

## SUBMISSION ON PLAN CHANGE 18 TO MACKENZIE DISTRICT PLAN

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**DATE:** 9 March 2018

### INTRODUCTION

- 1 EDS is a public interest environmental group, formed in 1971. The focus of its work is on achieving positive environmental outcomes through improving the quality of Aotearoa New Zealand's legal and policy frameworks and statutory decision-making processes. It has been actively involved in the Mackenzie District seeking to ensure protection of the Mackenzie Basin's unique and threatened ecology and of its iconic landscape values. Experience shows the operative planning framework's approach is not working. Regulatory failure has allowed extensive vegetation clearance, pastoral intensification, and agricultural conversion<sup>1</sup> resulting in widespread degradation and loss of endangered, vulnerable, and rare ecosystems, and of outstanding natural landscape (**ONL**) values. Degradation and loss is accelerating.
- 2 This submission is made on Plan Change 18 to the Mackenzie District Plan (**PC18**) which introduces objectives and policies for indigenous biodiversity and indigenous vegetation clearance rules. PC18 is a crucial element in achieving the regulatory change urgently required.
- 3 This submission is structured as follows:
  - a. Summary
  - b. Mackenzie Basin
  - c. Legislative Framework

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<sup>1</sup>To use the terms applied to different intensification activities by PC13:

*Pastoral intensification: means subdivisional fencing and/or topdressing and oversowing.*

*Agricultural conversion: means direct drilling or cultivation (by ploughing, discing or otherwise) or irrigation.*

d. Submission Table

**SUMMARY**

4 In summary, EDS submits that:

- a. The Mackenzie District is home to important indigenous biodiversity values which are nationally and internationally unique. Those values are fragile and currently under immense pressure from land use intensification. They are rapidly being lost. The Basin's biodiversity and landscape values are at a tipping point, exceedance of which will see it no longer qualify as outstanding under s6(b) RMA or significant under s6(c) RMA.
- b. A robust and stringent planning framework is required if loss and degradation of biodiversity, landscape, and natural character values is to be stopped. PC18's provisions are a key component of that framework.
- c. PC18 is a positive step away from the complexity and opaqueness of the operative District Plan. However, absent the changes sought in this submission EDS considers PC18 would:
  - Not promote the sustainable management of resources.
  - Not recognise and provide for protection and preservation of s6(a), (b), and (c) RMA values as a matter of national importance.
  - Not give effect to the Canterbury Regional Policy Statement, in particular Chapter 9.
  - Represent a failure by Council to fulfil its function under s31 RMA to maintain indigenous biological diversity.
  - Fail to achieve the designated purpose of a district plan.
  - Not warrant confirmation under s32 RMA.
  - Allow the generation of significant adverse effects on the environment.
- d. The key issues with PC18 are:
  - Failure to update mapped Sites of Natural Significance<sup>2</sup> (**SONS**). In the Mackenzie Basin, the entire remaining, undeveloped corridor (see **Attachment A**<sup>3</sup>) should be identified as a SONS.
  - Failure to address the overlap between s6(b) and (c) values. Clearance of vegetation can also have significant adverse effects on ONL values.

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<sup>2</sup> Being those areas which qualify as significant under s6(c) RMA.

<sup>3</sup> Attachment A shows the remaining corridor of indigenous biodiversity value as identified by ecologists before the Environment Court during the PC13 hearing.

- Failure to require avoidance of adverse effects on SONS and non-mapped s6(c) significant areas, in particular in the Mackenzie Basin. The Basin’s biodiversity values are extremely fragile. Many exist nowhere else and are on the verge of extinction. Avoidance of adverse effects is appropriate and necessary.
- Provision for permitted activities which would result in extensive clearance, including of non-mapped significant areas. In particular because of:
  - Failure to include a cap on permitted clearance under Rule 1.1.1.
  - The exemption included in the definition of “improved pasture”.
  - Failure to include sufficient parameters around clearance for the Waitaki Power Scheme.
  - Failure to include matters of discretion regarding protection of SONS and non-mapped significant areas, and protection of ONL values.

5 The specific relief sought is set out in table form below. EDS also seeks any alternative and/or consequential relief necessary to address the issues raised.

6 EDS wishes to be heard in support of its submission. It will consider bringing a joint case with others with the same interests.

### **THE MACKENZIE BASIN**

7 EDS’s key area of interest is the Mackenzie Basin. The Basin’s landscape and biodiversity values are unique. It is valued because it is one of New Zealand’s environmental extremes: cold, high, and dry, with its sequence of landforms almost entirely derived from the glaciers and their melting. It still has extensive connected areas of dryland, wetland, and fresh water ecosystems found nowhere else and recognised as rare and threatened.

8 But in the past five years the Basin has been modified, largely as a result of farming intensification. It has changed from a unique, complex matrix of indigenous cushion and mat vegetation, shrub, and grasslands to an artificial, exotic, and alien monoculture. Once the Basin’s ecosystems, flora, and fauna are lost they are lost globally, forever.

