

**BEFORE THE MACKENZIE DISTRICT PLAN PC 18 INDIGENOUS
BIODIVERSITY HEARINGS PANEL**

IN THE MATTER of the Resource Management Act 1991

AND Plan Change 18 to the Mackenzie District Plan

**STATEMENT OF EVIDENCE OF ANDREW WILLIS
ON BEHALF OF ENVIRONMENT CANTERBURY**

INDIGENOUS BIODIVERSITY

Planning evidence

Dated 12 February 2021

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1. EXECUTIVE SUMMARY

- 1.1 My full name is Andrew Peter Hewland Willis. I hold the position of Managing Director of Planning Matters Limited in Christchurch. I have the experience and qualifications set out in the body of my evidence. I have been engaged by ECan to provide planning evidence relating to Proposed Plan Change 18 – Indigenous Biodiversity to the Mackenzie District Plan (“**PC 18**”).
- 1.2 ECan is generally in support of PC 18 as it considers it is a significant step towards better giving effect to the CRPS. However, through its submission ECan sought some changes to PC 18 to: better give effect to the CRPS; improve the clarity and workability of the policy and rule framework; and make some changes of a technical nature.
- 1.3 Having reviewed the proposed amended provisions in response to submissions (as set out in the Section 42A Report), overall I consider that the revised proposed PC 18 has a clearer policy and rule framework, and better gives effect to the CRPS, consistent with ECan’s submission. Overall, I support the recommended changes set out in the Section 42A Report.
- 1.4 Regarding the objectives, in my opinion the amended Objective 2 addresses the issues ECan raised in its submission. I support the amended Objective 2 set out in Ms White’s s42A report as it avoids duplication and clarifies that it is significant habitats of indigenous fauna that require protection and enhancement, consistent with the Resource Management Act 1991 (“RMA” or “Act”).
- 1.5 Regarding the policies, ECan sought a number of changes to: improve clarity; identify other areas of significant indigenous vegetation and habitats through Farm Biodiversity Plans and the resource consent process; refer to “significant” indigenous biodiversity values; and introduce a clear hierarchy of avoidance, then remedying, then mitigating, then offsetting. In my opinion the proposed amended policies set out in Ms White’s s42A report address the matters ECan raised in its submission and I support the recommended changes.
- 1.6 Regarding definitions, ECan sought changes to: “farming enterprise”; “indigenous vegetation”; and “improved pasture”. In my opinion the changes

proposed in Ms White's s42A report in response to ECan's submission on these definitions are appropriate, however I suggest that reference to contiguous and non-contiguous land parcels be included in the definition of "farming operation".

- 1.7 I also note that as a result of adding 'irrigation' to the definition of vegetation clearance there is potential to incorrectly apply the exemption in rule 12.1.1a (ii) to irrigation consents. In addition to widening the scope of the exemption, the "clearance" of riparian vegetation may not have been assessed by ECan as part of the application to take and use water for irrigation, and therefore there would be no assessment as to the appropriateness of this clearance. Clause 12.1.1a (ii) should be amended to exclude a water permit enabling irrigation.
- 1.8 Regarding the rules, ECan sought key changes to: improve clarity; remove references to the Regional Pest Management Plan ("RPMP"); include an exemption for ECan river control purposes; include consideration of linkages between areas of indigenous vegetation; provide for vegetation clearance based on area basis (as opposed to a site basis); and enable consideration of the contribution indigenous vegetation makes to Outstanding Natural Features / Landscapes and other listed special areas. I agree with the amended provisions proposed by Ms White, but I have provided some minor suggestions for the Hearing Panel's consideration that I think add further clarity.

2. INTRODUCTION

- 2.1 My full name is Andrew Peter Hewland Willis. I hold the position of Managing Director of Planning Matters Limited in Christchurch. I have held this position for over 8 years.
- 2.2 I hold the following academic qualifications:
- (a) MSc in Resource Management with Honours from Lincoln University, conferred 1996;
 - (b) BA in Psychology with Honours, from the University of Canterbury, conferred in 1994;
 - (c) BSc in Zoology from the University of Canterbury, conferred in 1993.

