BEFORE COMMISSIONERS APPOINTED BY
THE MACKENZIE DISTRICT COUNCIL

Under the Resource Management Act 1991

In the matter of proposed Plan Change 18

LEGAL SUBMISSIONS ON BEHALF OF THE WOLDS STATION LIMITED AND MT GERALD STATION LIMITED

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MAY IT PLEASE THE COMMISSIONERS:

Introduction

1 These submissions on behalf of the Wolds Station Limited (**the Wolds**) and Mt Gerald Station Limited (**Mt Gerald**), in accordance with the direction of the Commissioners to pre-circulate legal submissions.

2 The Wolds and Mt Gerald filed the following evidence, which is referred to throughout these submissions:

2.1 Expert ecological evidence from Dr Peter Espie;

2.2 Evidence of John Murray (the Wolds); and

2.3 Evidence of Michael Burtscher (Mt Gerald).

3 These submissions cover the following matters:

3.1 Critical evidential conclusions;

3.2 Existing use rights and permitted activities;

3.3 draft National Policy Statement for Indigenous Biodiversity;

3.4 Canterbury Regional Policy Statement;

3.5 Section 32 and economic considerations; and

3.6 Particular provisions of the Plan.

EXECUTIVE SUMMARY

4 Firstly, it is vital that the Commissioners understand the way in which the definitions shape the rules. This has become apparent between the notified version of proposed Plan Change 18 (**PC18**) and the s42A officers report which seeks to introduce new 'clearance' activities (for example, oversowing and topdressing land which has historically been subject to that regime) and a revised definition of 'improved pasture'. The definitions now proposed in the s42A officers report promote a fundamental shift in approach from PC18 as notified, which if approved will have significant flow on effects that have potential to challenge the viability of farming within the Mackenzie Basin.

5 It is submitted that the proposed definitions and the implications of the drafting must be tested and well understood before the objectives, policies and rules can be considered. If a top down approach is not adopted there is a risk that PC18 will fail to achieve the fundamental purpose of sustainable management.

6 Secondly, the key point of tension between the ecology experts relates to the likelihood of success that the PC18 provisions will provide for the environmental outcomes sought. This is a critical consideration when determining whether the requirements of section 32 of the Resource Management Act 1991 (**RMA**) have been met. It is our submission that they have not, and this is supported by the evidence of Mr Murray and Mr Burtscher.

7 Finally, you must consider how the existing use rights (**EUR**) provisions of the RMA and the existing Mackenzie District Plan Pastoral Intensification and Agricultural Conversion provisions interact with proposed PC18. These submissions explore the appropriateness of establishing rules which require landowners to rely on EUR (which come with their own restrictions, costs and processes to establish) to undertake traditional farming methods when a permitted activity rule is available (and indeed was contemplated in PC18 as notified).

SUBMISSIONS

Critical evidential conclusions on which these submissions rely

8 Submissions and evidence for other parties, including the Council, appear to be concentrating on the decrease of indigenous biodiversity, and the threatened species at risk. The Wolds and Mt Gerald agree that these are issues occurring within the District. However, the critical difference between the evidence prepared for Mt Gerald and the Wolds, is the reason for that decline. The evidence of Dr Espie, who has extensive experience in the District and whose evidence is ground-truthed in a way that others isn't, is that the cause of this decline is plant competition rather than farming activities.

9 The evidence for other parties and the Council seems to suggest that if PC18 introduces a "stop farming" approach (by including oversowing and topdressing within the definition of vegetation clearance and restricting the ability for maintenance activities to occur by limiting the application of the 'improved pasture' definition) then biodiversity will improve. It is critical that the Commissioners understand that the evidence before you is that this will not

work. The detailed ecological evidence of Dr Espie is clear that stopping oversowing and topdressing, and reducing grazing due to decreased feed, will not have a positive effect on biodiversity. This is outlined in detail in his evidence, and is based on four decades of work documenting the ecological situation in the Mackenzie Basin.

10 The Council position and the approach of PC18 is reliant on the assumptions of Mr Harding, which Dr Espie has rebutted. It follows that if the Council assumptions informing PC18 are incorrect, then the s32 assessment and the recommendations of the s42A Officer are also incorrect. These legal submissions set out an appropriate approach for PC18, if the evidence of Dr Espie is accepted.

Existing use rights and permitted activities

11 The RMA provides for the continuation of existing uses, even where they are contrary to a new rule in a Plan, in certain situations[1]. Essentially, section 10 authorises lawfully established activities to continue where the effects of the activity retain the same character, intensity and scale, even if the rules change and that same activity would now require a resource consent if it were to start new.