9 It is EDS’s understanding that:<sup>4</sup>

- a. Across the Basin floor (both WDC and MDC jurisdictions) the area of indigenous vegetation and ecosystems directly lost to land use change between 1990 and 2017 exceeds approximately 68,000ha. That is 22.5% of the total Basin floor.<sup>5</sup>
- b. 22.5% greatly understates the percentage of the Basin that has experienced adverse ecological effects from land use change because many effects extend far beyond the

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<sup>4</sup> Statistics from Dr Susan Walker. Also provided in evidence on PC13 and Simons Pass preliminary tenure review proposal.

<sup>5</sup> Which is approximately 301,000ha.

sites where ecosystems are directly lost (e.g. through fragmentation, loss of species population, fresh water effects).

- c. Half of the direct ecosystem loss (about 34,000ha) occurred between 2009 and present. It has accelerated in the last four to five years, with between 65%-85% of conversion occurring in the last three years.<sup>6</sup> Recently issued but unimplemented consents threaten to further increase ecological loss.
- 10 In short, a tipping point, exceedance of which sees biodiversity and landscape values eradicated, is perilously close to being reached. In the part of the Basin under WDC jurisdiction (Omarama) the tipping point has already been surpassed. In the Canterbury Plains, analogous values have been long annihilated. As a result, the part of the Basin in Council jurisdiction is the last bastion for much of its biodiversity, geology, geomorphology, and associated iconic views. Landscape scale ecological and landscape connectivity and coherence persist. Loss in Canterbury and Waitaki renders what remains in Council jurisdiction of even greater importance.
- 11 The underlying cause of loss and degradation of biodiversity and landscape values is cross-institutional policy and regulatory failure resulting from:
- a. Bad decision-making on tenure review and discretionary consents on pastoral lease land which sets up an expectation of land development/intensification.
  - b. Regional council failure to consider terrestrial biodiversity and landscape effects when considering applications for water take and use consents.<sup>7</sup>
  - c. Opaque drafting creating 'loopholes' in the planning framework providing opportunity to avoid regulatory oversight.<sup>8</sup>
  - d. Incomplete definitions meaning some activities physically/practically resulting in vegetation clearance are not subject to regulatory oversight.<sup>9</sup>
  - e. Failure to review 'interim rules' facilitating manipulation of loopholes and definitional deficiencies.<sup>10</sup>
  - f. Lack of capacity to undertake compliance, monitoring, and enforcement action.<sup>11</sup>

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<sup>6</sup> PC13 11<sup>th</sup> EC Decision at [92].

<sup>7</sup> 12 regional consents for water take for irrigation were issued by Canterbury Regional Council between November 2015 and November 2016, totally approximately 13,000ha. On top of the area already developed (either by irrigation or dryland intensification) there is no doubt the Mackenzie Agreement would be meaningless if that area is irrigated.

<sup>8</sup> In particular in Rules 7.12.1.1g and 7.12.1.1h. Subject to interim suspension by PC17. For specific details see:

***Environmental Defence Society Inc v Mackenzie District Council*** [2016] NZEnvC 253.

<sup>9</sup> ***Royal Forest & Bird Protection Society of NZ Inc v Waitaki District Council*** [2012] NZHC 2096. In the part of the Basin in MDC jurisdiction this has now been remedied by the Court's decisions on PC13 (see 11<sup>th</sup> EC Decision and 12<sup>th</sup> EC Decision).

<sup>10</sup> Again, in particular in Rules 7.12.1.1g and 7.12.1.1h. Subject to interim suspension by PC17. For specific details see:

***Environmental Defence Society Inc v Mackenzie District Council*** [2016] NZEnvC 253.

<sup>11</sup> The 2014/2015 NMS data indicates MDC and no resource for these functions.

- 12 The operative planning framework is clearly not working. Change is urgently required. PC18 and the wider District Plan review provides Council with an opportunity to take a fresh, strategic, and innovative approach to managing the Basin. It should not let that opportunity pass.

## **LEGISLATIVE FRAMEWORK**

### **Resource Management Act**

- 13 The relevant provisions under the RMA are directive. Council through its District Plan must *inter alia*:
- a. Recognise and provide for the protection of ONLs. The Environment Court has confirmed the entire Mackenzie Basin is an ONL (s6(b) RMA).<sup>12</sup>
  - b. Recognise and provide for protection of significant indigenous vegetation and habitats of indigenous fauna (**significant areas**). The Environment Court has observed that the remaining area ecological connectivity in the Mackenzie Basin is significant (s6(c) RMA).<sup>13</sup>
  - c. Control the effects of the use, development, or protection of land for the purpose of the maintenance of biological diversity.
  - d. Give effect to the Canterbury Regional Policy Statement (**RPS**).

### **Regional Policy Statement**

- 14 The key section of the RPS is Section 9 Indigenous biological diversity. PC18 must give effect to the provisions in Section 9 RPS and other relevant RPS sections<sup>14</sup>. Key elements of Section 9 are:
- a. Ongoing loss and degradation of ecosystems and indigenous biodiversity and difficulties with identification of significant areas are identified as significant regional resource management issues (Issues 9.1.1 and 9.1.2). Lowland and montane environments are identified as having experienced the greatest loss and, as a consequence, remaining indigenous biodiversity in those environments as “having a correspondingly higher significance and is in greatest need of protection...” (Explanation, Issue 9.1.2).
  - b. Dual objectives of halting biodiversity decline and restoring and enhancing ecosystems and biodiversity (Objectives 9.2.1 and 9.2.1).
  - c. Objective 9.2.3 is the protection of significant indigenous vegetation and habitats. This is achieved through identifying significant areas and then ensuring their protection to ensure no net loss of indigenous biodiversity values from land use (Policy 9.3.1). District

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<sup>12</sup> PC13 1<sup>st</sup> EC Decision.