- 2.3 I have been employed in the practise of planning and resource management for 25 years. Prior to establishing Planning Matters Limited I was the Team Leader Urban Renewal and Transport at the Christchurch City Council for two years. Prior to working at the Christchurch City Council I was the Regional Policy and Plan Effectiveness Section Manager at Environment Canterbury ("**ECan**") for two years and a senior policy analyst before that for three years. Prior to that I worked as a policy planner for five years for the Christchurch City Council.
- 2.4 I am a full member of the New Zealand Planning Institute ("**NZPI**") and the former Deputy Chair of the national NZPI Board, which I was on for 5 years.
- 2.5 I have been engaged by ECan to provide planning evidence relating to Proposed Plan Change 18 – Indigenous Biodiversity to the Mackenzie District Plan ("**PC 18**").
- 2.6 My experience with regard to indigenous biodiversity has been formed through working in various roles in planning. At ECan I led the drafting of a number of chapters of the Canterbury Regional Policy Statement 2013 ("**CRPS**"), and provided input into all the others, including the indigenous biodiversity chapter (Chapter 9 of the CRPS).
- 2.7 As a consultant, in 2020 I prepared early drafts of the Waimakariri District Plan Ecosystems and Indigenous Biodiversity Chapter before passing that chapter onto a Council staff member to progress.

3. CODE OF CONDUCT

- 3.1 Although this is a Council hearing, I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note. I have complied with the Practice Note when preparing my written statement of evidence, and will do so when I give oral evidence before the Hearings Panel.
- 3.2 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
- 3.3 Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

4. SCOPE

4.1 I have been asked to provide planning evidence in relation to ECan's submission on PC 18. My evidence is arranged as follows:

- (a) ECan's submission;
- (b) Objectives;
- (c) Policies;
- (d) Definitions;
- (e) Rules.

4.2 In forming my views I have drawn upon the following documents and evidence:

- (a) The notified PC 18 and s32 report;
- (b) ECan's submission on PC 18;
- (c) The section 42A Hearings Report by Liz White ("Section 42A Report");
- (d) The evidence of Mike Harding;
- (e) The CRPS.

5. ECAN'S SUBMISSION

5.1 ECan is generally in support of PC 18 as it considers it is a significant step towards better giving effect to the CRPS. However, ECan sought some changes to PC 18 to:

- (a) better give effect to the CRPS;
- (b) ensure the objectives of PC 18 are the most appropriate way to achieve the purpose of the RMA, and that the provisions are the most appropriate way to achieve the objectives;
- (c) improve the clarity of the policy framework;
- (d) improve the clarity and workability of the rules, by amending key definitions and making other amendments; and
- (e) make other minor changes of a technical nature.

- 5.2 ECan's submission contains comments on PC 18's policy framework, definitions and rules. Appendix A to ECan's submission contains detailed track changes consistent with its comments. I have provided comments on specific plan provisions in this evidence in order to address these stated outcomes and desired amendments.
- 5.3 I have not undertaken an assessment of the relevant planning framework (e.g. RMA, any relevant NPS and NES). Normally this is undertaken in the relevant s32. I note that in her report Ms White assesses the CRPS where relevant to the submissions being considered. I have adopted a similar approach in my assessment.

6. OVERALL COMMENTS

- 6.1 Having reviewed the proposed amended provisions in response to submissions as set out in the Section 42A Report, overall I consider that the revised proposed PC 18 has a clearer policy and rule framework, and better gives effect to the CRPS, consistent with ECan's submission. Overall, I support the recommended changes made. My specific comments on specific plan provisions are set out below.

7. OBJECTIVES

- 7.1 In its submission ECan noted the overlap between Objective 1 and 2 and sought the deletion of Objective 2. In her report Ms White recommended deleting Objective 1 and proposed a number of changes to Objective 2. In my opinion the amended Objective 2 recommended by Ms White covers the matters addressed across proposed Objective 1 and 2 and addresses the issues ECan raised. I support the amended Objective 2 as it avoids the duplication and clarifies that it is significant habitats of indigenous fauna that require protection and enhancement, consistent with the Act.
- 7.2 In its submission ECan also sought minor changes to Objective 3 to improve its interpretation (changing "/" into "and"; deleting "/or"). In her report Ms White proposes to delete Objective 3 as she considers it is drafted like a policy and that what is being sought is already captured in the reworded Objective 2. I agree with Ms White's assessment and recommendation to delete Objective 3 as set out in her report.

