 5-year period would still require resource consent as a non-complying activity pursuant to Rule 1.3 (regardless of whether or not an FBP is submitted with the application).
17. The above amendments would result in any indigenous vegetation clearance (outside of what is provided for as a permitted activity) requiring resource consent as a non-complying activity if an FBP is not included in the application.

Area of indigenous vegetation (within a property within any continuous 5-year period)	Activity status
More than 5000 m²	Non-complying
Less than 5000 m² Without an FBP	Non-complying
Less than 5000 m² With an FBP	Restricted discretionary