12 EUR are an important consideration for the Panel in the Mackenzie Basin context. The s42A Officer suggests changes to the definitions and rules package which would mean oversowing and topdressing would be considered 'clearance' activities and would require resource consent to be obtained where activities are proposed on land that fails to meet the definition of improved pasture. This is despite the fact that this land has been subject to a programme of pasture renewal spanning decades.

13 The Court in *Nicholls v Papakura DC*[2] held that section 10 protects only those uses which existed lawfully at the time a new rule became operative. It cannot be used to protect "expectations which have not reached fulfilment". In the Mackenzie Basin context this means that existing use rights could not be relied upon where development was planned but has not yet occurred. This is consistent with the changes Mt Gerald and the Wolds propose to the definitions which differentiate between **maintenance clearance activities** and **new clearance activities.**

[1] Section 10 RMA: Certain existing uses in relation to land protected.
[2] [1998] NZRMA 233

14 The changes sought to the definitions by the Wolds and Mt Gerald are necessary to acknowledge the RMA's provision for EUR and to provide a pathway for farming to continue in the Mackenzie Basin. Further, the relief sought by the Wolds and Mt Gerald aligns with the draft National Policy Statement Indigenous Biodiversity (**NPS-IB**) which specifically provides for existing activities[3]. A rule framework that provides for existing maintenance activities to be carried out as a permitted activity is a more efficient proposal than individual property owners bearing the burden of establishing EUR, as well carrying as the financial cost that is accompanied by an application for resource consent to Council – in this case which would include the costs of obtaining expert ecological assistance to prepare an extensive Farm Biodiversity Plan (**FBP**) . The changes sought by The Wolds and Mt Gerald do not propose to authorise change to any existing land use (and specifically do not seek to allow intensification of any land use), but instead provide for existing activities to continue in reliance on EUR as prescribed in section 10 of the RMA.

Draft National Policy Statement for Indigenous Biodiversity

15 As the Commissioners will be aware, the NPS-IB was released for public comment in November 2019. More than 7000 individual submissions were received, and the date for delivery of the NPS-IB was extended from April 2021 to July 2021.

16 Due to its current draft status, the hearing panel is not required to give any weight to the NPS-IB. This was confirmed by the Environment Court in *Mainpower NZ Limited v Hurunui District Council*[4] where it determined it would not put any weight on draft NPS documents which "may yet change".

17 On the basis of the above timelines, it is possible that the NPS-IB will be delivered during the period that the Commissioners are deliberating on outcomes for PC18. In that instance, if the NPS-IB gave directions that meant PC18 had to give effect to it, we would expect that all submitters would be provided the opportunity to provide comment on the NPS-IB and how it interrelates with PC18 provisions.

RMA section 6(c) – "significant"

[3] Proposed National Policy Statement for Indigenous Biodiversity Part 3, 3.12, November 2019
[4] [2011] NZEnvC 384 at [27]

18 Section 6(c) of the RMA requires that decision makers, recognise and provide for "the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna".

19 It is submitted that the proposal from the s42A Officer, and other parties, seeks relief which goes beyond this requirement, as it seeks to protect all indigenous vegetation and habitat regardless of significance. This is of particular concern when considered alongside the wholescale changes the s42A Officers report now proposes to several critical definitions in PC18 – 'vegetation clearance', 'indigenous biodiversity' and 'improved pasture'.

20 Substantial weight appears to have been given to the finding of Judge Jackson that "much of the ONL (i.e. the Mackenzie Basin) "meets the area of significant vegetation criterion" and that "consequently the ONL is a significant natural area under policy 9.3.1 of the CRPS"[5]. It is important to acknowledge that the evidence of Dr Espie was not before the Environment Court during the PC13 litigation (PC13 was a landscape hearing, Mt Gerald and The Wolds had not anticipated that ecological evidence would be considered) and the evidence that was presented was a compilation of dated desktop assessments which all parties acknowledged required extensive ground truthing.

21 In contrast, Dr Espie considers the Sites of Natural Significance (**SONS**) that have been identified as part of the Protected Natural Area Survey and other areas. Around 80 SONS were incorporated into the Mackenzie District Plan and have been afforded protection since. Dr Espie's evidence at paragraph 16 outlines the objective of the earlier research, and the way it was utilised to inform both the SONS and the tenure review process, where land identified as significant was retained in Crown ownership.

