

Mackenzie District Plan Change 18 Hearing – Fairlie - Tuesday 9 March 2021

EDS speaking notes

Importance of Mackenzie Basin

- Nationally and internationally important. Not replicated anywhere else in the world – once it is lost it is lost forever.
- This demands a stringent and robust framework for protection.

Councils obligations under the RMA

- Dual objectives of maintain¹ and protect² apply.
- Protection is a stronger obligation. Requires Council to keep significant indigenous vegetation safe from harm or damage.
- These obligations are reflected in the Canterbury RPS, which must be given effect to.

Indigenous vegetation in the Mackenzie Basin

- Definition of vegetation clearance
 - o To ensure maintenance of indigenous vegetation, inclusive definition is required.
 - o 30% not appropriate – degraded ecosystem and significant indigenous vegetation often exists in areas below this threshold. Does not mean it is not significant nor that these areas are not important to maintain biodiversity; these areas are essential. NPS-IB definition, for same reason.
 - o Threshold creates ambiguity – and is unworkable in practice.
 - Refer PC17 declarations
- Mackenzie Basin highly significant
 - o All remaining areas of connectivity are significant.³ This is supported by the Courts decision in PC13.
 - o Full extent of what is significant not identified in PC18, and therefore not subject to same policy framework – this fails to give effect to s6(c).
- Mapping of land provides certainty and is supported. If there are issues as to fairness, recommend that Council do this by way of a variation.

Protection from further loss

- Definition of vegetation clearance
 - o Needs to be broad and incorporate all activities that can result in clearance or modification of indigenous vegetation.
 - o Further intensification is not compatible with the protection of significant indigenous vegetation.
 - o EDS's proposed definition recognises that a range of activities will have adverse effects on indigenous vegetation which need to be managed in accordance with Council's obligations. The effects of irrigation and intensive grazing (or mobstocking) have been recognised as contributing to vegetation loss.
- Permitted activity rules

¹ S31(b)(iii) RMA

² S6(c) RMA

³ Evidence of Dr Walker at [15] - [19]

- Must be confident that permitted activity rules will manage adverse effects of activity. Require certainty and must be tightly confined. Especially in a complex, significant and vulnerable environment such as Mackenzie Basin.
- **Improved pasture** – only supported if mapped. Return to contestable and ambiguous definition risks further loss. Not appropriate for permitted activity.
 - Suggest renaming this “fully agriculturally converted land” to prevent risk of other definitions of improved pasture running interference.
- Specific exclusion of locations listed in **Rule 1.3.2** should refer to all areas of significance, not just SONS. All areas that meet significance criteria must be protected under s6(c).
- Farm biodiversity plans
 - Not appropriate in Mackenzie Basin. Experimental, not supported by robust assessment of effects of indigenous biodiversity. Should only occur as part of a resource consent process.
 - Current framework provides a loophole to continue to clear and degrade indigenous vegetation.

No net loss and use of offsetting

- No net loss is different to protection. Biodiversity offsetting must achieve no net loss. This envisages degradation of one area on the basis of gains in another.
- No net loss is not appropriate for significant indigenous vegetation – significant indigenous vegetation requires protection.
- Limits to offsetting are well established. Mackenzie Basin is an area where these limits are appropriate (vulnerable, significant and irreplaceable).
- Support for limits to offsetting can also be found in the Canterbury RPS (explanation to Policy 9.3.6). This is addressed further in legal submissions for Forest & Bird.⁴

Waitaki Power Scheme

- Bespoke approach supported but consideration of adverse effects on significant indigenous vegetation should be provided for. Current framework provides for clearance of SONS that exist in easement areas to be cleared as a permitted activity, without consideration of the effect on these values.
- EDS not suggesting that consent cannot be granted in these areas, all that is sought is that Council are given the ability to assess the effects of the activity on the significant indigenous vegetation and discretion to require avoidance of those effects where practicable.⁵
- This is also consistent with higher order direction in the NPSREG and CRPS.⁶

⁴ At [39] – [42]

⁵ Avoid where practicable does not simply mean avoid – it takes into account contextual factors such as the cost of avoiding adverse effects, the biodiversity values present and the value of the proposed activity (Royal Forest and Bird Society of New Zealand v Whakatane District Council [2017] NZEnvC 051 at [48] – [53])

⁶ For example Policy 16.1.4 which discusses the practical constraints associated with the development, operation, maintenance and upgrade of new and existing renewable energy activities discusses how to manage adverse effects and states that if adverse effects cannot be practicable avoided then they should be remedied or mitigated.