8. POLICIES

Policy 2

- 8.1 In its submission ECan sought significant amendments to Policy 2 to introduce a requirement for identification of other areas of significant indigenous vegetation and habitats through Farm Biodiversity Plans and the resource consent process.
- 8.2 In her report Ms White states that the matters covered by Policy 2 are captured in Policies 3 and 5 and proposes to delete Policy 2 and replace it with a policy setting out how effects on non-significant areas are to be managed.
- 8.3 I consider that ECan's request to identify other areas of significant indigenous vegetation and habitats is already captured in proposed amended Policy 1 which seeks to identify all sites of significant indigenous vegetation or habitat in accordance with the CRPS criteria. As such, provided Policy 1 is included as recommended, in my opinion this requested amendment to Policy 2 is no longer necessary.
- 8.4 Regarding the ECan requested reference to Farm Biodiversity Plans and the resource consent process as a tool for identification and protection, in my opinion this is adequately covered in the Section 42A recommendations in proposed amended and renumbered Policy 5 (which seeks consideration of a range of mechanisms for securing protection of significant indigenous vegetation and habits), amended and renumbered Policy 8 (which seeks to enable land use and development through Farm Biodiversity Plans) and rule 1.2.1 which provides for the use of Farm Biodiversity Plans.
- 8.5 I consider that the amended proposed Policy 2 which covers non-significant indigenous vegetation and habitats is a useful addition. It is in accordance with ECan's submission seeking clarity on how the policies distinguish between the management of indigenous vegetation and habitats that meet the threshold of significance, and wider biodiversity values, where the criteria for significance may not be met.

Policy 3

- 8.6 In its submission ECan sought minor amendments to Policy 3 to reference "significant" indigenous biodiversity values and include the word "only" to strengthen the requirement to achieve no net loss of significant indigenous

biodiversity values as part of rural development. In her report Ms White recommends these changes are made in her amended Policy 3. I support these changes as they provide clarity on the type of vegetation covered and its importance.

Policy 5

- 8.7 In its submission ECan sought amendments to Policy 5 to introduce a clear hierarchy of avoidance, then remedying, then mitigating, then offsetting. In her report Ms White proposes to split Policy 5 into two separate policies (with a third policy added). Re-numbered Policy 3 includes the hierarchy ECan requested.
- 8.8 I support the inclusion of this re-numbered Policy 3 as I consider it adds useful policy direction, setting out the approach to take to manage adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna (being to avoid, then remedy, then mitigate, then offset). I note that this approach/policy direction is also utilised in Policy 9.1.2.2.6 of the Christchurch District Plan.

Policy 8

- 8.9 In its submission ECan sought amendments to Policy 8 to remove reference to the “values associated with” significant indigenous vegetation and habitats. In her report Ms White supports this request, noting that RMA s6(c) seeks “the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna” rather than the values associated with these. I agree with her analysis.
- 8.10 I note that there are a number of other changes proposed by Ms White to Policy 8 in response to other submissions, for example the inclusion of the maintenance of other (non-significant) indigenous biodiversity (clause b) and opportunities for enhancement (clause c). I consider these changes are consistent with ECan’s submission and in my opinion help clarify the approach to managing significant and non-significant indigenous vegetation.

9. DEFINITIONS

Farming Enterprise

9.1 In its submission ECan sought to retitle the definition of “Farming Enterprise” to “Farming Operation” as the definition of Farming Enterprise is modelled on the definition in the Canterbury Land and Water Regional Plan. ECan stated that the Regional definition was developed as part of the Region’s approach to nutrient management and that having two similar definitions for different purposes may cause some confusion. ECan also sought to clarify that parcels of land referred to in the PC 18 definition are not necessarily contiguous.

9.2 ECan’s proposed revised wording is as follows:

“Farming Operation ~~Enterprise~~: means an aggregation of parcels of land (whether contiguous or non-contiguous) held in single or multiple ownership (whether or not held in common ownership) that constitutes a single operating unit for the purpose of farming management.”