22 Mr Harding offers no evidence for his conclusions that "most undeveloped (un-converted) land on depositional landforms in the Mackenzie Basin has significant ecological values"[6]. There appears to have been no field work undertaken in the preparation of his evidence to identify sites where that statement might apply – or more importantly to establish that the approach adopted by PC18 would deliver the sought environmental outcomes. Dr Espie has visited the Wolds and Mt Gerald, and identified areas outside the mapped (converted and partially converted) areas produced by Mr Harding which have

[5] Paragraph [45] of Harding evidence.
[6] Paragraph [44] of Harding evidence.

been subject to ‘development’ and need to be incorporated within any mapping.

Canterbury Regional Policy Statement

23 The introduction to Chapter 9 – Ecosystems and Indigenous Biodiversity states that the focus of [this chapter] is on the requirements of Section 6(c) of the RMA – *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna*. It is important to keep this front of mind when considering the reach of the CRPS. The key driver is the protection of significant examples of indigenous vegetation rather than adopting a blanket approach that seeks to protect all indigenous vegetation regardless of whether it has been identified as meeting the Appendix 3 criteria.

24 Issue 9.1.1 acknowledges that the principal threats to ecosystems and indigenous vegetation are land-use and development, and the impact of animal and plant pests. Importantly the CRPS uses the phrase “land-use and development” – it does not separate these two activities out into two separate potential threats to indigenous biodiversity and ecosystems. It is submitted that ‘land use’ must be read in conjunction with ‘development’ i.e. it is only land use which follows some form of development that contributes to loss and degradation of Canterbury’s indigenous biodiversity.

25 It is critical to understand the distinction between existing farm practices and new “land-use and development” activities. The CRPS does not seek to wind back existing farm practices which have been occurring for many years and where land use change from activities such as topdressing and oversowing pre-dated the CRPS. It acknowledges that Canterbury has experienced decline (from a history of land use intensification) and that action is needed to halt further decline. A fundamental concern for the farming industry is that PC18 has morphed (from the version notified) into a suite of provisions that now seeks to control all pastoral farming activities by including these within the definition of ‘vegetation clearance’. In its current draft as proposed in the s42A report PC18 contains no enabling component to provide a pathway for existing operators to maintain the status quo on their properties. The evidence of Mr Murray for the Wolds Station states that the critical change in vegetation cover occurs at the time of the initial application of fertiliser rather than at the point of each subsequent application. This means that land that has in the past been subject to topdressing and oversowing activities (for most High Country Stations this first application occurred decades ago or was authorised under earlier planning regimes) cannot fall within the same category as new

"land use and development" which admittedly may pose a threat to indigenous biodiversity decline.

26 While it is acknowledged that Objective 9.2.2 provides for enhancement and restoration "…*in appropriate locations, particularly where it can contribute to Canterbury's distinctive natural character and identity and to the social, cultural, environmental and economic well-being of its people and communities*". The CRPS does not require restoration or enhancement of indigenous biodiversity in all situations and this cannot extend to a blanket approach to restore all of the Mackenzie Basin to some earlier 'natural state'. It is submitted that enhancement and restoration must be read in balance alongside the concept of sustainable management.

Section 32 / Economic considerations

Section 32

27 To change its District Plan, the RMA requires a local authority to complete an evaluation report under section 32, and examine:

27.1 The extent to which each objective is the most appropriate way to achieve the purpose of the Act[7]; and

27.2 Whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives[8].

28 The Court in *Long Bay-Okura Great Park Soc Inc v North Shore CC*[9] set out mandatory requirements for a s32 report, and in particular requires that each objective is to be evaluated by the extent it is the most appropriate way to achieve the purpose of the act, and that each proposed policy, method or rule is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method to achieve the objectives. When undertaking that analysis, the benefits and costs of the proposal must be considered.

29 The section 32 analysis completed by the Council, together with the section 42A Officers report, rely significantly on the ecological evidence of Mr Harding. As Dr Espie has provided in his evidence, it is submitted that the evidence of Mr Harding which underpins the assumptions and conclusions in the s32 and

[7] Section 32(3)(a)
[8] Section 32(3)(b)
[9] A078/08

s42A Officers report is inherently flawed. As a result, both reports are incapable of demonstrating that the planning framework that they propose are the most appropriate means of giving effect to the statutory requirements and higher order planning documents that apply.