<sup>13</sup> PC13 11<sup>th</sup> EC Decision.

<sup>14</sup> In particular Sections 7, 10, 12 as identified in the introduction to Section 9.

plans must include provisions to provide for identification and protection of significant areas (method 3, Policy 9.3.1). This must include rules which trigger case-by-case assessment of indigenous vegetation clearance to allow for identification of significance areas (method 4, Policy 9.3.1).

- d. Policy 9.3.2 sets out priorities for protection to which district plans must give effect. These include land environments where less than 20% of original indigenous vegetation cover remains, wetlands, originally rare ecosystem types, and habitats of threatened or at risk species. All of these priority areas are found across large tracts of the Mackenzie Basin, in particular in the remaining area of ecological and landscape connectivity.
- e. Policy 9.3.3 requires adoption of an integrated approach *inter alia* across catchments where connectivity is an issue for sustaining habitats and ecosystem function. The Mackenzie Basin is one of those areas. Policy 9.3.4 is complementary, promoting enhancement and restoration to improve functioning and long term sustainability. The need for action to restore fragmented, degraded, or scarce natural habitats to restore ecosystem functioning is a key driver for those policies (explanation, Policy 9.3.4).
- f. A key anticipated environmental result is that the “overall functioning and intrinsic value of Canterbury’s existing ecosystems and indigenous biodiversity are protected from adverse effects of land use and development”.

#### SUBMISSION TABLE

Provision	Relief	Reasons
<b>Gaps</b>		
Failure to identify all SONS.	Mapping of all SONS, including mapping of the Mackenzie Basin’s remaining contiguous/connected area of biodiversity (and geomorphological and landscape) value as a SONS.	Identification of the Mackenzie Basin’s remaining area of connectivity of biodiversity values as a SONS is consistent with the Environment Court’s finding that where the Basin has not been subject to pastoral intensification/agricultural conversion, is a SONS for s6(c) RMA <sup>15 16</sup> purposes and an ONL for s6(b) RMA purposes <sup>17</sup> . Ecologists in PC13 identified at a basic level where contiguity and connectivity remains at request of the Court. <sup>18</sup>  Spatial mapping has many positives. It is

<sup>15</sup> PC13 11<sup>th</sup> EC Decision.

<sup>16</sup> It is not clear from the Consultation Documents the extent and location of the 8 additional SONS it has identified as part of preparing for the Review.

<sup>17</sup> PC13 1<sup>st</sup> EC Decision.

<sup>18</sup> Attachment B to EDS’s feedback of 20 September 2017 on the vegetation clearance rule consultation documents.

		<p>clear and simple for plan users, plan regulators, and the public. It allows easy delineation between different areas and application of targeted rules to each. It reduces complexity of monitoring as outcomes on the ground can be cross-checked against those expected and visually represented under the spatial plan. This assists with management of cumulative effects. It also removes issues over Council inability to access properties to undertake SONS assessments.<sup>19</sup> It aligns with the Mackenzie Agreement shared vision of a drylands park to which stakeholders with a multiplicity of perspectives are signatory. It also gives effect to the RPS which requires identification and protection of SONS<sup>20</sup>, and identifies fragmentation of ecosystems as a key contributor to ecosystem loss, and achieving connectivity as a key restoration objective.<sup>21</sup></p>
<p>Failure to take an integrated approach to protecting ONL and ecological/biodiversity values.</p>	<p>Insert a new policy recognising the overlap between ONL and biodiversity values.</p> <p>Amend the assessment criteria and Appendix Y to provide for consideration of landscape effects as set out below.</p>	<p>Landscape value and ecological and biodiversity values are intimately interlinked (see for example RPS landscape criteria). In the context of the Mackenzie Basin this has been acknowledged by the Environment Court. For Council to fulfil its obligations under s6(b) RMA and under the District Plan's landscape objectives and policies (introduced by PC13) it is necessary for this overlap to be recognised in Section 9 RPS and discretion reserved to consider adverse effects on landscape values.</p>
<p>Failure to address relationship with Section 16 District Plan.</p>	<p>Insert policy direction that Section 9 and associated vegetation clearance rules apply to all activities and other parts of the plan, including Section 16.</p>	<p>Broad, poorly drafted exemptions in Section 16 have been relied on to allow for large-scale permitted clearance resulting in loss of s6(c) and (b) RMA values. This is not acceptable. Robust regulatory oversight is required to ensure those values are protected.</p>
<p><b>Definitions</b></p>		

<sup>19</sup> An issue specifically identified by the Consultation Documents, and which has also arisen in context of PC13 and PC17.

<sup>20</sup> Objective 9.2.3, Policy 9.3.1 RPS.

<sup>21</sup> Objective 9.2.2 including principal reasons and explanation, Policy 9.3.4 RPS.