9.3 In her report Ms White agrees with retitling Farming Enterprise as Farming Operation for the reasons provided by ECan. I agree with this change for the reasons provided in ECan’s submission. However, the revised definition does not include the change in relation to contiguous parcels. The rationale for omitting this request is not obvious in Ms White’s report.

9.4 The revised Farming Operation definition reads:

“Means an area of land, including an aggregation of parcels of land, held in single or multiple ownership (whether or not held in common ownership), that constitutes a single operating unit for the purpose of farming management.”

9.5 I have reviewed the amended definition, and consider that, while it may be implicit that a farming operation could include contiguous or non-contiguous parcels, the ECan addition to explicitly refer to contiguous or non-contiguous land parcels provides some additional clarity. In my opinion this amendment should be incorporated. I am not aware of any issues this inclusion would cause.

Indigenous Vegetation

9.6 ECan submitted to amend the definition of indigenous vegetation as follows:

“Indigenous Vegetation: means a plant community of species that are native to the district. It includes:
• areas of mat and cushion vegetation

- areas with a component of open ground
- areas with individual or low numbers of threatened or at risk native plant species contained within non-native plant communities
- areas with seasonal growth of indigenous vegetation.

~~which may include exotic vegetation. It but does not include plants within a domestic garden or that have been planted for the use of screening/shelter purposes e.g. as farm hedgerows or that have been deliberately planted for the purpose of harvest.”~~

- 9.7 A key component of the proposed definition was the removal of the exclusion for domestic gardens and screening/shelter purposes and harvesting as ECan considered these were better located in the rule than the definition. In her report Ms White agrees with ECan (and other submitters) that the exemption should sit within the rule as this is where the management of the vegetation should differ. I agree with Ms White’s conclusion for the reasons she provides.
- 9.8 ECan’s submission also sought amendments to the definition to restrict it to vegetation that is indigenous to the district. Ms White recommends amending the definition to “species native to the ecological district” based on the evidence of Mr Harding. I support this recommendation.
- 9.9 Another key component of the ECan submission was the listing of examples. I consider that these listed examples are unhelpful as there are communities of plants native to the district that do not meet these criteria, for example where there is no component of open ground, or where the areas have high numbers of threatened or at risk native species contained within non-native plant communities. I note that in her report Ms White makes a similar comment.
- 9.10 I support the amended definition proposed by Ms White for the reasons provided by Mr Harding (set out in paragraph 513 in Liz White’s report).

Improved Pasture

- 9.11 In its submission ECan stated that “the definition of improved pasture is critical to determining the extent of indigenous vegetation clearance that is permitted under rule 1.1.1.6 versus that which requires consent. The definition will determine the number of consents that will be triggered, and how much control the Council will have over future loss of indigenous vegetation.”

- 9.12 I understand that there is considerable difficulty in determining what constitutes improved pasture. Many areas have been subject to some degree of improvement, but the extent of this improvement and when it occurred varies across sites. Often some indigenous vegetation remains in improved pasture, or has regenerated. Mr Harding explores these issues in his evidence.
- 9.13 Improved pasture definitions are common in district plans as a way to manage indigenous vegetation clearance whilst providing for existing farming operations. While common, the definitions vary across district plans (for example the Christchurch District Plan and the Proposed Selwyn District Plan).
- 9.14 ECan's submission sought the following amendments to the improved pasture definition:

“means an area of pasture where:

- a) *Exotic pasture species have been deliberately introduced and dominate in cover and composition as at December 2017. Species composition and growth have been modified and enhanced for livestock grazing within the previous 15 years, by clearance, cultivation, or topdressing and oversowing, or direct drilling; and*
- b) ~~*Exotic pasture species have been deliberately introduced and dominate in cover and composition.*~~

~~*For the purposes of this definition the assessment of dominance shall disregard indigenous vegetation which is growing on land that has previously been modified and enhanced for livestock grazing in accordance with clause a) above and is less than 15 years old.*~~

- 9.15 In her report Ms White explains the issues with improved pasture definitions and their application. She recommends the following amended definition with reference to Mr Harding's evidence:

“Means an area where, as at May 2020, indigenous vegetation had been fully removed and the vegetation converted to exotic pasture or crops.”