30 A key concern for The Wolds and Mt Gerald is how the costs and benefits have been assessed. In the form proposed by the s42A officers report, PC18 seeks to manage 'vegetation clearance' (which includes an extensive list of traditional farming activities that have not historically been considered 'clearance' activities) and is based on the assumption that managing these activities will protect indigenous biodiversity. This assumption is not supported by evidence and the approach adopted for PC18 means that the actual causes of decline (as identified in the evidence of Dr Espie) are left unmanaged. It is considered that this approach is more focussed on the need to be seen to be doing something, rather than addressing the wider issues which impact indigenous biodiversity decline. This appears to be accepted in the evidence of Mr Harding where he says that *"land use change (development) is an important contributor (in addition to grazing and pests)… [and] is also the contributor that can be most effectively addressed by the plan rules"*[10].

31 The section 32 analysis does not appropriately address the costs associated with the proposal on individual landowners. Mr Burtscher and Mr Murray have outlined the financial impact of the proposed changes on their farm operations. They are two of many station holders in similar situations in the District. The cost is significant, and the benefit is uncertain at best, and arguably has not been established.

32 The rules as proposed by the s42A Officer require a FBP to be established for vegetation clearance activities that are unable to proceed as a permitted activity i.e. clearance to maintain existing fence lines, tracks, roads etc or where clearance is proposed within an area of improved pasture, and dictates that an application for resource consent is to be processed as a restricted discretionary activity. If no FBP is prepared, the activity status defaults to non-complying. This introduces significant pressure on landowners to prepare a FBP, with the anticipated cost of that work (due to the extensive list of requirements) in the tens of thousands of dollars as the list if information to be included within an FBP means that a landowner will be required to obtain expert ecological advice. When considering the cost implications, it is critical to understand that High Country Stations in the Mackenzie Basin are vast

[10] Technical Report Ecology, Evidence of Mike Harding, 10 December 2020, para [64].

tracts of land so a whole of farm ecology assessment is a significant undertaking and the costs associated with traversing large landholdings will be astronomical. Further, that money is invested with no guarantee that the Council will accept the FBP, even where it is prepared with input from an independent expert. A controlled activity status as per the relief sought by the Wolds and Mt Gerald is the most effective and efficient way of achieving the objectives of PC18.

33 It is expected that, due to the way the rules are currently proposed, a landowner will have to prepare a FBP much sooner than the Council will complete its planned mapping of additional SONS. We note that this workstream has been planned by Council for many years and is yet to occur despite the lengthy delays in PC18 being heard. Essentially, the identification of significant areas will have to be taken on by landowners under the FBP process so as to provide a reasonable pathway to a resource consent, despite the fact that the identification of significant indigenous vegetation and habitat is a requirement for Council to undertake[11].

34 Even if a FBP is approved by Council, it offers no certainty as to a positive decision on an application for resource consent. Given the proposed restricted discretionary status it is open to Council to decline consent. This is why the Wolds and Mt Gerald have sought a controlled activity status (with no notification requirement) where vegetation clearance is consistent with an approved FBP. A significant cost in the Mackenzie basin is the involvement of outside interest groups. For a landowner to complete the FBP process and still be subject to a notified resource consent application is highly inefficient.

35 None of the above costs have been adequately assessed in the section 32 report. It also does not accurately capture the cost to landowners, specifically the proposed changes to “improved pasture” and “vegetation clearance” which have been suggested following submissions. The evidence of Mr Murray in particular addresses this in detail. Should the Panel elect to adopt PC18 in the form recommended by the s42 Officer it will be necessary to refer the revised provisions under s32AA of the RMA.

Economic considerations

36 There is a lack of balance in the proposed provisions and a fundamental failure from the Council to safeguard the ability for people and communities to provide for their social, economic, and cultural wellbeing.

[11] Section 6(c) of the RMA

37 The evidence of Dr Espie establishes that the amended plan provisions go too far by introducing limitations on traditional farm activities, while not actually addressing the main reason for biodiversity decline.

38 The concept of sustainable management is embodied in s5 of the RMA and fundamentally it is not about retention of the status quo. Section 5 is an enabling provision which promotes striking a balance between the use, development and protection of the natural resource – in this case the land. The Wolds and Mt Gerald are not seeking to enable additional development. Rather, they are seeking that the existing uses on which they rely are authorised in a way that does not require an extensive resource consent process.

