

PLAN CHANGE 17, MACKENZIE DISTRICT PLAN – SECTION 32 EVALUATION

1. Overview and Purpose

This evaluation has been undertaken in conformity with section 32 of the Resource Management Act 1991. The subject matter being evaluated is an amendment to two vegetation clearance rules in the Rural zone of the Mackenzie District Plan. These rules, with the proposed amendments shown as bold and underlined, are set out below in section 6 of this evaluation.

2. Background

The Council has been aware of concerns regarding the interpretation of an exemption relating to pasture improvement contained in two indigenous vegetation clearance rules in the Rural Section of the Mackenzie District Plan. The rules containing this exemption are Rural Zone rules 12.1.1.g (Short tussock grasslands) and 12.1.1.h (Indigenous Cushion and Mat Vegetation and Associated Communities) and only apply in the Mackenzie Basin.

There are also concerns that these exemptions, as they are being applied, enable the clearance of indigenous vegetation which has significant value to the landscape and biodiversity of the Mackenzie Basin and which therefore should receive a greater degree of protection. The Council is currently reviewing the District Plan, including a detailed review of the biodiversity policies and provisions. Recently, in response to a declaration being sought on this matter by a concerned party, and to avoid the potential for additional loss of valued indigenous vegetation, the Council has decided to remove the exemption for a period of 12 months. It is expected by this stage that the reviewed Plan will have been publicly notified with replacement rules addressing issues associated with clearance of significant indigenous vegetation. In addition a decision on the section 293 proposals for Plan Change 13 is expected to be issued.

3. Objectives and Policies

No new or amended Rural zone objectives or policies are proposed. No assessment of the appropriateness of these objectives and policies to achieve the purpose of the Act is therefore required.

4. Consultation

The Council has consulted with the parties listed below as required by Schedule 1 of the Resource Management Act. Wider consultation was considered, but it was determined that the benefits of this would be outweighed by the potential adverse and irreversible effects of a vulnerable resource, the protection of which is a matter of national significance. The potential adverse effects would occur through continued clearance of the listed indigenous vegetation and/or Council having to grant certificates of compliance for such clearance. The consultation that has been undertaken in terms of Schedule 1 of the RMA involved only those parties that need to be consulted under clause 3(1) namely:

- Minister for the Environment
- Minister for Lands (Land Information New Zealand)
- Environment Canterbury

- Te Runanga O Ngai Tahu
- Te Runanga O Arowhenua
- Te Runanga O Waihao

The responses from this consultation were as follows:

Minister for the Environment

1. Suggested minor changes but no substantive comments.

Land Information New Zealand

1. Advised that as an affected landowner the Commissioner is in support of the proposed plan change 17 to the Mackenzie District Plan
2. Noted that leasees of pastoral lease land must comply with the District Plan including a suspension
3. Where a pastoral leaseholder hold a lease consent for a particular activity, the Commissioner is not legally liable to suspend or withdraw consents obtained.

Environment Canterbury

1. Suggested that for the proposed rules to be effective an extension to the 12 month timeframe may be required to allow sufficient time for new provisions arising from the District Plan review dealing with vegetation clearance to be in place. They assume the Mackenzie District Council will notify the new provisions within the 12 month period and that these will have immediate legal effect, but they query with a year is sufficient time to achieve notification of the new rules

Kai Tahu ki Otago Ltd for Te Runanga o Waihao

1. They can accept the plan change on the basis that
 - it is largely procedural and is of a temporal nature for a defined period
 - It seeks to halt further indigenous vegetation clearance while the District Plan review processes deal with the issue in a more comprehensive and appropriate way
 - While only for a short period, it will protect remaining indigenous vegetation from uncontrolled clearance

Minister for the Environment

1. Suggested minor changes to wording but no substantive comments.

Te Runanga o Ngai Tahu

1. They acknowledged the request but no response received at this point

5. Current Rule Provisions

The District Plan currently controls vegetation clearance in a number of sensitive environments as well as controlling clearance of specific forms of indigenous vegetation. Two of these latter rules control clearance of **short tussock grasslands** (rule 12.1.1.g) and **cushion and mat vegetation and**

associated communities (rule 12.1.1.h). These rules set a maximum area of clearance of the specific indigenous vegetation type as a permitted activity, with any clearance greater than this area being a discretionary activity. The maximum permitted area of short tussock grasslands is 40 hectares and the maximum permitted area for cushion and mat vegetation is 10 hectares.