Improved pasture	Delete proposed definition.	<p>PC18's proposed definition is uncertain, relies upon ambiguous concepts, and is therefore unsuitable as a permitted standard. Subparagraph (b) creates a factual fiction where areas which are in fact predominately indigenous will be treated as if they are not and vegetation clearance will be permitted. Lack of clarity around key terms used in the definition means its ambit is potentially wide. For example, as drafted the definition would allow clearance of 14 year old indigenous vegetation over 100% of a farming enterprise not mapped as a SONS if it had been subject to a single clearance action (e.g. cutting, spraying, burning) 14 years ago.</p> <p>Key terms that contribute to the loop-hole include:</p> <ul style="list-style-type: none"> <li>- What qualifies as "modification and enhancement"? This is relevant to subparagraphs (a) and (b). In context of (b) failure to define means that a single round of spraying 14 years ago would trigger the exemption in (b).</li> <li>- When is the "previous 15 year" period to be calculated from? This is the exact drafting error that lead to the loop-hole in the operative rules.</li> <li>- Is the 15 year period appropriate? EDS's expert advice is that it is not. Indigenous vegetation with significant values will persist in many areas where there have been one or a number of 'improvement' interventions in a 15 year period.</li> <li>- When are exotic pasture species "deliberately introduced"?</li> <li>- When do exotic pasture species "dominate in cover"?</li> </ul> <p>When paired with the proposed permitted rule for vegetation clearance for "improved pasture" this definition would facilitate wide-spread clearance across the Mackenzie Basin in areas with s6(c) significant values. This would have corresponding adverse effects on s6(b) values.</p>
Indigenous vegetation	Delete proposed definition	The proposed definition is not clear and uses terms which themselves need defining.



	<p>and replace with:</p> <p>Any plant community, which supports plant species naturally originating in New Zealand and their associated ecosystems, including where exotic species (species not naturally occurring in New Zealand) form part of that ecosystem (including tussock grasslands).</p>	<p>Recognition of overlap between exotic and indigenous vegetation is positive, however clarity is required as to the relationship between those two groups.</p> <p>EDS is not opposed to providing for clearance of indigenous vegetation in some situations e.g. if planted for harvest. However, the definition is not the appropriate place to exclude certain vegetation. If the vegetation concerned is indigenous it is indigenous. The correct place to provide for such clearance is through a rule.</p>
<p>New definition: Maintenance</p>	<p>Insert new definition:</p> <p>In relation to indigenous biodiversity “maintenance” means to enable indigenous biodiversity to continue by achieving “no net loss”.</p>	<p>Maintenance of biodiversity is a key outcome sought by PC18. It is important it is defined. Maintenance is not defined by the RMA or the RPS. The definition proposed relies on the common dictionary definition of maintenance and incorporates the concept of no net lost consistent with the approach taken by PC18.</p>
<p>New definition: No net loss</p>	<p>Insert new definition:</p> <p>In relation to indigenous biodiversity, “no net loss” means no reasonably measurable overall reduction in:</p> <p>a)the diversity of indigenous species or recognised taxonomic units; and b)indigenous species’ population sizes (taking into account natural fluctuations) and long term viability; and c)the natural range inhabited by indigenous species; and d)the range and ecological health and functioning of assemblages of indigenous species, community types and ecosystems</p>	<p>No net loss is a key outcome sought by PC18. It is important it is defined. The proposed definition is that used by the RPS. Repetition of the definition in the District Plan is efficient and assists with ease of understanding.</p>
<p>New definition:</p>	<p>Insert a new definition of</p>	<p>Addressed below under Policy 6.</p>

Biodiversity offsetting	biodiversity offsetting.  Definitions and analysis addressed below under Policy 6.	
Site of Natural Significance (or SONS)	Insert new definition:  SONS means significant sites of indigenous vegetation and fauna habitat identified in the District Plan maps. Not all sites qualifying as significant under s6(c) RMA and Policy 9.3.1 RPS in the District have been mapped. Other sites will be identified on a case-by-case basis.	SONS' are an important concept under PC18 and the District Plan. It is important the term is defined. The Environment Court has found and Council has acknowledged not all significant areas have been mapped as SONS under the District Plan. Non-mapped sites must also be protected in order for Council to fulfil its obligations under s6(c) RMA and Section 9 RPS. As a result the definition of SONS should acknowledge that mapped SONS are not exhaustive, consistent with the approach in PC18 to identify further SONS via a case-by-case process.
<b>Objectives</b>		
Objective 1	Amend as follows:  To safeguard indigenous biodiversity and ecosystem functioning through:  <ul style="list-style-type: none"> <li>a. the protection and enhancement of significant indigenous vegetation and habitats, riparian margins; and</li> <li>b. the maintenance of <u>indigenous biological diversity.</u> <del>natural biological and physical processes.</del></li> </ul>	The objective is opposed in part. The two limbs align with the Council's obligations under s6 and s31 RMA. Amendments are proposed to make the Objective's two limbs more clear. As proposed it is not clear what the second limb is trying to achieve, in particular because the terms natural biological and physical processes are not clear or defined. The proposed amendment simplifies the Objective and is supported by a new definition of maintenance which focuses on flora, fauna, and processes.
Objective 2		Support.
Objective 3	Amend Objective 3 as follows:	Oppose in part. Objective 3 only refers to the use of FBPs to protect significant areas. FBPs apply to an entire farming enterprise.