39 Section 5(2)(a) requires consideration of the natural resources ability to meet the reasonable needs of future generations. It is therefore paramount that due consideration be afforded to the land owners ability to continue to farm their land in a manner which allows for succession. The proposed provisions must provide for this and must ensure there is a pathway for farm land to continue to be productive (so that farmers have the resources to continue to maintain the land) and for farmers to be equipped with the tools (such as over sowing and top dressing) to allow them to maintain the land.

40 It is submitted that the proposed provisions fail to have regard to the significant level of investment made by land owners including participating in the tenure review process, previous plan change processes, installation of fencing, tracks and water supply, undertaking topdressing and over sowing regimes to establish suitable grazing pasture and purchasing the infrastructure to give effect to Regional Council resource consents to take and use water for irrigation.

PARTICULAR PROVISIONS OF THE PROPOSED PLAN

41 This section generally refers to the objectives, policies, rules and definitions as proposed in the s42A report (including updated numbering), rather than the notified version (unless specifically noted otherwise).

42 To assist the Commissioners, this section addresses all the matters (definitions, objectives, policies and rules) contained within proposed PC18. However, it is considered that a stepped approach is necessary when deciding these provisions. It is a critical first step that the definitions are confirmed.

43 The definitions are integral in understanding the extent of the objectives, policies and rules. In some situations, we have proposed rules based on the definition sought by Mt Gerald and the Wolds, and offered alternative wording for a new rule if the definitions as proposed in the section 42A officers report are accepted. We appreciate that this adds a layer of complexity to the relief sought, however the reality is that the definitions have the ability to significantly alter what land use activities are provided for in the Mackenzie Basin.

44 Firstly, we consider Rule 12.1.1 which relates to non-indigenous vegetation clearance. There appears to be an omission here (or at least a lack of clarity in the rule framework) as it could be read that the only non-indigenous vegetation clearance is where the standards of 12.1.1.a can be met, which only apply to riparian areas. This would exclude activities such as felling trees in a plantation forest, or burning off crop stubble which we consider must be intended to be included as permitted activities. The 'hole' appears to have arisen due to the shift from rules within the rural chapter to a separate chapter. On that basis, we have proposed amendments to Rule 12.1.1 which we consider clarify the permitted activity status of non-indigenous vegetation clearance.

Definitions

45 The submissions for Mt Gerald and the Wolds focussed on the following critical definitions:

45.1 Improved Pasture;

45.2 Vegetation Clearance; and

45.3 Indigenous Vegetation

46 These are dealt with individually below, however we make the following preliminary comments:

47 Firstly, Mr Harding has provided maps which identify "converted" and "partially converted" land. There are no definitions of either of these terms proposed in PC18, and his evidence does not clarify how these areas fit into the proposed definition of "improved pasture". It is submitted that one consistent term needs to be used throughout the plan, and "improved pasture" is appropriate (although the proposed definition is flawed, as outlined below). Mr Harding's evidence is unhelpful as it refers to "unconverted land" or "partially converted land" with no guidance as to what is meant by those terms. This is particularly

confusing where Mr Harding refers to “partially converted land” where this land has been extensively OSTD, direct drilled and grazed for decades.

48 It is not understood what is proposed for the maps produced by Mr Harding. Are all areas identified as “partially converted” to be subject to a field assessment to determine whether they are more accurately classified as “converted” land? Or is it proposed that “converted” and “partially converted” land is to be subject to different rule/ activity status framework? The approach of the s42A Officer to delay introduction of these maps until such time as their appropriateness has been analysed in line with s32 of the RMA and the boundaries of any mapped areas have been robustly tested through a publicly notified Plan Change process is supported. The focus must be on mapping SONS in the first instance. This is the direction proposed in the CRPS and the NPS-IB.

49 Secondly, case law has clearly established that rules require certainty[12], and that part of that certainty comes from having definitions which are capable of construction and use by non-specialist users of a plan. For the reasons outlined below, we consider that the proposal falls short of meeting this requirement, and changes are needed to ensure that specialist advice from ecologists, planners or lawyers is not needed at every step.

Indigenous Vegetation

50 The definition proposed by Mr Harding includes the statement “the community may include exotic species”. He goes on to say that the inclusion of “exotic species” in the definition is not essential, but he considers it appropriate in the context of the Mackenzie Basin[13].

51 The NPS-IB includes a definition of *indigenous biodiversity* that makes no reference to exotic species. This is consistent with the position of Dr Espie, who proposes wording that recognises a “minor element” of exotic species may need to be provided for in the definition, simply due to the Mackenzie Basin’s unique circumstances, but offers clarity through a proposed percentage.