In addition to the usual exemptions relating to track maintenance and removal of weeds, there is a specific exemption in these two rules which specifies that the rules do not apply where that vegetation has been:

oversown, and topdressed at least three times in the last 10 years prior to new clearance so that:

- *In the case of short tussock the inter-tussock vegetation is dominated by clovers and/or exotic grasses, and*
- *In the case of indigenous cushion and mat vegetation the site is dominated by clovers and/or exotic grasses.*

Plan Change 17 proposes to remove this exemption in rules 12.1.1.g and 12.1.1.h for a period of 12 months by which time it is expected that new provisions in the reviewed District Plan will be in place – refer 6 below for the proposed amendment. The intention of this Plan Change is that clearance of these types of vegetation beyond the specified maximum areas will require resource consent, regardless of previous oversowing and topdressing. The consent process will provide an opportunity for assessment of the value of the indigenous vegetation and the degree to which this vegetation requires protection.

Council has sought a declaration and/or order from the Court that this Plan Change has immediate effect upon notification pursuant to section 86B (3) and/or 86D(2) of the Resource Management Act 1991. If either or both are granted prior to notification, this Plan Change will have effect upon notification. Therefore, clearance pursuant to the existing exemptions will no longer be permitted.

6. Plan Change 17 - Proposed Amended Rules

12 VEGETATION CLEARANCE

12.1 Permitted Activities – Vegetation Clearance

12.1.1.g Short Tussock Grasslands

An interim Rule that will be reviewed three years after the Plan becomes operative.

On each of the individual farm properties existing in the Mackenzie Basin Map as at 1 January 2002 in any continuous period of five years there shall be no clearance including cultivation above the following thresholds of short tussock grasslands, consisting of silver or blue (*Poa* species), or *Elymus solandri*, or fescue tussock where tussocks exceed 15% canopy cover:

- (i) 40 hectares or less – Permitted Activity
- (ii) Greater than 40 hectares – Discretionary Activity

Performance Standards for Permitted Activity

- The landholder shall notify the Mackenzie District Council of the proposed clearance 4 months prior to the clearance being undertaken and shall supply a map of the proposed site.
- The clearance shall be more than 150m from the boundaries of any existing Sites of Natural Significance.

Exemptions

This rule shall not apply to:

- Any removal of declared weed pests; or
- Vegetation clearance for the purpose of track maintenance or fenceline maintenance within existing disturbed formations; or
- Any vegetation clearance including burning which has been granted resource consent for a discretionary or non-complying activity from the Canterbury Regional Council/Environment Canterbury under the Resource Management Act 1991; or
- Any short tussock grassland where the site has been oversown, and topdressed at least three times in the last 10 years prior to new clearance so that the inter-tussock vegetation is dominated by clovers and/or exotic grasses. **This exemption shall not apply within the period 14 December 2016 to 24 December 2017.**

12.1.1.h

Indigenous Cushion and Mat Vegetation and Associated Communities

An interim Rule that will be revised three years after the Plan becomes operative.

On each of the individual farm properties existing in the Mackenzie Basin as at 1 January 2002 in any continuous period of five years there shall be no clearance including cultivation above the following thresholds of indigenous cushion, mat (*Raoulia* species) or herb and scabweed vegetation where at least 50% of the vegetation ground cover comprises vascular and non-vascular indigenous species, OR where the number of vascular indigenous species is greater than 20:

- (i) 10 hectares or less – Permitted Activity
- (ii) Greater than 10 hectares – Discretionary Activity

Performance Standards for Permitted Activity:

- The landholder shall notify the Mackenzie District Council of the proposed clearance 4 months prior to the clearance being undertaken and shall supply a map of the proposed site.
- The clearance shall be more than 150m from the boundaries of any existing Sites of Natural Significance.