	<p>To support/encourage the integration of land development proposals with comprehensive identification, and protection and/or enhancement of values associated with significant indigenous biodiversity, <u>and maintenance of indigenous biodiversity outside significant areas</u>, through providing for comprehensive Farm Biodiversity Plans and enabling development that is in accordance with those plans.</p>	<p>That enterprise will include areas which qualify as significant under s6(c) and areas which do not. Non-significant areas cannot be ignored if biodiversity is to be maintained. In addition, enabling of development in accordance with FBPs is only acceptable of those FBPs are robust and ensures biodiversity values are appropriately addressed. Changes are sought to the relevant rules and FBP requirements to achieve that outcome.</p>
<p><b>Policies</b></p>		
<p>Policy 1</p>	<p>Amend as follows:</p> <p>Delete the words “in the District Plan”.</p> <p>Insert a new map identifying the remaining area of biodiversity/ecological connectivity in the Mackenzie Basin as a SONS.</p>	<p>Oppose in part because:</p> <ul style="list-style-type: none"> <li>- The District Plan does not identify all SONS. PC18 sets up a planning framework where non-mapped significant sites are identified and protected on a case-by-case basis consistent with the RPS (method 3, Policy 9.3.1). As a result, Policy 1 should not be solely focused on identification of significant areas in the District Plan.</li> <li>- Ecologists in PC13 identified at a basic level where biodiversity/ecological contiguity and connectivity remains in the Basin at request of the Court and that that area qualified as significant under s6(c) RMA (i.e. as a SONS). Currently PC18 and the District Plan only identify small pockets of SONS across the Basin. As a result, the more stringent rules framework applying to SONS in order to ensure protection of significant values only applies to a small portion of the Basin. In fact the values present across much of the Basin are deserving of that level</li> </ul>

		of protection.
Policy 2	<p>Delete proposed policy and replace with:</p> <p>Policy 2A</p> <p>Avoid adverse effects on significant indigenous vegetation and habitat, riparian areas, and linkages between these areas.</p> <p>Policy 2B</p> <p>Avoid, remedy, or mitigate adverse effects on indigenous biological diversity outside of significant areas.</p>	<p>Policy 2 is opposed because:</p> <ul style="list-style-type: none"> <li>- The Mackenzie Basin is in a state of crisis. Its biodiversity/ecological values are being lost at a rapid pace and with those s6(a) and (b) natural character and landscape values. It is at a tipping point beyond which its significant and outstanding values will not survive. Robust and stringent effects management is required if this trend of loss is to be halted and reversed. Avoidance of adverse effects on significant areas is required.</li> <li>- Outside of significant areas a more flexible effects management framework is acceptable.</li> <li>- The terms used in the proposed policy are not clear, and it is not clear how they fit with requirements under the RPS and ss6 and 31 RMA.</li> </ul>
Policy 3	<p>Amend as follows:</p> <p>Delete the words at the end of Policy 3 “in areas identified as significant.”</p>	<p>Policy 3 is opposed in part. The goal of no net loss applies to maintenance of indigenous biodiversity across the District, not significant sites. Protection of significant sites is a key tool to achieving no net loss. Significant sites are not areas where the ‘unders and overs’ approach that can be connected with the no net loss concept applies. This interpretation gives effect to Policy 9.3.1(3) RPS which requires identified significant areas to be protected “to ensure no net loss of indigenous biodiversity” generally.</p>
Policy 4	<p>Amend as follows:</p> <p>To ensure that land use activities including indigenous vegetation clearance <del>and</del>, pastoral intensification <u>and</u> <u>agricultural conversion</u> do not adversely affect any</p>	<p>Policy 4 is opposed in part. Changes are made to:</p> <ul style="list-style-type: none"> <li>- Include reference to agricultural conversion which was introduced by PC13 and captures activities different to pastoral intensification with equal potential to have adverse effects.</li> </ul>

	<p><del>ecologically significant</del> <u>the significant values of</u> wetlands.</p> <p>Policy direction on the significant values of the District's different wetland types should also be included.</p>	<ul style="list-style-type: none"> <li>- Give effect to the NPSFM which requires protection of the significant values of all wetlands.</li> </ul>
Policy 5	<p>Delete proposed policy and replace with:</p> <p>Policy 5</p> <p>To consider a range of mechanisms for securing protection if consent is granted including:</p> <ol style="list-style-type: none"> <li>Consent conditions.</li> <li>Joint management agreements.</li> <li>Covenants.</li> </ol>	<p>Direction in Policy 5 as to how protection can be secured is supported. Outside of that Policy 5 is opposed because:</p> <ul style="list-style-type: none"> <li>- As noted above, the fragility of the District's remaining significant areas, in particular in the Mackenzie Basin, demand an avoidance approach.</li> <li>- Offsetting is a process by which residual adverse effects on one area is allowed on basis they will be counterbalanced by a gain in another. This does not achieve "protection" which requires the resource affected to be "kept safe from harm, injury, or damage"<sup>22</sup>.</li> </ul>
Policy 6	<p>Delete proposed policy and replace with:</p> <p>Policy 6</p> <p>To consider use of biodiversity offsetting to address residual adverse effects on indigenous biological diversity outside of areas of significant indigenous vegetation and habitats where effects cannot be avoided, remedied or mitigated.</p> <p>Insert new definition of biodiversity offsetting which includes all BBOP principles (<b>Attachment B</b>).</p>	<p>The Policy is opposed in part. Ability to consider use of biodiversity offsetting in accepted at a conceptual level however:</p> <ul style="list-style-type: none"> <li>- It should not apply to significant areas for the reasons outline above. In the Mackenzie context avoidance is required.</li> <li>- Biodiversity offsetting is a specific tool, subject to criteria agreed by ecological experts internationally. Those criteria should apply. Many of the criteria are proposed to apply, some are not. A definition of biodiversity offsetting is proposed which aligns with international best practice. That definition builds on and complements the RPS criteria.</li> </ul>