52 It is submitted that the proposal of Dr Espie is more appropriate than that of Mr Harding and the s42A Officer. The Council position offers no guidance as to how many exotic species can be present before the definition of indigenous

[12] See for example the discussion at [61] of *Central Otago District Council v Greenfield Rural Opportunities Ltd* Environment Court, Christchurch 11/12/2009, C128/09, Judge Jackson.
[13] Paragraph [89](d) of Harding evidence

vegetation is no longer met. It is only logical that there must be a point at which the exotic vegetation dominance becomes so much that the presence of indigenous vegetation becomes a minor aspect of the community, rather than the dominant one.

53 We have considered the Joint Witness Statement of Ms Ruston and Dr Mitchell for Meridian and Genesis respectively (**JWS**), and in particular the definition of 'indigenous vegetation' proposed. Generally, Mt Gerald and the Wolds prefer the definition detailed in the JWS to that proposed by Council as it:

53.1 Links to the particular plant species indigenous to the area (rather than New Zealand generally);

53.2 Has two considerations – coverage or structural dominance; and

53.3 Excludes indigenous vegetation that was planted for a particular purpose.

54 However, we question the appropriateness of the percentages agreed by the two planning witnesses (based on the ecological evidence of Mr Michael Thorsen). We do not consider that 30% (for coverage) and 20% (for structure) can be considered "dominance".

55 We also question the appropriateness of including reference to 'species diversity', as that can result in absurd outcomes. An example from the Mackenzie basin is where a lucerne crop is clearly dominant from a coverage perspective, but is the only exotic species present. If 5 other specimens can be found of indigenous vegetation, there is confusion around whether the area is "improved pasture", or "indigenous vegetation" as from a species diversity perspective indigenous vegetation has higher prevalence. Mr Espie can speak to this in questioning.

56 When compared with the wording proposed by the s42A Officer, the Wolds and Mt Gerald consider the JWS definition of 'indigenous vegetation' is more appropriate. However when considering the need for certainty and definitions which are capable of construction and use by non-specialist users of a plan the preference remains for the definition of 'indigenous vegetation' to be as set out at **Appendix 1**, as proposed by Dr Espie.

Improved Pasture

57 Mr Hardings evidence suggests mapping areas of improved pasture. The Wolds and Mt Gerald consider that there is merit in this, as it would offer complete certainty to landowners as to where particular activities can occur without requiring consent but this is only helpful where areas of significant indigenous vegetation and significant habitats of indigenous fauna are also mapped. As noted above, the s42A Officer rejects the appropriateness of the maps being introduced via PC18, due to the fact the maps were introduced following submissions closing, and a lack of time to ground truth the maps.

58 It is with this background context, that we consider the proposed definition from Mr Harding - adopted by the s42A Officer. Mr Harding recommends a definition where "indigenous vegetation has been **fully** removed". It is submitted that this is an extremely blinkered view of what constitutes farming in the Mackenzie Basin.

59 The definition of *improved pasture* should not just capture 'green land' (i.e. land that has been subject to irrigation, or intensive management). Although this land is critically important to farming operations, areas of oversowing and topdressing are just as critical to financial viability[14]. Mr Harding appears to be looking at the definition of improved pasture with a landscape lens, rather than a biodiversity one. In many instances, introduced grasses such as brown top and sweet vernal look as though they have not been modified to the same extent, however they should equally be treated as areas of improved pasture due to their historical land use by the landowner.

60 The proposed definition does not appear to have considered logic or practical applicability. Mr Burtscher's evidence includes a photograph[15] of land that must be considered improved pasture with matagouri and sweet briar present. Under Mr Hardings definition, this land would fail to meet the test of "improved pasture", a result which is clearly absurd.

61 This lack of logic and basic understanding of high country farming is best seen in Mr Hardings evidence where he considers "irrigation is an important, if not essential, activity to effectively convert indigenous vegetation to exotic pasture or crops. . . Other activities such as OSTD and direct drilling, will introduce exotic pasture or crop species but will not necessarily displace all indigenous species"[16]. This statement, combined with his proposed definition requiring

[14] See evidence of John Murray
[15] Photo 3 (p4) of evidence of Michael Burtscher
[16] Paragraph [97] of Harding evidence.

"full" conversion suggests a belief that only irrigated green land should be considered improved pasture. His proposal would mean that the continuation of OSTD and direct drilling, on land he acknowledges has been subject to this historically, would require a resource consent for "vegetation clearance".