Exemptions

This rule shall not apply to:

- Any removal of declared weed pests; or
- Vegetation clearance for the purpose of track maintenance or fenceline maintenance within existing disturbed formations; or
- Any vegetation clearance including burning which has been granted resource consent for a discretionary or non-complying activity from the Canterbury Regional Council/Environment Canterbury under the Resource Management Act 1991; or
- Any indigenous cushion or mat vegetation where the site has been oversown, and topdressed at least three times in the last 10 years prior to new clearance so that the site is dominated by clovers and/or exotic grasses. **This exemption shall not apply within the period 14 December 2016 to 24 December 2017.**

For the purposes of Rule 12.1.1(g) and 12.1.1(h):

- The intention of the landholder notifying the Mackenzie District Council of permitted clearance activities is to allow interested parties to assess their interest in the proposed area, to discuss the proposal with the landholder and to undertake an inspection where appropriate. All inspections will be the result of voluntary agreement between the parties.
- The Mackenzie District Council will maintain a publicly available register of permitted clearance activities as notified by landowners under these Rules.
- For Discretionary Activities, the Mackenzie District Council will require areas of short tussock and indigenous cushion and mat vegetation to be significant in terms of the primary and secondary criteria for significance in Rural Policy 1B (i.e. the criteria used to identify Sites of Natural Significance) if these areas are to be protected from clearance. When assessing 'significance', the Mackenzie District Council shall restrict its assessment solely to the criteria set out in Rural Policy 1B.

7. Resource Management Issue

The issue that is being addressed by the proposed Plan Change is the need to avoid additional loss of valued indigenous short tussock and mat and cushion vegetation within the Mackenzie Basin through clearance. Clearance of vegetation is defined in the Definitions Section of the District Plan (section 3) as *“felling, clearing or modification of trees or any vegetation by cutting, crushing, cultivation, spraying or burning”* of vegetation. The two rules proposed to be amended were developed through mediation following appeals to the then proposed District Plan. During the mediation recognition was sought for land that was oversown and topdressed over time to improve the land for grazing. The rule was written as a place-holder until vegetation assessments were undertaken that would identify the vegetation of value and at risk. It was intended that these rules would be reviewed within three years of the Plan becoming operative i.e. 2007, as set out in detail in the implementation methods for Rural Objective 1 – Indigenous Ecosystems, Vegetation and Habitat and supporting policies 1A and 1B on pages 7-19 and 7-12 of the Plan (see Appendix) . This review and the associated assessment of the extent and conditions of the short tussock and associated communities did not occur.

The exemption from the clearance rules applies when the vegetation has been *“oversown and topdressed at least three times in the last 10 years prior to new clearance so that the site is dominated by clovers and/or exotic grasses”*. Applying this exemption is administratively burdensome as it requires an assessment of whether there has been the required oversowing and topdressing and what the current state of the vegetation is. With a move to irrigation within the drier areas of the Basin there is increased pressure for clearance of existing indigenous vegetation, including short tussock and mat and cushion vegetation. The exemption for oversowing and topdressing therefore is now enabling a level of change that was not anticipated when the rule was created. The clearance permitted is also potentially at odds with the objectives and policies of the District Plan – given the farming practices that now exist in the Basin. These objectives and policies seek to safeguard indigenous biodiversity and ecosystem functioning through the protection and enhancement of significant indigenous vegetation and habitats and the maintenance of natural biological and physical processes. This protection has the purposes of maintaining ecosystems, and retaining indigenous biodiversity, soil and water values, natural character, landscape and amenity.

8. Relevant Objectives and Policies

The objectives and policies which are the most relevant to the issue at hand are set out below:

Rural Objective 1 - Indigenous Ecosystems, Vegetation And Habitat

To safeguard indigenous biodiversity and ecosystem functioning through the protection and enhancement of significant indigenous vegetation and habitats, riparian margins and the maintenance of natural biological and physical processes.

