

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
I MUA I TE KOOTI TAIAO O AOTEAROA**

Env-2021-CHC-94

IN THE MATTER of the Resource Management Act
1991 (“Act”)

AND

IN THE MATTER of an appeal under clause 14 Schedule 1 of
the Act

BETWEEN

**Environmental Defence Society
Incorporated**

Appellant

AND

Mackenzie District Council

Respondent

**NOTICE OF MERIDIAN ENERGY LIMITED’S WISH TO BE PARTY
TO PROCEEDINGS**

DATED 24 August 2021

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Notice of Meridian Energy Limited's wish to be party to proceedings

To The Registrar
Environment Court
Christchurch

- [1] **MERIDIAN ENERGY LIMITED**, wishes to be a party to the abovenamed appeal.
- [2] Meridian Energy Ltd is a person who made a submission to Plan Change 18 of the Mackenzie District Plan that is the subject matter of these proceedings.
- [3] Meridian Energy Ltd is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991.
- [4] Meridian Energy Ltd is directly affected by an effect of the subject of the appeal that:
- (a) Adversely affects the environment; and;
 - (b) Does not relate to trade competition or the effects of trade competition;
- [5] Meridian Energy Ltd is interested in all of the proceeding.
- [6] Meridian Energy Ltd is interested in the following particular issues:
- (a) Attached as **Attachment B** is a compendium of relief sought in the following related appeals:
 - (i) ENV-20210-CHC-91 – Meridian Energy Ltd.
 - (ii) ENV-20210-CHC-92 – Director-General of Conservation.
 - (iii) ENV-20210-CHC-93 – Royal Forest and Bird.
 - (iv) ENV-20210-CHC-94 – Environmental Defence Society Incorporated.

- (b) Attached as **Attachment A** is a schedule of the provisions of particular interest in this appeal and related appeals.
 - (c) Attachment A shows the appeal points that have a potential effect on the present or future operation of the Waitaki Electric Power Scheme which is a matter of national importance.
- [7] Meridian Energy Limited has also filed an appeal about Plan Change 18. Meridian Energy Ltd considers that Plan Change 18 as determined by the Mackenzie District Council with the provisions changed and matters addressed as proposed in Meridian Energy Limited's appeal deliver an appropriate performance of Mackenzie District Council's functions under RMA, Part 5.
- [8] Meridian Energy Limited opposes the relief sought in this and related appeals by other parties because:
- (a) The provisions proposed have potential to inappropriately undermine the present and future performance and functionality of the Waitaki Electric Power Scheme.
 - (b) Do not give effect to the National Policy Statement on Renewable Energy and does not give effect to the Canterbury Regional Policy Statement.
- [9] Meridian Energy Limited agrees to participate in mediation or other alternative dispute resolution of the proceedings.

Date: 24 August 2021



Signature of Humphrey Tapper:
(as an authorised person on behalf of Appellant)

This document is filed by Humphrey Tapper, In-House Counsel for the Appellant. The address for service of the Appellant is 287/293 Durham Street North, Christchurch Central.

Documents for service on the Appellant may be left at that address for service or may be:

- (a) Posted to the Humphrey Tapper at Meridian Energy Limited, 287/293 Durham Street North, Christchurch Central 8140; or
- (b) Sent by email to humphrey.tapper@meridianenergy.co.nz

Any documents served on the Appellant's solicitor should also be served on the Appellant's counsel, Mr John Maassen at john@johnmaassen.com