62 It is further submitted that any definition of "improved pasture" should have some reference to previous activity. It is agreed that there are potential issues as identified by Mr Harding[17] where reference is required to activities over the previous 15 years, however there needs to be acknowledgement of EUR. It is submitted that the definition of 'improved pasture' as set out in Appendix 1 would provide a balance to the two positions:

62.1 Assuage the fears of several submitters who are concerned that a wide definition of "improved pasture" would give landowners *carte blanche* to remove indigenous vegetation; and

62.2 Provide for continued use of land that has been developed and farmed previously (without allowing any further intensification in areas where indigenous vegetation has partially remained, such as areas of OSTD and/or direct drilling).

63 To clarify the definition of improved pasture, a similar approach is proposed as to the definition of indigenous vegetation above. In line with Dr Espie's evidence, the proposal by the Wolds and Mt Gerald requires that an exotic pasture or crop has 'dominated' ground cover, to be established by 66% coverage. This is appropriate as it allows for the definition to capture dryland, whereas the definition of Mr Harding essentially required irrigation to have occurred for the requirements of the definition to be met. The definition as proposed allows for some indigenous vegetation to be present, which is appropriate given fertiliser can in some cases encourage indigenous vegetation growth.

Vegetation Clearance

64 This is a definition which has undergone significant change from the notified version of PC18. Under the notified version of PC18, oversowing and topdressing activities were included as activities that contributed to an areas ability to meet the definition of 'improved pasture'. What is now proposed by the s42A Officer is to deem these activities 'vegetation clearance'.

[17] From paragraph [101] onwards of Harding evidence

65 Mt Gerald and the Wolds agree that OSTD or direct drilling in **previously untouched** land would require evaluation, and should be controlled under PC18 (although it is already controlled under PC13 landscape provisions). However, continuing to undertake those activities in areas that have historically being subject to them is authorised by section 10 of the RMA, and these EUR are best captured in a permitted activity rule.

66 In its current form (as proposed by the s42A Officer) the definition of 'vegetation clearance' (OSTD) would be a non-complying activity in an area of more than 5,000m^2 (0.5ha) in any 5 year period, if it was occurring in a location that did not meet the definition of "improved pasture". For reference, Mr Murray in his evidence identifies that the Wolds would oversow/ top-dress 4,273ha in a five year period. The implications of PC18 not providing a permitted activity pathway for oversowing and top-dressing to occur is that the Wolds would be required to obtain a non-complying resource consent for every application. The only way to make this a restricted discretionary activity is to complete a FBP, the issues of which have been addressed above.

67 It is apparent that the definitions of *improved pasture* and *vegetation clearance* are critical to each other. The way that the permitted activity rules are worded allow for vegetation clearance in areas of improved pasture, and so clarity is required as to what activities and situations the rule is seeking to permit, when determining the appropriate wording of a definition.

Objectives and Policies

Objective 1

68 The Wolds and Mt Gerald support the amendments made to Policy 1 by the JWS, which amends the requirements to enhance significant indigenous vegetation and significant habitats of indigenous fauna to be only "where practicable".

69 The JWS seeks acknowledgement in the objective of the national significance of the Waitaki Power Scheme. Along the same lines, it is submitted that an enabling provision is required in the objective to reflect rural farming activities that are lawfully established within the District and allow for those to be maintained. Wording to that effect is proposed in **Appendix 1**.

Policy 1

70 The changes proposed in the JWS are supported. It is critical that significant areas (including conservation land) are mapped and included within the

District Plan, to provide certainty to landowners as well as Council and other interest groups.

Policy 2

71 The Wolds and Mt Gerald seek that 'land use' be removed from the wording of the policy. It is appropriate that development (i.e. new conversions) are subject to the requirements of no net loss, however it is submitted that 'land use' also captures lawfully established farming activities. It would be inappropriate for Policy 2 to apply to activities protected by EUR.

72 It is submitted that reference to pastoral intensification is not appropriate in PC18 as it is addressing vegetation clearance. There is also significant risk of confusing the definitions in the Plan dependant on what version of definitions are accepted. In its current form 'vegetation clearance' incorporates activities that are considered both pastoral intensification and agricultural conversion activities.

73 Finally, the word 'values' is deleted in the **Appendix 1** version, as the no net loss provisions should relate to the biodiversity itself, rather than 'values' which it is submitted are vague and unhelpful.

Policy 3

74 Wording is proposed to ensure that "any" adverse effects are managed, rather than assumptions that there will always be adverse effects. In addition, the wording of the policy has been clarified to ensure that the policy relates to vegetation clearance, rather than 'activities' which is broad, not defined and has potential to include activities protected by EUR.