<sup>22</sup> *Royal Forest & Bird Protection Society Inc v New Plymouth District Council* [2015] NZEnvC 219.

Policy 7	<p>Delete proposed policy and replace with:</p> <p>Policy 7</p> <p>To recognise that the location of renewable energy generation structures and activities can overlap with indigenous biological diversity values.</p>	<p>Recognition of overlap between energy generation activities and existence of indigenous biological diversity is accepted in principle. However, as worded Policy 7 is not appropriate for inclusion in a district plan chapter focused on indigenous biological diversity. It is solely focused on recognising the values of renewable energy generation. That is addressed in other parts of the District Plan.</p>
Policies 8 & 9	<p>Amend as follows:</p> <p>Policy 8 To enable rural land use and development at an on-farm level, where that development is integrated with comprehensive identification, sustainable management, <del>and</del> long-term protection of values associated with significant indigenous vegetation and significant habitats of indigenous fauna, <u>and maintenance of indigenous biological diversity</u>, through a Farm Biodiversity Plan process.</p>	<p>Policies 8 and 9 are opposed in part. Currently both focus only on significant biodiversity. However management of indigenous biological diversity outside significant sites is also required to ensure maintenance is achieved. Protection of significant sites is an important element of overall maintenance, but only one element. This is reflected in Appendix C and the FBP requirements themselves.</p>
Rules		
Rule 1.1.1 Permitted activities	<p>Amend as follows:</p> <ul style="list-style-type: none"> <li>- All permitted clearance should be subject to a maximum clearance cap or alternative, specific parameters around clearance.</li> <li>- Delete Rule 1.1.1.6.</li> </ul>	<p>Provision for some permitted clearance is accepted at a conceptual level however:</p> <ul style="list-style-type: none"> <li>- All permitted clearance should be subject to a maximum clearance cap. Permitted clearance for permitted purposes can be extensive (e.g. farm tracks). A cap and/or specific parameters to control extent of clearance is particularly important to ensure cumulative effects are addressed. It is also imperative given that not all SONS have been identified in</li> </ul>

		<p>PC18 or the District Plan. This means that the rules framework must be set to ensure regulatory oversight at the point where protection of significant ecological values may be compromised. This is particularly important in the Mackenzie Basin.</p> <ul style="list-style-type: none"> <li>- When paired with the proposed definition of “improved pasture” Rule 1.1.1.6 provides for extensive clearance across the whole of the Mackenzie Basin as a permitted activity. This is strongly opposed on basis of the significance of the Basin’s ecological value, the need to protect those values, and the fact that not all SONS in the Basin have been identified. The complexity, diversity, fragility of the Basin’s ecological values means regulatory oversight of what is potentially large-scale clearance is appropriate.</li> <li>- Rules 1.1.1.7 and 1.1.1.8 are supported. SONS and the identified waterbodies represented some of the District’s highest value environments. Stringent and robust protection is appropriate.</li> </ul>
<p>Rule 1.2.1 Restricted discretionary activities (FBP)</p>	<p>Amend as follows:</p> <ul style="list-style-type: none"> <li>- New matter 1(b)</li> </ul> <p>Adequately identifies biodiversity values including:</p> <ol style="list-style-type: none"> <li>a. SONS</li> <li>b. Other areas of significant indigenous vegetation or habitat of indigenous species using the criteria provided in Appendix 3 of the CRPS.</li> <li>c. Biodiversity values outside (a) and (b) areas in particular those important for</li> </ol>	<p>Provision for clearance subject to a FBP is support at a conceptual level, however:</p> <ul style="list-style-type: none"> <li>- The FBP requirements need work. This is addressed below.</li> <li>- Re matter of discretion 1: <ol style="list-style-type: none"> <li>(a) Reliance on achievement of the purposes in Appendix Y is only acceptable if those are consistent with Section 9’s Objectives and Policies and Council’s obligations under ss6 and 31 RMA. This is addressed below.</li> <li>(b) The District Plan needs to be clear how it addresses mapped SONS and areas that are significant but have not yet been mapped. Matter 1(b) needs to be clear that reliance on mapped SONS is inadequate</li> </ol> </li> </ul>