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

ATTACHMENT A

	Appeal points that directly relevant to MEL'S current and future operations	Appeal points that indirectly affect MEL's present and future operations
1.	Definition of indigenous vegetation(F&B, 2).	Definition of "improved pasture" (F&B,1), (EDS, 2).
2.	Definition of significant indigenous vegetation and significant habitats of indigenous fauna (F&B, 3), (EDS, 3), (DoC, 1).	Definition of "vegetation clearance" (F&B, 4), (EDS, 4), (DoC, 2), relates to improved pasture issues.
3.	Objective 1 (c) (F&B, 6), (EDS, 5) – Seek deletion of "c) despite (a) and (b), recognise and provide for the national significance of the Waitaki Power Scheme and the National Grid when managing effects on indigenous biodiversity arising from the development, operation, maintenance, refurbishment or upgrade of those utilities."	Objective 1, Introduction (F&B, 5) - Regarding rearranging the introduction and subpart (b).
4.	Policy 2 (F&B, 7) - Refers to Policy 5 and they do not want Policy 5.	Rule 1.1.1 (F&B, 12) - Relates to improved pasture
5.	Policies 3 & 4 (F&B, 8) - Relates to "offsetting" and the term "significant" being used with residual effects.	Rule 1.1.1(1)(a) (DoC, 4), (EDS, 8) - Seeks to remove stock tracks etc from permitted action.
6.	Policy 3 (F&B, 9) - Questioning whether "compensation" is part of Policy 3.	Rule 1.1.1(7) - (DoC, 3) (EDS, 10) - "7. The clearance is of indigenous vegetation within an area of improved pasture and the clearance is not within a location specified in Rule 1.3.2."
7.	Policy 4 (F&B, 10), (EDS, 6) - Regarding how offsetting will be limited.	Rule 1.2.2, condition 1(a) (F&B, 12) - Relates to improved pasture.
8.	Policy 5 (F&B, 11), (EDS, 7) - Seeks to delete "Despite Policy 2", and EDS seeksto add in avoid, remedy, mitigate, offset hierarchy	Rule 1.3.2 (F&B, 13) - Relates to improved pasture.
9.	Rule 1.1.1(1)(b) (EDS, 9) - Relates to network utilities.	Mapping fully converted land (EDS, 1).

ATTACHMENT B

Appeal by Meridian Energy Ltd

ENV-2021-CHC-91 Meridian Energy Limited

Table 1 for Median Energy Ltd appeal on Plan Change 18

Table 1 Column A	Column B	Column C	Column D
Relevant part of Commissioners' recommendation	Commissioners' recommended provision for Plan Change 18	Relief sought by Appellant	Reasons for relief
Section 3, Definitions Definition of significant indigenous vegetation and significant habitats of indigenous fauna.	<p>“Significant indigenous vegetation and significant habitats of indigenous fauna: means areas of indigenous vegetation or habitats of indigenous fauna which:</p> <p>a) meet the criteria listed in the Canterbury Regional Policy Statement’s Policy 9.3.1 and Appendix 3; or</p> <p>b) are listed in Appendix I as a Site of Natural Significance; and</p> <p>c) includes any areas that do not comprise improved pasture within the glacial derived or alluvial (depositional) outwash and moraine gravel ecosystems of the Mackenzie Basin as shown on Figure 1.”</p>	<p>The Appellant seeks either:</p> <p>i. Deletion of subsection c) and Figure 1 from the definition of significant indigenous vegetation and significant habitats of indigenous fauna; or</p> <p>ii. Amendments to subsection c) that exempt the Waitaki Power Scheme’s (WPS) existing footprint, cores sites and areas covered by an operating easement from the definition of significant indigenous vegetation and significant habitats of indigenous fauna.</p>	<p>The impact of the Commissioners’ recommended definition, in combination with the Commissioners’ recommended Condition 5 of Rule 2.1.1, leads to the clearance of indigenous vegetation associated with existing authorised WPS sites that are located in the “glacial derived or alluvial (depositional) outwash and moraine gravel ecosystems of the Mackenzie Basin as shown on Figure 1” being a restricted discretionary activity.</p> <p>This constraint is unnecessarily restrictive, since existing authorised WPS sites are highly modified and many of these sites will not include significant indigenous vegetation and significant habitats of indigenous fauna when assessed against the criteria set in Appendix 3 of the Canterbury Regional Policy Statement. On this basis, the definition, in combination with Condition 5 of Rule 2.1.1, is not consistent with the National Policy Statement for Renewable Energy Generation 2011 (NPSREG).</p>
Policy 5	<p>The Commissioners recommended that Policy 5 read as follows:</p> <p>“Despite Policy 2, to manage effects on indigenous biodiversity in a way that</p>	<p>The Appellant seeks the following amendments to Policy 5.</p> <p>“Despite Policy 2 <u>and Policy 3</u>, to manage effects on indigenous biodiversity in a way</p>	<p>Policy 5 seeks to ensure that adverse effects on indigenous biodiversity are managed in a way that recognises the national significance of renewable energy generation. To achieve</p>