Policy 4

75 As outlined in the original submissions of the parties, Policy 4 is proposed to be deleted. A wetland containing ecologically significant values will meet the criteria of significance as contained within the CRPS. There is no need for a separate policy. It may be appropriate to include a policy of this nature at the time wetlands (including ecologically significant wetlands) have been mapped and introduced to the plan.

Policy 5

76 When considering mechanisms by which the objectives and policies can be given effect to, weight should also be given to Farm Biodiversity Plans.

Policy 8

77 The changes in **Appendix 1** suggest the removal of “long-term”, as guidance around the best protection of significant vegetation and habitats is provided in the CRPS.

78 In addition, as this is an enabling provision for land use and development on farm, it is critical that this policy reflect that PC18 permits the continuation of lawfully established land use activities. Rules have been proposed to this effect (together with the amendments already noted to Objective 1), and it is critical that EUR are enabled.

Policy 9

79 The proposal of the JWS is accepted in full by Mt Gerald and the Wolds, for the reasons provided in that document.

Rules

80 **Rule 1.1:** Consistent with the original submission, the Wolds and Mt Gerald seek for clearance related to maintenance, replacement or a minor upgrade to be a permitted activity. The 2m ‘corridor’ proposed by the s42A officer appears arbitrary and based off a desire to ensure that large machinery is not used for jobs that could be done on a smaller scale. It is submitted that there needs to be an element of ‘moving with the times’ and requiring farmers to undertake works with the tools that originally would have been available to them is inefficient. Any clearance would have to reasonably relate to the work to be undertaken – a simple fence repair would not justify a digger going through to clear vegetation in a 6m wide strip (however a more complicated pipe issue may justify that). Discretion is required as to what is the appropriate tool for the job, which this proposal does not allow.

81 Along the same lines as the above, a new standard for permitted activities is proposed to allow clearance for new small scale farming activities. This exemption would only apply to clearance of indigenous vegetation that did not meet the definition of ‘significant’.

82 A new standard for vegetation clearance is proposed (standard 8 in **Appendix 1**) to permit the installation of a fence where it is required to exclude stock from a waterway. This arises in the context of the National Policy Statement for Freshwater Management, which directs fencing of certain waterways. It is appropriate that PC18 reflect the requirements of that higher order document.

83 Finally, a further standard for permitted activities is proposed **if required**. Proposed standard 9 is sought to be included **if** the definitions of "improved pasture" and "vegetation clearance" are retained generally in accordance with the s42A officers suggestions. It is noted that this rule was **not** required at the submission stage, as the definition of improved pasture would include land that had been historically used (for example oversown and topdressed) and the definition of vegetation clearance did **not** include oversowing and topdressing. On the basis of the proposed definitions, a standard is required in the permitted activity rule to ensure that existing activities can continue.

84 Proposed standard 9 requires a notification to Council, to ensure that there are records at Council about which landowners are relying on these provisions. Evidence which establishes that clearance has occurred historically may include fertiliser records, photographs of previous usage (e.g. Mr Burtscher's hay paddock), information from other hearings/resource consent applications/code compliance applications etc.

85 **Rule 1.2.** A controlled activity status (with a non-notification requirement) is proposed for the reasons outlined in detail above in these submissions. The matters of control have been amended to reflect the requirements of the CRPS, and focus on areas of **significant** vegetation or habitat. Other relief is consistent with the original submission and reasoning contained within that.

86 **Appendix Y**. An addition is sought to the FBP framework whereby the information contained within it remains the ownership of the landowner (who will have undergone considerable expense to prepare the FBP) and that information is kept confidential between the landowner and the Council.

RELIEF SOUGHT

87 Primarily, the Wolds and Mt Gerald seek relief that allows for the continuation of farming **as it currently exists in the Basin**. They do not seek pathways for new development without resource consent, but rather they seek to ensure that:

87.1 The definitions are sensible and fit for purpose;

87.2 The objectives and policies allow for the enabling of maintenance activities; and

87.3 The rules (in combination with the definitions) enable the continuation of maintenance activities as permitted.

88 The specific relief sought by the Wolds and Mt Gerald is tracked into Appendix 1 attached to these submissions, however the submitters will consider any alternative relief which meets the above three requirements.

Katherine Forward

Solicitor for Mt Gerald Station and The Wolds Station

3 March 2021

APPENDIX 1 – Tracked Change version attached as separate documents