	<p>ecosystem connective, function, diversity, and integrity.</p> <ul style="list-style-type: none"> <li>- New matter 1</li> </ul> <p>Make identification of threats on the values identified under matter 1(b) a new, stand-alone matter of discretion.</p> <ul style="list-style-type: none"> <li>- Matters 1(c) and (d)</li> </ul> <p>Delete the word adequate.</p> <ul style="list-style-type: none"> <li>- New matter 1</li> </ul> <p>Includes methods that will maintain indigenous biodiversity outside significant areas, including effects on the wider ecosystem from the proposed clearance and how this may impact connectivity, function, diversity and integrity.</p> <ul style="list-style-type: none"> <li>- New matter 1</li> </ul> <p>Includes methods that will protect outstanding natural landscape values resulting from links between between the vegetation proposed to be cleared and the visual or landscape values which are underpinned by the ecology present, including with reference to Appendices X &amp; W.</p> <ul style="list-style-type: none"> <li>- Matter 2(a)</li> </ul> <p>Delete “identified as significant”.</p> <ul style="list-style-type: none"> <li>- Matter 2(d)</li> </ul>	<p>and that a significance assessment of remaining areas on the property is required. Matter 1(b) addresses two matters – identification and threats. These should be split to ensure clarity.</p> <ul style="list-style-type: none"> <li>(c) Matters 1(c) and (d) both refer to “adequate” protection. The word adequate is redundant. Protection is either achieved or it is not.</li> <li>(d) The matters under Part 1 do not address biodiversity outside of significant areas. This is necessary for Council to be confident it is fulfilling its s31 functions. Protection of significant areas is only one part of that requirement.</li> </ul> <ul style="list-style-type: none"> <li>- Re matter of discretion 2: <ul style="list-style-type: none"> <li>(a) The no net loss test should not be applied to significant areas. The ‘unders and overs approach’ no net loss implies is not appropriate where the objective is to protect. In the Basin, the fragility of the remaining values demands an avoidance approach to protection.</li> <li>(b) Matter 2(d) is not clear. The issue is not one of ‘potential’ to address effects but adequacy of proposed measures to address effects. Further, in respect of significant areas, in particular in the Mackenzie Basin, the fragility of the remaining values demands an avoidance approach to protection.</li> <li>(c) Matter 2(g) is not an issue of compliance with a FBP.</li> <li>(d) A new matter of discretion is required to ensure consideration of the link between biodiversity values and landscape values.</li> </ul> </li> </ul>
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	<p>Delete and replace with: Includes methods that will protect significant indigenous vegetation and significant habitats of indigenous fauna.</p> <ul style="list-style-type: none"> <li>- Matter 2(g)</li> </ul> <p>Delete.</p>	
<p>Rule 1.2.2 Restricted discretionary activities</p>	<p>Amend as follows:</p> <ul style="list-style-type: none"> <li>- New matter</li> </ul> <p>Adequately identifies biodiversity values including:</p> <ol style="list-style-type: none"> <li>a. SONS</li> <li>b. Other areas of significant indigenous vegetation or habitat of indigenous species using the criteria provided in Appendix 3 of the CRPS.</li> <li>c. Biodiversity values outside (a) and (b) areas in particular those important for ecosystem connective, function, diversity, and integrity.</li> </ol> <ul style="list-style-type: none"> <li>- New matter</li> </ul> <p>Includes methods to protect significant indigenous vegetation and significant habitats of indigenous fauna.</p> <ul style="list-style-type: none"> <li>- New matter</li> </ul> <p>Includes methods that will</p>	<p>Provisions for some clearance as a restricted discretionary activity without a FMP is acceptable in principle, however:</p> <ul style="list-style-type: none"> <li>- The cap proposed is high. It is only appropriate if the additional matters of discretion are sought.</li> <li>- In significant areas, in particular in the Mackenzie Basin, the fragility of the remaining values demands an avoidance approach to protection. It is important Council clearly reserves its discretion on that point. Simply considering the “impacts” of a proposal (matter 1) does not extend to addressing those impacts.</li> <li>- In respect of areas that are not significant remediation should be considered by Council as a tool available to address effects (matter 3)</li> <li>- Monitoring of effects is equally as important in respect of general clearance as clearance under an FMP.</li> </ul>

	<p>maintain indigenous biodiversity outside significant areas, including effects on the wider ecosystem from the proposed clearance and how this may impact connectivity, function, diversity and integrity.</p> <ul style="list-style-type: none"> <li>- New matter</li> </ul> <p>Includes methods to protect outstanding natural landscape values resulting from links between the vegetation proposed to be cleared and the visual or landscape values which are underpinned by the ecology present, including by reference to Appendices X &amp; W.</p> <ul style="list-style-type: none"> <li>- Matter 3</li> </ul> <p>Insert “remediation” before “mitigation”.</p> <ul style="list-style-type: none"> <li>- New matter</li> </ul> <p>The adequacy of proposed monitoring and reporting.</p>	
<p>Rule 1.3 Non-complying activities.</p>	<p>Retain.</p>	<p>Rules 1.3.1 and 1.3.2 are supported. Stringent control and regulatory oversight are appropriate in respect of the listed environments.</p>
<p>Section 2 Waitaki Scheme</p>	<p>Insert controls on the extent of permitted clearance for example:</p> <ul style="list-style-type: none"> <li>- No permitted clearance in SONS.</li> <li>- Parameters around permitted clearance elsewhere.</li> </ul>	<p>Bespoke provision for clearance for the Waitaki Power Scheme is accepted in principle, however:</p> <ul style="list-style-type: none"> <li>- Because of the definitions proposed (e.g. core sites) the potential extent and location of permitted clearance provided for is unacceptable. Clearance of mapped SONS or unmapped significant areas could</li> </ul>

