

Before the Independent Hearing Panel
Appointed by the Mackenzie District Council

Under the Resource Management Act 1991 ("Act")

In the matter of Proposed Plan Changes 23-27 to the Mackenzie District Plan

Closing Legal Submissions of Counsel for Mackenzie District Council on PC23-27

14th June 2024

Mackenzie District Council's Solicitor:

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- 1 These legal submissions are in reply to issues raised at the PC23-27 hearing held on 22–24 May 2024.

NPS-IB and Renewable Energy

- 2 Counsel for Genesis Energy Ltd submitted that the NPS-IB does not apply to renewable energy generation. This submission was developed to state that the EIB chapter and particularly Rule 1.2.5 that engages biodiversity offset and compensation principles could not apply to any renewable energy generation managed under the proposed REG chapter of the District Plan (see legal submissions by Counsel for Genesis Energy Ltd at paras 5.15 - 5.32 and 5.31 in particular).
- 3 It is agreed and accepted that the NPS-IB expressly states that nothing in the NPS-IB applies to the development, operation, maintenance or upgrade of renewable energy generation assets and activities, and also the transmission network. This is set out expressly in clause 1.3(3) of the NPS-IB.
- 4 It is submitted that what this means is that the objective, policies and implementation obligations set out in the NPS-IB clearly do not apply and are not intended to apply to renewable energy generation projects.
- 5 It is submitted that the NPS-IB does not state that section 6(c) RMA is not applicable to REG when it comes to potential clearance of significant indigenous vegetation. Mrs White in her section 42A report on PC26 was recommending that new REG projects have policy guidance to engage the effects management hierarchy for a particular consent that might adversely affect areas of significant indigenous vegetation. Reference was made in the s42A report to Appendix 3 and 4 of the NPS-IB as a template for the effects management hierarchy.
- 6 This issue has now been addressed by the Planners' Joint Witness Statement. It is noted that the agreed approach of the Planners is to bring into the REG chapter relevant rules and assessment matters to address any clearance of significant indigenous vegetation. This includes the assessment matter contained in REG-MD5 (a) and (b) that potentially engages the effects management hierarchy in a suitable case. This outcome from the Planners' conferencing is therefore supported and seen as resolving this issue. Should this remain a legal issue it is submitted that the Planners' conferencing version of the provisions is valid and an appropriate way to implement section 6(c) of the RMA and is not contrary to the NPS-IB.

SASM and ONL Overlays

- 7 A number of property owners¹ raised the issue that the provisions of the SASM or ONL overlay as they are currently proposed may not necessarily be of major concern, but the concern was heightened by the prospect of these overlays being used to impose further regulation on the property in the future.
- 8 While this concern about the "thin end of the wedge" is understandable, it is the role of the section 42A report writers and the Hearing Panel to assess under section 32 RMA the benefits and costs of policies and rules that are actually proposed and in scope. It is not correct, nor a relevant consideration to attempt to assess what hypothetical future regulation may or may not impose on landowners. Any future regulation if any does arise would need to be justified at that time, and in light of the statutory framework that then applies. It is not a valid reason to reject a SASM or ONL overlay on the grounds that they could in the future be used as a method to force some further (unjustified) regulation. It is submitted such arguments although obviously genuinely held should be afforded little weight under the relevant tests for policy and rules in the RMA as it is currently framed.

Changes recommended to ONL and SASM boundaries by s42A Officer

- 9 Mr Boyes in his reply report is recommending some amendments to the ONL and ONF boundaries to respond to issues raised by Submitters.
- 10 In some of these locations the ONL boundary has been co-located with the boundary of the SASM overlay. This provides certainty to land owners. It is proposed by Mr Boyes to keep the boundaries of these two overlays in alignment. This raises a potential issue of scope.
- 11 The ONL and SASM overlay boundaries on some of these properties were notified as being in the same location. Mr Boyes is recommending where the ONL boundary is proposed to be altered (either reduced, or increased to respond to submissions received) for planning reasons they stay aligned. It is submitted that this makes good sense from a merits point of view so land owners have only one boundary to contend with on their property, rather than two different overlay locations. Mr Boyes outlines that mana whenua support this alignment too in the cases where Mr Boyes is recommending alterations to boundaries.

¹ Such as John Murray, Federated Farmers, Mathew and Victoria Simpson, Ian Morrison, A and R McGregor

12 The legal issue is that changes sought by submitters to the ONL boundary may not have expressly sought consequential changes to the SASM boundaries as well.

13 In terms of actual submissions made on SASM boundaries, the Wolds Station made a reasonably wide-ranging submission on SASM overlays as follows (page 6 of Wolds Station submission #17 on PC24):

SASM Maps and related schedules	<p>As above, The Wolds considers that a ground-truthed review of the mapped and scheduled SASMs needs to be undertaken to confirm location, extent, and significance. SASM55, the Mary Range traverses the Wolds Station.</p>	<p>Delete SASM55 or in the alternative follow a collaborative identification process as detailed in this submission.</p> <p>Amend the SASM overlays and schedules to align with ground-truthed outcomes.</p>
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14 While the Wolds Station submission in the table above this passage did refer to SASM's 03, P1 and P6, this submission point enlarges that and adds to that reference to SASM 55, and applies more broadly seeking mapping to be "ground-truthed" to "confirm location, extent and significance". The relief is to "Amend the SASM overlays and schedules to align with ground-truthed outcomes." It is submitted this relief reasonably covers aligning SASM boundaries to ONL identified boundaries on the ground.

15 The Hearing Panel also has jurisdiction to make consequential alterations to the plan under Clause 10(2)(b)(i) and (ii), First Schedule RMA. This provides that a decision on submissions may include:

- (i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and
- (ii) Any other matter relevant to the proposed statement or plan arising from the submissions.

16 It is submitted this is a very appropriate time to ensure that the ONL and SASM boundaries on a property remain aligned if the ONL is altered to address submissions made.

17 It is submitted that the mapping changes recommended by Mr Boyes are appropriate to make, and within the jurisdiction of the hearing Panel, for the reasons set out above.

Dated this 14th day of June 2024

A handwritten signature in black ink, appearing to read "m. garbett".

Michael Garbett
Counsel for the Mackenzie District Council