	<p>recognises the national significance of renewable energy generation activities and the electricity transmission network and provides for their development, operation, upgrading, and maintenance by:</p> <ul style="list-style-type: none"> a) Enabling indigenous vegetation clearance that is essential for the operation, maintenance or refurbishment of the Waitaki Power Scheme, the National Grid and the Opuha Scheme; and b) Providing for the upgrading and development of renewable energy generation and the electricity transmission network, while managing any adverse effects on indigenous biodiversity, having particular regard to: <ul style="list-style-type: none"> i. the location of existing structures and infrastructure and the need to locate the generation activity where the renewable energy resource is available; and ii. the logistical, technical and operational constraints associated with the activity; and iii. the importance of maintaining and increasing the output from existing renewable electricity generation activities; and iv. environmental compensation which benefits the local environment affected, as an alternate, or in addition to offsetting, to address any 	<p>that recognises the national significance of renewable energy generation activities and the electricity transmission network and provides for their development, operation, upgrading, and maintenance by:</p> <ul style="list-style-type: none"> a) Enabling <u>the clearance of indigenous vegetation and habitats of indigenous fauna where the</u> clearance that is essential for the operation, maintenance or refurbishment of the Waitaki Power Scheme, the National Grid and the Opuha Scheme; and b) Providing for the <u>clearance of indigenous vegetation and habitats of indigenous fauna where the clearance is for the</u> upgrading and development of renewable energy generation and the electricity transmission network, while managing any adverse effects on indigenous biodiversity, having particular regard to: <ul style="list-style-type: none"> i. the location of existing structures and infrastructure and the need to locate the generation activity where the renewable energy resource is available; and ii. the logistical, technical and operational constraints associated with the activity; and iii. the importance of maintaining and increasing the output from existing renewable electricity generation activities; and 	<p>this, Policy 5 commences with “Despite Policy 2, ...”.</p> <p>The Appellant considers that Policy 5 should apply despite both of Policies 2 and 3. The Appellant considers that this is more consistent with the NPSREG and avoids unresolvable tensions arising if Policies 3 and 5 were to be applied at the same time to WPS activities.</p> <p>The Appellant also considers that Policy 5(b) should be amended to more directly provide for the clearance of indigenous vegetation and habitats of indigenous fauna while upgrading and developing renewable energy generation; and that Policy 5(a) should be clear that it is enabling both the clearance of indigenous vegetation and the habitats of indigenous fauna.</p>
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	significant residual environmental effects.”	iv. environmental compensation which benefits the local environment affected, as an alternate, or in addition to offsetting, to address any significant residual environmental effects.”	
Rule 2.1.1	<p>The Commissioners recommended that Rule 2.1.1 read as follows:</p> <p>“The clearance of indigenous vegetation associated with the Waitaki Power Scheme, the National Grid or the Opuha Scheme is a permitted activity where one or more of the following conditions are met:</p> <ol style="list-style-type: none"> 1. The clearance is a consequence of an emergency occurring on, or failure of, the Waitaki Power Scheme, the National Grid or the Opuha Scheme; or 2. The clearance meets the conditions in Rule 1.1.1, or 3. The clearance is required for the operation, maintenance or refurbishment of the Waitaki Power Scheme within the following areas; <ol style="list-style-type: none"> i. The existing footprint of the Waitaki Power Scheme. ii. On core sites associated with the Waitaki Power Scheme. iii. On areas covered by an operating easement associated with the Waitaki Power Scheme; or 4. The clearance is required for the operation, maintenance or refurbishment 	<p>The Appellant seeks the following amendments to Rule 2.1.1.</p> <p>“The clearance of indigenous vegetation <u>and habitats of indigenous fauna</u> associated with the Waitaki Power Scheme, the National Grid or the Opuha Scheme is <u>are</u> a permitted activity where one or more of the following conditions are met:</p> <ol style="list-style-type: none"> 1. The clearance is a consequence of an emergency occurring on, or failure of, the Waitaki Power Scheme, the National Grid or the Opuha Scheme; or 2. The clearance meets the conditions in Rule 1.1.1, or 3. The clearance is required for the operation, maintenance or refurbishment of the Waitaki Power Scheme within the following areas; <ol style="list-style-type: none"> i. The existing footprint of the Waitaki Power Scheme. ii. On core sites associated with the Waitaki Power Scheme. iii. On areas covered by an operating easement associated with the Waitaki Power Scheme; or 	<p>Rule 2.1.1 identifies when the clearance of indigenous vegetation associated with the WPS, the National Grid and the Opuha Scheme is permitted. To be permitted, Rule 2.1.1 states that “one or more of the following conditions” must be met. This means that the conditions that follow the introductory part of Rule 2.1.1 are disjunctive. However, the list of conditions includes an “and” between Conditions 4 and 5.</p> <p>The Appellant considers that the “and” should be an “or” to ensure that Rule 2.1.1 can be implemented as intended by the Commissioners. Alternatively, the Appellant seeks the deletion of Condition 5.</p> <p>Further to the above, the Appellant considers that the Rule should be specific to both the clearance of indigenous vegetation and the clearance of habitats of indigenous fauna.</p>