- 9.16 In my opinion, certainty is the key outcome that is required through the definition given its use in a resource consent framework. In my opinion the proposed amended definition provides greater certainty than that proposed in the ECan version and PC 18 as notified. Both the version recommended by Ms White and the version in ECan's submission include timeframes as

reference points by which the improved pasture must be established (May 2020 and December 2017, respectively). However, the ECan amended version also requires an assessment of whether the introduced species “dominate in cover and composition” and a further assessment as to the age of the existing indigenous vegetation. These additional assessments add complexity and reduce certainty.

- 9.17 The date of May 2020 recommended in Ms White’s version of the definition is based on Mr Harding’s evidence that this date is appropriate as it is the date of satellite images upon which draft maps of converted and partially converted land are based. In my opinion this date seems sensible for the reasons provided in Mr Harding’s evidence.
- 9.18 Given its greater certainty, I favour the proposed amended definition as set out in the Section 42A Report over the ECan proposal, although I note that the Draft NPS for Indigenous Biodiversity contains a different definition of Improved Pasture so the matter may continue to evolve.

Vegetation Clearance

- 9.19 In its submission, ECan noted that the definition of “vegetation clearance” has been amended to include “irrigation” along with the other methods of vegetation clearance. While ECan supports this change, it noted that this change has an impact on the way Rule 12.1.1.a functions.
- 9.20 This rule permits (by way of exemption (ii) to the standard) vegetation clearance in riparian areas where the vegetation clearance “has been granted resource consent for a discretionary or non-complying activity” by the Regional Council.
- 9.21 As vegetation clearance is currently defined in the operative Mackenzie District Plan (i.e. not including irrigation), this exemption would apply only where regional consent has been issued for the burning of vegetation. Other vegetation clearance under the Canterbury Land and Water Regional Plan is a permitted or a restricted discretionary activity (and therefore would not fall within the exception in Rule 12.1.1.a (ii)).
- 9.22 Irrigation is commonly discretionary under the relevant Regional plans. ECan is concerned that, with the new definition for vegetation clearance in PC 18 including irrigation, if consent for the take and use of water for irrigation is granted by ECan, this water permit could be viewed as permitting vegetation clearance through exemption (ii) in rule 12.1.1.a.

9.23 I note that, in addition to widening the scope of the exemption, the “clearance” of riparian vegetation may not have been assessed by ECan as part of an application to take and use water for irrigation, and therefore there would not have been any assessment as to whether the clearance is appropriate.

9.24 To address this issue, ECan sought to amend rule 12.1 by:

- (a) Removing the exemption under 12.1.1.a (ii), and
- (b) Adding a note to the effect that both regional and district resource consents may be required for clearance of riparian vegetation; and
- (c) Adding a note to the effect that these resource consents can be processed together.

Alternatively, ECan sought to make other changes to PC 18 which ensure riparian areas are protected from vegetation clearance, but which avoid the need for both regional and district consents where possible.

9.25 In her report Ms White acknowledges ECan’s comments but states (at paragraph 528) “It is not clear to me what, if any changes CRC are seeking. The submitter may wish to clarify this.” In my opinion there is potential to incorrectly apply the exemption to irrigation consents which are a method of vegetation clearance. This confusion could be solved by amending 12.1.1a (ii) to exclude water permits enabling irrigation or clarifying that the exemption does not apply to a consented activity that simply results in vegetation clearance. In my opinion the former solution is more targeted to the issue raised by ECan and would read as follows:

*“This standard shall not apply to any vegetation clearance which has been granted resource consent for a discretionary or non-complying activity, **excluding a water permit enabling irrigation**, from the Canterbury Regional Council under the Resource Management Act 1991.”*

9.26 In my opinion, as this issue has arisen as a result of a change to the definition of vegetation clearance which is within scope of the PC 18, it is appropriate and within scope to make consequential changes to rule 12.1.1.a to address this matter.