	<p>Insert new matters of discretion:</p> <p>Adequately identifies biodiversity values including:</p> <ul style="list-style-type: none"> <li>d. SONS</li> <li>e. Other areas of significant indigenous vegetation or habitat of indigenous species using the criteria provided in Appendix 3 of the CRPS.</li> <li>f. Biodiversity values outside (a) and (b) areas in particular those important for ecosystem connective, function, diversity, and integrity.</li> </ul> <p>Includes methods to protect significant indigenous vegetation and significant habitats of indigenous fauna.</p> <p>The adequacy of proposed monitoring and reporting.</p> <p>Includes methods to protect outstanding natural landscape values resulting from links between the vegetation proposed to be cleared and the visual or landscape values which are underpinned by the ecology present, including by reference to Appendices X &amp; W.</p>	<p>occur. This clearance could have a significant adverse effect on retention of the remaining area of landscape and ecological connectivity in the Basin and persistence of ecological values. The environment does not care for what purpose clearance is occurring. Additional controls are required.</p> <ul style="list-style-type: none"> <li>- The restricted discretionary criteria do not address significant areas and do not reserve Council discretion to consider and require avoidance of adverse effects on those areas. As noted above, the fragility of the Basin's ecological values justify and avoidance approach.</li> <li>- Monitoring of effects is equally as important in respect of clearance for the Waitaki Power Scheme as for clearance under an FBP.</li> <li>- The matters of discretion do not address overlap between biodiversity values and landscape values.</li> </ul>
Appendix Y	Amendments to address the issues identified.	<p>An approach to controlling vegetation clearance which promotes use of a FBP is supported in principle. However:</p> <ul style="list-style-type: none"> <li>- The District Plan needs to make</li> </ul>

		<p>clear that FBP's form part of a consent and ensure that required actions and review are included as conditions of consent.</p> <ul style="list-style-type: none"> <li>- Section A: <ul style="list-style-type: none"> <li>(a) Fails to require identification of all areas with s6(c) values not identified as SONS (matter f is insufficiently specific).</li> <li>(b) Fails to require identification of Farm Based Areas.</li> <li>(c) Should require identification of the different areas subject to different management regimes e.g. lawful oversowing and topdressing vs. lawful irrigation (matter g is insufficiently specific).</li> <li>(d) Fails to require identification of ONL values.</li> </ul> </li> <li>- Section B: <ul style="list-style-type: none"> <li>(a) The chapeau fails to identify protection of significant areas as a goal to be achieved. This is inconsistent with the RMA, RPS, and proposed objectives &amp; policies.</li> <li>(b) Fails to require identification of the values associated with mapped SONS. This is required for clarity.</li> <li>(c) Fails to require identification of recommend outcomes to achieve protection of significant areas.</li> <li>(d) Matter 3(a) should relate to biodiversity generally, not significant areas.</li> <li>(e) Fails to require identification of and the link between ecological and biodiversity values and ONL values.</li> </ul> </li> <li>- Section C: <ul style="list-style-type: none"> <li>(a) The chapeau does not capture significant areas identified as a result of the process in Section A and B. It should. Mapped SONS are incomplete and do not include large areas where significant values are acknowledged to exist.</li> </ul> </li> </ul>
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		<p>Protection of those values is required whether they are identified in the District Plan maps or via a site specific assessment. Matter 3 also fails to clearly distinguish between and require assessment of effects on significant areas identified under Sections A &amp; B.</p> <ul style="list-style-type: none"> <li>(b) Fails to require identification of effects on ONL values.</li> <li>(c) Fails to clearly require identification of effects on non-mapped significant sites and indigenous biological more generally.</li> </ul> <p>- Section D:</p> <ul style="list-style-type: none"> <li>(a) The chapeau should also require decision-makers to have regard to Section C as well as Section B. Otherwise decision-makers are only directed to consider the values in assessing adequacy of management methods and not the specific activity to which those methods apply.</li> <li>(b) Matter 1 only refers to “no net loss”. Further direction is required to tie that to an outcome. The description should explain how “no net loss” of indigenous biodiversity will be met and how protection of significant areas will be achieved.</li> <li>(c) Matters 2 and 3 (in particular the requirement to include defined measureable targets) are supported. This ensures a clear, monitored trajectory of improvement with ability to change or stop an activity if that trajectory is unsatisfactory.</li> <li>(d) Fails to require identification measures to ensure protection of ONL values.</li> </ul> <p>- Section E:</p> <ul style="list-style-type: none"> <li>(a) Care needs to be taken to ensure that elements which should be included in consent</li> </ul>
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		<p>conditions are not included in a FBP. Requirements for review are one of those elements. There may be a role for review in a FBP but this should also be addressed in conditions of consent.</p>
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