	<p>of the National Grid or the Opuha Scheme; and</p> <p>5. The clearance is located outside areas of significant indigenous vegetation and significant habitats of indigenous fauna identified in accordance with Policy 1”</p>	<p>4. The clearance is required for the operation, maintenance or refurbishment of the National Grid or the Opuha Scheme; and <u>or</u></p> <p>5. The clearance is located outside areas of significant indigenous vegetation and significant habitats of indigenous fauna identified in accordance with Policy 1”</p> <p>Alternatively, the Appellant seeks the following amendments to Rule 2.1.1:</p> <p>“The clearance of indigenous vegetation <u>and habitats of indigenous fauna</u> associated with the Waitaki Power Scheme, the National Grid or the Opuha Scheme is <u>are</u> a permitted activity where one or more of the following conditions are met:</p> <ol style="list-style-type: none"> 1. The clearance is a consequence of an emergency occurring on, or failure of, the Waitaki Power Scheme, the National Grid or the Opuha Scheme; or 2. The clearance meets the conditions in Rule 1.1.1, or 3. The clearance is required for the operation, maintenance or refurbishment of the Waitaki Power Scheme within the following areas; <ol style="list-style-type: none"> i. The existing footprint of the Waitaki Power Scheme. ii. On core sites associated with the Waitaki Power Scheme. 	
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		<p>iii. On areas covered by an operating easement associated with the Waitaki Power Scheme; or</p> <p>4. The clearance is required for the operation, maintenance or refurbishment of the National Grid or the Opuha Scheme; and</p> <p>5. The clearance is located outside areas of significant indigenous vegetation and significant habitats of indigenous fauna identified in accordance with Policy 1”</p>	
Rule 2.2.1.	<p>The Commissioners recommended that Rule 2.2.1 read as follows:</p> <p>“The clearance of indigenous vegetation associated with the Waitaki Power Scheme, the National Grid or the Opuha Scheme that does not comply with one or more of the conditions of Rule 2.1.1.</p> <p>The Council will restrict its discretion to the following matters:</p> <p>(a) Whether the works are occurring on a surface that has previously been modified by the construction, operation, maintenance or refurbishment of the Waitaki Power Scheme, the National Grid or the Opuha Scheme;</p> <p>(b) The adequacy of the identification of biodiversity values, including, but not limited to identification of areas of significant indigenous vegetation or significant habitats of indigenous fauna, and values outside of these areas that are</p>	<p>The Appellant seeks the following amendments to Rule 2.2.1.</p> <p>“The clearance of indigenous vegetation and habitats of indigenous fauna associated with the Waitaki Power Scheme, the National Grid or the Opuha Scheme that does not comply with one or more of the conditions of Rule 2.1.1. is a restricted discretionary activity.</p> <p>The Council will restrict its discretion to the following matters:</p> <p>(a) Whether the works are occurring on a surface that has previously been modified by the construction, operation, maintenance or refurbishment of the Waitaki Power Scheme, the National Grid or the Opuha Scheme;</p> <p>(b) The adequacy of the identification of biodiversity values, including, but not limited to identification of areas of significant indigenous vegetation or significant habitats of indigenous fauna,</p>	<p>Policy C2 of the NPSREG, requires that “when considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected.”</p> <p>The Appellant considers that for PC18 to be consistent with the NPSREG, matter d) of Rule 2.2.1 should include environmental compensation as a method to avoid, remedy or mitigate adverse effects on indigenous biodiversity.</p> <p>Consistent with the previous relief sought, the Appellant considers that the Rule should be specific to both the clearance of indigenous vegetation and the clearance of habitats of indigenous fauna.</p> <p>In addition, the Appellant considers that the body of the rule should clearly state the status</p>