10. RULES

Rule 1.1.1

- 10.1 In its submission ECan sought changes to Rule 1.1.1 to improve clarity, remove references to compliance with the Regional Pest Management Plan (“**RPMP**”) and include a reference to clearance carried out by or on behalf of a local authority which is necessary for erosion and flood control works.
- 10.2 Regarding clarity, ECan stated that the list of "conditions" that must be met to be a permitted activity contains two different types of condition. Conditions 1-6 provide alternative situations in which clearance is permitted activity – they can be read as having an “or” between the clauses, and are more properly described as "activities" rather than conditions. Conditions 7 and 8 are two absolute exclusions that apply to each of the activities, and should be read as having an “and” between them. I note that the proposed amended rule 1.1.1 and additional Rule 1.2.3 as recommended in the Section 42A Report include a number of clarity improvements that satisfy ECan’s concerns and I support these changes.
- 10.3 Regarding compliance with the RPMP, in its submission ECan stated that the exemption for clearance that is essential for compliance with the Regional Pest Management Strategy was appropriate in the past when the main focus of pest management was on maintaining productivity from the land. However, the revised RPMP seeks to mitigate effects from pests on both production values and biodiversity values and therefore ECan considers that it would be inconsistent to enable the removal of indigenous vegetation based solely on compliance with the RPMP and that this exemption should be removed. I note that Ms White has proposed removing this clause as requested, which I support for the reasons given in ECan’s submission.
- 10.4 Regarding the requested exemption for ECan River control purposes, in its submission ECan noted it has statutory responsibilities for erosion and flood control within a number of riverbeds and that a permitted activity status allowing for some, non-targeted, consequential clearance of indigenous vegetation whilst undertaking this function is important for this work to be carried out efficiently. Under PC 18 as notified, this activity would be a non-complying activity.

- 10.5 I note that Method 8 to Policy 9.3.1 in the CRPS states that local authorities should:

“Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna as they undertake their own activities and operations. This should apply unless the adverse effects on the areas or habitats cannot be avoided, because they are necessary for the maintenance of erosion or flood protection structures or for the prevention of damage to life or property by floods.”

- 10.6 A similar statement is made under Policy 9.3.2 (Method 5) and Policy 9.3.3 (Method 8). As such, the CRPS clearly anticipates that some significant indigenous vegetation clearance may be required where this is deemed necessary. At issue is how to determine the necessity of the works. This could either be done through ECan staff determining this under the CRPS or some other internal policy and utilising the exemption as proposed, or via a resource consent with technical evidence provided.

- 10.7 In her report, Ms White references the evidence of Mr Harding, noting that flood protection works have contributed to the degradation of ecological values and states that if erosion and flood control works were permitted there is no way to scrutinise the necessity of the works, nor to ensure that significant areas are protected as much as possible. Ms White concludes by stating that a non-complying activity status would not align with the method in the CRPS and proposes a new rule 1.2.4 with restricted discretionary activity status, with the necessity of the works being one of the matters for discretion.

- 10.8 During the development of the CRPS 2013 this matter was expressly considered by the drafting team. We considered issues such as the need for consistency of application and transparency. I am comfortable with Ms White’s recommendation that a restricted discretionary activity status is appropriate in the Mackenzie District for the reasons she provides. I am also comfortable with the matters of discretion proposed by Ms White.

Rule 1.2.1

- 10.9 In its submission ECan sought the following changes to Rule 1.2.1 to reference the retitled ‘farming operation’ definition and make it explicit that this rule is specific to indigenous vegetation clearance for which a Farm

Biodiversity Plan has been prepared and submitted as part of the consent application:

“Unless permitted under Rule 19.1 the clearance of indigenous vegetation ~~clearance~~ on a farming operation is a restricted discretionary activity provided the following conditions are met:

1. ~~The farm enterprise has a~~ A Farm Biodiversity Plan (see Definitions) is prepared for the farming operation and is submitted with the application for resource consent.

10.10 In my opinion these changes provide greater clarity for the application of the rule and I note that the proposed amended Rule 1.2.1 set out in the Section 42A Report includes the requested ECan amendments. I also support the addition of the consideration of indigenous biodiversity outside of significant areas, including their connectivity (matter of discretion clause i(e)) and the ability to consider the contribution indigenous vegetation makes to Outstanding Natural Features or Landscapes and the other listed special areas (matter of discretion clause iii). These changes respond to ECan submission points seeking the ability to consider linkages and to recognise that indigenous vegetation is a significant contributor to the outstanding landscape values in the Mackenzie Basin.