Rural Policy 1C - Natural Character And Ecosystem Functions

To avoid, remedy or mitigate adverse effects on the natural character and indigenous land and water ecosystem functions of the District, including

- i land form, physical processes and hydrology;*
- ii remaining areas of significant indigenous vegetation and habitat, and linkages between these areas;*
- iii aquatic habitat and water quality and quantity.*

Rural Objective 3A - Landscape Values

Protection of outstanding landscape values, the natural character of the margins of lakes, rivers and wetlands and of those natural processes and elements which contribute to the District's character and amenity.

Rural Objective 3B – Activities in the Mackenzie Basin's outstanding natural landscape

- (1) Subject to (2)(a), to protect and enhance the outstanding natural landscape of the Mackenzie Basin subzone in particular the following characteristics and/or values:
 - (a) the openness and vastness of the landscape;*
 - (b) the tussock grasslands;*
 - (c) the lack of houses and other structures;*
 - (d) residential development limited to small areas in clusters;*
 - (e) the form of the mountains, hills and moraines, encircling and/or located in, the Mackenzie Basin;*
 - (f) undeveloped lakesides and State Highway 8 roadside;**

Rural Objective 4 - High Country Land

To encourage land use activities which sustain or enhance the soil, water and ecosystem functions and natural values of the high country and which protect the outstanding landscape values of the high country, its indigenous plant cover and those natural processes which contribute to its overall character and amenity.

Rural Policy 4B - Ecosystem Functioning, Natural Character And Open Space Values

Activities should ensure that overall ecosystem functioning, natural character and open space values of the high country are maintained by:

- Retaining, as far as possible, indigenous vegetation and habitat*
- Maintaining natural landforms*
- Avoiding, remedying, or mitigating adverse effects on landscape and visual amenity.*

These objectives and policies have the purpose of highlighting the importance of indigenous vegetation and habitats and the need to safeguard these for the purpose of retaining natural character, ecosystem functions and outstanding landscape values. There is an emphasis on significant indigenous vegetation and habitats as referred to in section 6(c) of the Act, but these provisions do not limit this consideration only to identified significant areas such as the Sites of

Natural Significance identified in the District Plan planning maps. Council is aware of expert opinion from several independent experts that a number of the short tussock areas and areas of mat and cushion plants and their associated communities would constitute significant indigenous vegetation when assessed against either the criteria referred to in Rural Policy 1B or in the more recent criteria in the Canterbury Regional Policy Statement. These areas, even in a degraded state, may also constitute significant habitats for indigenous fauna. With regard to indigenous vegetation communities of lesser significance, the objectives and policies seek that this plant cover is retained where possible to ensure overall ecosystem functioning, natural character and open space values of the High Country are maintained.

9. Alternative methods to achieve objectives

Possible methods to achieve the objectives and policies referred to in 8 above are:

- a. **Status quo** – retain oversowing and topdressing (OSTD) exemption in Rural zone rules 12.1.1g and 12.1.1.h
- b. Suspend the effect of the OSTD exemption for 12 month period or until new provisions in place i.e. **Plan Change 17 proposal**
- c. **Amend the OSTD exemption** to apply only if the OSTD occurred prior to the District Plan becoming operative in 2004
- d. **Rely on pastoral intensification** controls which are proposed as part of the section 293 proposal amending Plan Change 13, which is currently before the Environment Court.

10. Evaluation of effectiveness of alternative methods

a. Status quo

The current exemption has not been effective as it has enabled unlimited areas to be cleared and certificates of compliance to be obtained providing for such clearance. As no consent has been required for this clearance there has been no ability to assess the value of the vegetation or place limits on its clearance. The rules with their exemptions have not been efficient over time, which is not surprising given that they were only intended to apply for a limited time until detailed assessment of the vegetation resource and means of protecting the resource were reviewed and decided upon.

There has been evidence provided to the Environment Court that recent clearance activity has been occurring at pace, on a large scale and having irreversible adverse effects on matters of national importance under the RMA.

