

**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**ENV-2021-CHC-**

**I TE KŌTI O AOTEAROA  
ŌTAUTAHI ROHE**

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

**AND**

**IN THE MATTER** of an appeal under clause 14(1) of the First Schedule  
of the Act in relation to the Proposed Marlborough  
Environment Plan

**BETWEEN** **ENVIRONMENTAL DEFENCE SOCIETY  
INCORPORATED**

**Appellant**

**AND**

**MACKENZIE DISTRICT COUNCIL**

**Respondent**

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**NOTICE OF APPEAL BY ENVIRONMENTAL DEFENCE SOCIETY  
INCORPORATED**

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Environmental Defence Society Inc  
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**TO:** The Registrar  
Environment Court  
CHRISTCHURCH

## **INTRODUCTION**

1. The Environmental Defence Society Incorporated (**Appellant**) appeals against part of the decision of Mackenzie District Council (**Respondent**) on proposed Plan Change 18 to the Mackenzie District Plan (**PC18**).
2. The Appellant is a not-for-profit environmental advocacy organisation, comprised of resource management professionals who are committed to improving environmental outcomes within New Zealand.
3. The Appellant made a submission and further submission on PC18.
4. The Appellant is not a trade competitor for the purposes of s308D of the Resource Management Act 1991 (**RMA**).
5. The Appellant received notice of the decision on 24 June 2021.
6. The decision was made by the Respondent.

## **PARTS OF THE DECISION BEING APPEALED**

7. The parts of the decision being appealed are:
  - a. Section 3 – Definitions
  - b. Section 19 – Objective
  - c. Section 19 – Policies
  - d. Section 19 – Rules

## REASONS

### General reasons

8. The general reasons for the appeal are that parts of PC18:
  - a. Do not promote the sustainable management of natural and physical resources under section 5 RMA.
  - b. Do not adequately recognise and provide for matters of national importance under section 6 RMA, in particular sections 6(b) and (c).
  - c. Do not have adequate regard to the matters in section 7 RMA, in particular sections 7 (d), (f) and (f).
  - d. Represent a failure of the Respondent to fulfil its functions under section 31(1)(b)(iii) RMA.
  - e. Do not have adequate regard to the Canterbury Regional Policy Statement (RPS) as required under section 74(2)(a)(i) RMA.

### Specific reasons

9. Without detracting from the generality of the above, the specific reasons for the appeal, and the relief sought, are set out in Annexure A.
10. In addition to the relief specified in Annexure A, the Appellant seeks any further or other relief necessary to address the reasons for the appeal.

## ANNEXURES

11. The following documents are **attached** to this notice:
  - a. Copy of Appellant's appeal (**Annexure A**)
  - b. Copy of Appellant's submission (**Annexure B**)
  - c. Copy of Appellant's further submission (**Annexure C**)

- d. Copy of the Appellant's legal submission to the Hearings Panel  
(**Annexure D**)
- e. Copy of the Respondent's decision (**Annexure E**)

**DATED 5 August 2021**



**Cordelia Woodhouse**

Signed for and on behalf of the  
**ENVIRONMENTAL DEFENCE  
SOCIETY INCORPORATED** by its  
duly authorised agent

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## Annexure A

Part of decision	Reasons for appeal	Relief
<b>Gaps</b>		
Mapping of fully converted and unconverted land	<p>Mapping of land is clear and simple for plan users, regulators and the public, and allows rules targeted for each area.</p> <p>The mapping of fully converted land (either fully agriculturally converted land, or other fully converted land eg town centres) and unconverted land will remove the ambiguity and contentious nature of some of the provisions of PC18.</p> <p>Fully converted land should be defined as land where indigenous vegetation had been fully removed, and includes agriculturally converted land.</p>	Include maps in PC18 for fully converted land, including a subset of fully agriculturally converted land, and unconverted land.
<b>Definitions</b>		
Improved pasture	<p>The definition of improved pasture is broad and ambiguous. It is likely to include nearly all land in the Mackenzie Basin that is currently used for farming, as well as any area that has, at any point in time, been oversown, and that is still used for livestock grazing</p> <p>The definition is met by most, if not all, areas of significant indigenous vegetation and significant habitats of indigenous fauna in the Mackenzie Basin, as well as by other indigenous vegetation in the district.</p>	Delete proposed definition. Replace with land classification category of “fully agriculturally converted land”, which is land where indigenous vegetation had been fully removed and the vegetation converted to exotic pasture or crops.
Significant indigenous vegetation and significant	EDS supports subclauses (a) and (c) of the	Amend subclauses (b) and (c) as set out below:

habitats of indigenous fauna	<p>definition and seeks they be retained. Subclause (c) however is problematic.</p> <p>EDS supports recognition of the glacial derived or alluvial (depositional) outwash and moraine gravel ecosystems as being significant. However, due to the issues with the improved pasture, as described above, it is likely that all indigenous vegetation on depositional landforms will meet the definition of improved pasture.</p> <p>EDS considers that (c) is also subject to multiple interpretations, making its application ambiguous. If interpreted correctly, coupled with the definition of improved pasture, the subclause adds little, if anything to the assessment of significant areas.</p> <p>This issues with (c) could be resolved if reference to “improved pasture” is replaced with “fully converted land” and accompanied by maps, as set out above.</p> <p>EDS is also concerned about the linking of subclauses (b) and (c) by the word “and”. Given the concerns raised above, an interpretation could result in areas listed in Appendix I as a Site of Significance not being treated as significant indigenous vegetation or significant habitat of indigenous fauna if they are within an area of improved pasture as set out in (c).</p>	<p>b) are listed in Appendix I as a Site of Natural Significance; <del>and or</del></p> <p>c) includes any areas that <u>are not fully converted land</u> <del>do not comprise improved pasture</del> within the glacial derived or alluvial (depositional) outwash and moraine gravel ecosystems of the Mackenzie Basin as shown on Figure 1.</p>
Vegetation clearance	An exclusion for areas of improved pasture in the vegetation clearance rules is inappropriate.	Amend definition as set out below:

	<p>Excluding “oversowing, topdressing or overplanting on land that is not improved pasture” from the definition of vegetation clearance may result in wide-spread loss, not only of significant indigenous vegetation and habitats of indigenous fauna but also of other indigenous vegetation important for the maintenance of indigenous biodiversity. As most indigenous biodiversity in the Mackenzie District is likely to meet the definition for improved pasture, oversowing, topdressing and overplanting in these areas will not be considered vegetation clearance and will therefore sit outside the vegetation clearance provisions in chapter 19.</p> <p>The definition of vegetation clearance should also be wide enough to capture effects on indigenous vegetation that may arise from the future land use change.</p>	<p><b>Vegetation Clearance:</b> means the felling, clearing or modification of trees or any vegetation, <u>including but not limited to,</u> by cutting, crushing, cultivation, spraying, burning, irrigation, artificial drainage, and mob stocking. <del>It includes oversowing, topdressing or overplanting on land that is not improved pasture.</del> Clearance of vegetation shall have the same meaning.</p>
<p><b>Section 19 – Ecosystems and Indigenous Biodiversity</b></p>		
<p><b>Objectives and Policies</b></p>		
<p>Objective</p>	<p>Subclause (c) exempts the Waitaki Power Scheme and the National Grid from requirements to protect significant indigenous biodiversity and maintain and enhance other indigenous biodiversity.</p> <p>While a bespoke approach for the Waitaki Power Scheme and National Grid is accepted in principle, this must still be subject to the dual objectives of maintaining and protecting indigenous biodiversity set out in (a) and (b).</p>	<p>Delete subclause (c) in its entirety.</p>

<p>Policy 4</p>	<p>Offsetting criteria are incomplete. Amendments are required to ensure offsetting criteria are in line with best practice.</p> <p>Offsetting should apply to all residual adverse effects, not just those that are significant.</p>	<p>Amend policy to be consistent with best practice offsetting guidance (e.g. Maseyk et al, Biodiversity Offsetting under the Resource Management Act, September 2018).</p> <p>Amend to allow offsetting of “<del>significant</del> residual adverse effects”.</p> <p>Consequential amendments to rules that refer to offsetting (eg 1.2.2(2)(5)) and definition of biodiversity offset to amend reference to “significant residual adverse effects”.</p>
<p>Policy 5</p>	<p>A bespoke approach to the management of the Waitaki Power Scheme, National Grid and Opuha Scheme is supported in principle but consideration of adverse effects on significant indigenous vegetation and significant habitat of indigenous fauna must be provided for.</p> <p>As a result of the inclusion of “despite Policy 2” in Policy 5, the policy no longer includes a management framework for the protection of significant indigenous vegetation or significant habitat of indigenous fauna. Instead, vegetation clearance in these areas is “enabled”. This sets up a weaker framework for the protection of significant indigenous vegetation or significant habitat of indigenous fauna than for the maintenance of other indigenous biodiversity provided for in Policy 3. This does not give effect to section 6(c) RMA.</p> <p>Policy 5 also introduces the concept of biodiversity compensation. Biodiversity</p>	<p>Amend Policy to set out effects management hierarchy for vegetation clearance in areas covered by Policy 5. This should require first that adverse effects on significant indigenous vegetation or significant habitat or indigenous fauna are first avoided where practicable. If avoidance is not practicable, steps should be undertaken to remedy or mitigate adverse effects before offsetting can be considered.</p> <p>Consequential amendments to Policy 2 may also be required.</p>



	compensation is a separate concept to biodiversity offsetting and unless supported by a definition and separate policy it is not appropriate to include in Policy 5.	
<b>Rules</b>		
Rule 1.1.1(1)(a)	<p>The activities listed within subclause (a) are wide-ranging (e.g. existing stock tracks) and could lead to wide-spread clearance of significant indigenous vegetation or significant habitat of indigenous fauna.</p> <p>As the permitted activity rule is not subject to the exclusions in Rule 1.3.2 a maximum cap for clearance is required.</p>	Insert maximum clearance cap on Rule 1.1.1(1)(a) of 100m <sup>2</sup>
Rule 1.1.1(1)(b)	<p>Subclause (b) enables vegetation clearance within areas of significant indigenous vegetation or significant habitat of indigenous fauna as a permitted activity for the purpose of operation, maintenance, repair or upgrade of network utilities.</p> <p>This could enable substantial clearance of significant areas, particularly as the permitted activity rule covers upgrading and is not subject to a maximum cap.</p> <p>It is more appropriate that vegetation clearance for these activities, within areas of significant indigenous vegetation or significant habitat of indigenous fauna, is assessed as a restricted discretionary activity under Rule 2.2.</p>	<p>Delete subclause (b).</p> <p>Consequential amendment required to delete reference to Rule 1.1.1 from Rule 2.1.1(2).</p>

<p>Rule 1.1.1(1)(7)</p>	<p>Permitting clearance of indigenous vegetation that is not within a location specified in Rule 1.3.2 is in clear conflict with Objective (b) “outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna, ensure the maintenance and enhancement of indigenous biodiversity”; and is also in conflict with Policy 3, which requires avoidance, then remedying, then mitigating, then offsetting for these areas.</p> <p>Also, the clause introduces further confusion given the concerns set out above about the overlap between the definition of improved pasture and most areas of significant indigenous vegetation and significant habitats of indigenous fauna and elsewhere.</p>	<p>Delete Rule 1.1.1(7).</p>
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