10.11 It is not completely clear to me what happens if the Farm Biodiversity Plan standard is not met. Non-compliance with the standards under Rule 1.2.2 default to non-complying under Rule 1.3, however Rule 1.3 does not include reference to a Farm Biodiversity Plan. I assume clearance proposed without a Plan (or clearance with a Plan that does not accord with Appendix Y, or is not for the whole of a farming operation) would by default be assessed against 1.2.2. If this is the case this should be made clearer in the plan, for example by referring to the Farm Biodiversity Plan in the activity for Rule 1.2.1, rather than as a standard. It would be worded as follows:

“unless permitted under rule 1.1, the clearance of indigenous vegetation where an FBP is prepared is a restricted discretionary activity...”

Rule 1.2.2

10.12 ECan sought a number of changes to Rule 1.2.2 as follows:

Unless provided for in Rule 19.2.1, any indigenous vegetation clearance up to 5000m² ~~within any site~~ per 100ha in any 5-year continuous period is a restricted discretionary activity provided the following conditions are met:

...

The Council will restrict its discretion to the following matters:

1. The actual or potential effects on impacts on biodiversity or ecological values expected to occur as a result of the proposal, particularly. This includes the impact on

a) significant indigenous vegetation values including the values significant to Ngai Tahu

b) linkages between areas of indigenous vegetation and ecosystems

c) values of significance to Ngai Tahu

- 10.13 Regarding the requested change to include a per 100ha area instead of a site reference, ECan considers that rural area landholdings are typically made up of a complex of different land parcels ranging from smaller parcels, through to extensive runs and that the site of the land use and the lot or parcel are often not the same. ECan also stated that the use of a threshold of permitted indigenous vegetation clearance per site does not relate to the effects associated with the clearance, as the effects will ultimately depend on the size of each "site" (which is generally based on the size of a Certificate of Title). ECan considers that it is more certain to set a threshold for clearance based on a specific area, rather than a "site" and that this will provide clarity about how the rule functions, and prevent indigenous vegetation clearance thresholds being applied to multiple lots within one property or farming management unit.
- 10.14 In her report Ms White considers the application of the rule with reference to the definition of a 'site', and considers the ECan request would result in any vegetation clearance on sites smaller than 100ha defaulting to a non-complying activity status. She notes that ultimately the rule is restricted discretionary and allows for the clearance to be considered on a case-by-case basis.
- 10.15 Having considered the issues raised by ECan and the response by Ms White, I consider that applying the rule on a per site basis is better than applying it on a per 100ha basis as, being linked to a site, provides more certainty to plan users.
- 10.16 However, I note that the District Plan provides for subdivision outside of the Mackenzie Basin Subzone as a controlled activity where it complies with all Primary and Secondary Subdivision Standards (Rule 3a). I am not an expert on subdivision in the Mackenzie District, but from my assessment it

appears that there are no minimum site sizes in the Rural Zone outside of the Mackenzie Basin Subzone. Potentially a rural block could be subdivided down to 5000m² lots as a controlled activity, and then each lot could be fully cleared (assuming consent was granted under Rule 1.2.2) as a restricted discretionary activity (as opposed to a non-complying activity under 1.3.1). This is in stark contrast to the Mackenzie Basin Subzone outside of Farm Base Areas where the subdivision minimum is 200ha.

- 10.17 I acknowledge that proceeding through this process to facilitate indigenous vegetation clearance is a hurdle and may not actually occur. However, the pathway is provided under the current subdivision provisions and the wording of Rule 1.2.2. Should the Hearing Panel consider this an issue, adding an assessment matter to Rule 1.2.2 that expressly enables the consideration of actual or potential indigenous vegetation clearance on adjacent sites under the same ownership would respond to that loophole.
- 10.18 Regarding the changes requested to the matters of discretion, ECan's changes were to reference significant indigenous vegetation (instead of significant values) and to enable consideration of linkages between areas of indigenous vegetation and ecosystems. In her report Ms White notes that the clause is inclusive and that therefore the additional matter concerning linkages does not need to be explicitly stated. She also notes that the criteria for determining significant indigenous vegetation includes consideration of ecological linkages or networks, thus when a linkage is significant it is already covered by the current wording as a matter of discretion.
- 10.19 I note that the rule covers any indigenous vegetation clearance, not just significant vegetation clearance. As such, the significance criteria may not apply to all vegetation being cleared and Ms White's rationale for not including ECan's suggested additions therefore may not always apply. However, I note the new proposed clause v recommended by Ms White which applies outside of significant areas and expressly includes consideration of connectivity. For completeness clause v reads as follows:

“Outside significant areas, the methods proposed to maintain or enhance indigenous biodiversity, including effects on the wider ecosystem from the proposed clearance and how this may impact connectivity, function, diversity and integrity.”