The status quo is not easy to administer as clearance can occur under the OSTD exemption without notice being given to the Council. Given the vastness of the Basin, this requires considerable vigilance on the part of the Council to ensure any activity purportedly undertaken in reliance on the OSTD exemptions is in fact permitted.

b. PC17 – suspension of OSTD exemption

The proposed suspension of the OSTD exemption from the clearance controls in rules 12.1.1.g and 12.1.1.h will be effective in preventing larger scale clearance (greater than the limits set in these rules) as of right. However, clearance beyond the area limits will still be possible, but only by way of resource consent. That consent process will provide the Council

with an opportunity to receive assessments of the ecological value of the vegetation and ecosystems in place and to make a determination on the basis of these values and other relevant considerations. In terms of efficiency, the removal of the exemption will improve the certainty in applying these rules by removing the need to obtain information about past use and exotic dominance. It is simpler to apply and administer than the current regime.

c. Amend OSTD exemption

This amendment would specify that the only OSTD that would form the basis of an exemption from the vegetation clearance rules would have had to occur prior to 2004 when the District Plan was made operative. This is an interpretive approach that has been advanced by other parties. This approach would rely on good information in the form of farm records and aerial photos of the areas being available to cover the past period. Given that this information is unlikely to be available in all cases, there would be uncertainty as to whether the exemption applied. This level of uncertainty means that the rule would not be efficient as a means of control. In terms of the amount of clearance that could theoretically occur under this approach, this would be less than could occur under the current exemption, but more than could occur under the PC17 proposal. It would therefore be partially effective.

d. Rely on future pastoral intensification control

The pastoral intensification control proposed as part of the revised Plan Change 13 package defines pastoral intensification as meaning cultivation, irrigation, topdressing and oversowing and/or direct drilling. It is effectively then another form of vegetation clearance. Within the package pastoral intensification will require resource consent in the majority of the Mackenzie Basin subzone, except where an existing irrigation consent has been granted. There are two areas of uncertainty with reliance on this future control which mean that it is may not be an effective or efficient means of meeting the objectives and policies relating maintenance of indigenous vegetation in the Mackenzie Basin. The first matter of uncertainty is that there is wide range of matters of contention amongst the parties to PC13 including what should constitute pastoral intensification and when and where resource consent will be required for this intensification. Secondly, the timeframe for a decision on these matters is uncertain as there are a number of other contentious elements that may involve additional input into the Court process.

Delay is the second matter of concern. Council are aware of expert ecological opinion regarding the vulnerability of the natural resources at issue and the irreversible effects of vegetation clearance. Delay could mean that any changes warranted on the merits are undermined by events that occur between now and a decision being issued.

On the basis of this evaluation the option to remove the OSTD exemption from rules 12.1.1.g & h is the most effective and efficient.

11. Evaluation of costs and benefits

a. Status quo

Under the current Plan provisions there is less need to apply for resource consents for vegetation clearance of areas of short tussock and mat and cushion vegetation. There is therefore less time and cost involved for those wanting to undertake clearance than would be the case if the exemption for OSTD is removed. Further the costs associated with preparation and processing of the proposed Plan Change 17 would be avoided. There would

however be no environmental benefit; rather the removal of this special vegetation would result in a permanent loss and therefore considerable environmental cost.

b. PC17

The proposed suspension of the OSTD exemption for 12 months will require landowners who wish to clear more than 40ha of short tussock or 10ha of mat or cushion vegetation to obtain discretionary status resource consent. However, the guidance in the Plan is clear that consent is likely to be granted except where significant areas or habitats are affected (in the last bullet point under the "notes" to those rules). In this sense, the largest cost will be to those proposing to clear significant vegetation or habitats. This cost needs to be weighed against the costs to the environment of those resources being removed without some sort of offset or compensation offered. As part of that process they may need to employ an ecologist to prepare an assessment of the value of the vegetation proposed to be cleared. Alternatively the landowner could delay the proposed clearance. Both these options will involve cost and delay, but only for those landowners who had undertaken OSTD as specified in the exemption and who intend to undertake clearance during the year when the exemption is removed. The scale of their costs will depend on the matters including holding costs and commitments to uptake of irrigation allocations. An additional potential cost associated with the delay is that the reviewed District Plan may contain similar or even more stringent controls on indigenous vegetation clearance.

There will be significant costs associated with preparation and processing of the plan change. With regard to the environment, there are expected to be benefits as some landowners may choose not proceed with large scale clearance. Alternatively they may choose to apply for resource consent which will have the benefit of an assessment being undertaken of the value of the vegetation.

c. Amend OSTD exemption

If the OSTD exemption was limited to the period prior to 2004, it is expected there would be considerably fewer people who could rely on the exemption than is currently the case. As a result there would potentially be more consents required than with the current rule, but less consents than if the exemption is suspended. Overall it is expected that there would be more removal of vegetation as compared to the situation where the exemption is fully removed, but it is not clear to what extent. Monitoring and administration costs would be greater because of the need to establish whether the necessary OSTD practices occurred more than a decade ago.

c. Rely on future pastoral intensification control

In this case landowners who are able to utilise the OSTD exemption would bear no additional costs or delay in clearing vegetation. Neither would the Council bear the cost of proposed PC17 preparation and processing. However the environmental implications would be the same as retaining the status quo, namely there would be no environmental benefit; rather the removal of this special vegetation would result in a permanent loss and therefore considerable environmental cost. The main difference with this option as compared to the status quo is that there is possibility that the PC13 decision will come into effect prior to the reviewed District Plan provisions.

12. Adequacy of information and risk of not acting

There is no single source of information which provides a definitive answer as to how many properties can take advantage of the OSTD exemption and which therefore could be cleared of their valued indigenous vegetation. There is information however from a variety of sources, including ECan's database of irrigation consents, which indicates that there are a number of properties which have the potential or desire to move to more intensive farming and which is likely to involve clearance of the current indigenous vegetation in some manner. In addition recent experience indicates that more clearance is expected to occur and that there is a risk that there will be more requests for certificates of compliance for vegetation clearance if the exemption remains in place. For these reasons it is considered that the risk of not acting is significant as the vegetation once cleared will effectively be permanently lost.

20 December 2016

APPENDIX

Implementation Methods *(of Rural Objective 1 and Rural Policies 1A and 1B)*

- Identify sites of significance.
- Controls within Sites of Natural Significance:
limiting volume, area and slope of earthworks, tree planting, vegetation clearance, building and pastoral intensification.
- Promoting reasons and merits of protection of areas.
- Providing information on and promote opportunities for protection, including management agreements and covenants.
- Provide for exemptions from Plan rules where alternative protection mechanisms are in place.
- Rates relief for landholders protecting indigenous vegetation.
- Review of Rules 12.1.1 (g) and 12.1.1 (h)
- A review of Rules 12.1.1 (g) and 12.1.1 (h) will commence 3 years after the date at which the Plan became operative. These Rules will continue to apply until such time as the review is complete and a new Rule(s) is substituted. The agreed process for such a review is as follows:
 - (i) The Mackenzie District Council will review the extent and condition of short tussock grasslands and associated communities in the Mackenzie Basin, and the extent of cultivation and modification of these areas since the Plan became operative. Council will consult interested parties including landholders, Federated Farmers, Department of Conservation, Environment Canterbury, and environmental and community organisations. It will use relevant information such as the ortho-digital technology of the RFT (Rural Futures Trust). It will consider matters such as the economic, ecological, landscape and other values of the short tussock grasslands and associated vegetation.
 - (ii) The review process may result in the Council amending the Plan and/or Rules 12.1.1 (g) Short Tussock Grasslands and 12.1.1 (h) Indigenous Cushion and Mat Vegetation and Associated Communities to identify areas where development and modification needs to be more strictly controlled and/or areas where the above Rules would no longer apply.

Council has chosen to provide exemptions from the rules controlling adverse effects on Sites of Natural Significance where management agreements or covenants are in place. Council will monitor the effectiveness of these to maintain the significant values of these sites. If this review indicates that the values of the sites are not being satisfactorily maintained the Council will reconsider the mechanisms available to maintain these values.

Environmental Results Anticipated

Protection of the natural habitats of indigenous plants and animals from the adverse effects of human activities and a reduced overall rate of degradation of indigenous habitats and biodiversity.