- 10.20 Given the above additional proposed matter of discretion I consider that the additional reference to linkages sought through the ECan submission is no longer necessary.
- 10.21 With regard to referencing significant indigenous vegetation (instead of significant values), I note that the assessment matter stem refers to ‘values’, and that amending this to ‘vegetation’ causes a misalignment over what the matter of discretion is assessing. In my opinion it is more accurate to retain the reference to values. I note that assessing effects on indigenous biodiversity values is consistent with CRPS Policy 9.3.1(3).
- 10.22 As with Rule 1.2.1, I also support the recommended addition of the consideration of indigenous biodiversity outside of significant areas (matter of discretion clause v) and the ability to consider the contribution indigenous vegetation makes to Outstanding Natural Features or Landscapes and the other listed special areas (matter of discretion clause x).

Rule 1.3.1

- 10.23 Like Rule 1.2.2, ECan sought the inclusion of “per 100 ha” in Rule 1.3.1. The assessment of this addition in my evidence is covered in response to Rule 1.2.2 above.

Rule 2.2.1(b)

- 10.24 ECan sought similar changes to the matter of discretion (b) in Rule 2.2.1 as were sought to the matters of discretion in Rule 1.2.2 (as set out in paragraph 10.12 above). Principally these were to reference significant indigenous vegetation (as opposed to values) and to enable consideration of linkages between areas of indigenous vegetation and ecosystems.
- 10.25 Like Rule 1.2.2, Rule 2.2.1 refers to any indigenous vegetation clearance. Unlike the matters for discretion for Rule 1.2.2, there is no corresponding Clause v in Rule 2.2.1 which directly refers to connectivity. I therefore consider there is value in including a similar matter of discretion in Rule 2.2.1 as has been recommended for Rule 1.2.2 clause v. This would address ECan’s concerns.

Rule 12.1

- 10.26 In its submission ECan sought to amend Rule 12.1 by:

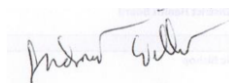
“ Removing the exemption under 12.1.1.a (ii), and

- *Adding a note to the effect that both regional and district resource consents may be required for clearance of riparian vegetation, and*
- *Adding at note to the effect that these resource consents can be processed together. Or*
- *Making other changes which ensure riparian areas are protected from vegetation clearance, but which avoid the need for both regional and district consents where possible.”*

- 10.27 As discussed above in relation to the definition of vegetation clearance, ECan’s proposed amendments to Rule 12.1 are consequential to the changes that PC 18 seeks to make to the definition of vegetation clearance (to include irrigation), which then impacts how Rule 12.1.1.a functions.
- 10.28 In her report Ms White considers these changes to Rule 12.1 to be beyond the scope of PC 18 as these changes apply to non-indigenous vegetation clearance and PC 18 does not propose any changes to these provisions. Her preference is for these matters to be resolved through the wider District Plan review.
- 10.29 It is easy to see why many submitters (including ECan) referred to the non-changed parts of Section 12 Vegetation Clearance. The changes proposed by Ms White to Section 12, e.g. to retitle it “Non-Indigenous Vegetation Clearance” and insert a note specifying that it does not cover clearance of indigenous vegetation makes it clear that this section is indeed largely out of scope of PC 18. I consider however that the proposed change to rule 12.1.1.a (ii) set out earlier in my evidence in paragraphs 9.19 to 9.26 is within scope and resolves ECan’s concerns with the exemption application.

Rule 12.2

- 10.30 ECan’s final submission point was to reinstate Rule 12.2 Discretionary Activities – Vegetation Clearance which appears to have been deleted by mistake. This request has been accepted by Ms White in her report as a consequential, in scope amendment. I support this reinstatement to ensure the workability of this set of amended provisions.



Andrew Willis
12th February 2021