	<p>particularly important for ecosystem connectivity, function, diversity, and integrity;</p> <p>(c) Managing the actual or potential adverse effects on indigenous biodiversity, species diversity, habitat availability or ecological functions (including connectivity, function, diversity and integrity) expected to occur as a result of the proposal, particularly the impact on values significant to Ngāi Tahu;</p> <p>(d) Methods to avoid, remedy or mitigate adverse effects on indigenous biodiversity and offset residual significant effects on indigenous biodiversity;</p> <p>(e) Any technical or operational constraints associated with the proposed activity requiring vegetation clearance;</p> <p>(f) The benefits the proposed activity provides to the local community and beyond;</p> <p>(g) The adequacy of monitoring;</p> <p>(h) The review of conditions; and</p> <p>(i) Consent duration.</p>	<p>and values outside of these areas that are particularly important for ecosystem connectivity, function, diversity, and integrity;</p> <p>(c) Managing the actual or potential adverse effects on indigenous biodiversity, species diversity, habitat availability or ecological functions (including connectivity, function, diversity and integrity) expected to occur as a result of the proposal, particularly the impact on values significant to Ngāi Tahu;</p> <p>(d) Methods to avoid, remedy or mitigate adverse effects on indigenous biodiversity, and offset <u>or compensate for</u> residual significant effects on indigenous biodiversity;</p> <p>(e) Any technical or operational constraints associated with the proposed activity requiring vegetation clearance;</p> <p>(f) The benefits the proposed activity provides to the local community and beyond;</p> <p>(g) The adequacy of monitoring;</p> <p>(h) The review of conditions; and</p> <p>(i) Consent duration.”</p>	<p>of the activity, rather than relying on the title above the rule to define the activity status (as is the case in the Commissioners’ recommended Rule 2.2.1).</p>
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Appeal by MOC

ENV-2021-CHC-92 Director-General of Conservation

- a. The definition of ‘improved pasture’, and inclusion of that term in the definition of ‘significant indigenous vegetation and significant habitat of indigenous fauna’, creates uncertainty regarding the identification of areas of indigenous vegetation.
 - b. Providing for clearance of indigenous vegetation as a permitted activity in areas that fit the definition of improved pasture through Rule 1.1.1.7 in the Council’s decision does not enable the Council to carry out its function under Section 31(1)(b)(iii) of Resource Management Act 1991 (RMA) to control effects of the use of land to maintain indigenous biodiversity and will not provide for the protection of significant indigenous vegetation or significant habitats of indigenous fauna as required by s6(c) of the RMA
 - c. In Rule 1.1.1.1, the Council’s decision to include ‘stock tracks’ and ‘stock crossings’ creates uncertainty about the nature and extent of the areas to which the rule applies as those terms are undefined. The rule may allow for clearance of inappropriately large areas of significant indigenous vegetation as a permitted activity.
8. I seek the following relief:
- a. Amend the provisions of the Mackenzie District Plan to limit areas in which indigenous vegetation clearance is a permitted activity to those areas where unimproved pasture has been improved through cultivation or irrigation, resulting in irreversible loss of indigenous vegetation ecosystems. Amend the provisions of the Mackenzie District Plan as follows:

Provision	Decision Text (<u>underlined</u> where additions are made and strikethrough where text is deleted from the notified text)	Amendments Sought (Bold underline where text is inserted and strikethrough and double underline where text is deleted, by the amendments sought through this appeal)
Definition of ‘Significant indigenous vegetation and significant habitats of indigenous fauna’	<p><u>Significant indigenous vegetation and significant habitats of indigenous fauna: means areas of indigenous vegetation or habitats of indigenous fauna which:</u></p> <p><u>a) meet the criteria listed in the Canterbury Regional Policy Statement’s Policy 9.3.1 and Appendix 3; or</u></p> <p><u>b) are listed in Appendix I as a Site of Natural Significance; and</u></p> <p><u>c) includes any areas that do not comprise improved pasture within the glacial derived or alluvial (depositional) outwash and moraine gravel ecosystems of the Mackenzie Basin as shown on Figure 1.</u></p>	<p><u>Significant indigenous vegetation and significant habitats of indigenous fauna: means areas of indigenous vegetation or habitats of indigenous fauna which:</u></p> <p><u>a) meet the criteria listed in the Canterbury Regional Policy Statement’s Policy 9.3.1 and Appendix 3; or</u></p> <p><u>b) are listed in Appendix I as a Site of Natural Significance; and</u></p> <p><u>c) includes any areas that do not comprise improved pasture within the glacial derived or alluvial (depositional) outwash and moraine gravel ecosystems of the Mackenzie Basin as shown on Figure 1.</u></p>

Definition of 'Vegetation Clearance'	<i>Vegetation Clearance: means the felling, clearing or modification of trees or any vegetation by cutting, crushing, cultivation, spraying, or burning, or irrigation artificial drainage, and mob stocking. It includes <u>oversowing, topdressing or overplanting on land that is not improved pasture.</u> Clearance of vegetation shall have the same meaning.</i>	<i>Vegetation Clearance: means the felling, clearing or modification of trees or any vegetation by cutting, crushing, cultivation, spraying, or burning, or irrigation, artificial drainage, oversowing, topdressing, overplanting, or and mob stocking. It includes <u>oversowing, topdressing or overplanting on land that is not improved pasture.</u> Clearance of vegetation shall have the same meaning.</i>
Rule 1.1.1.7	<i><u>7. The clearance is of indigenous vegetation within an area of improved pasture and the clearance is not within a location specified in Rule 1.3.2;</u></i>	<i><u>7. The clearance is of indigenous vegetation within an area of improved pasture that has previously been cultivated or irrigated, and the clearance is not within a location specified in Rule 1.3.2;</u></i>

b. Amend the provisions of the Mackenzie District Plan as follows:

Provision	Decision Text (<u>underlined</u> where additions are made and struck through where text is deleted from the notified text)	Amendments Sought (Bold underline where text is inserted and struck through and double underline where text is deleted, by the amendments sought through this appeal)
Rule 1.1.1.1.a	<i>a) the maintenance or repair of, existing fence lines, vehicle tracks, roads, <u>stock tracks, stock crossings, firebreaks, drains, ponds, dams, stockyards, farm buildings, water troughs and associated reticulation piping, or airstrips; or</u></i>	<i>a) the maintenance or repair of, existing fence lines, vehicle tracks, roads, <u>stock tracks, stock crossings, firebreaks, drains, ponds, dams, stockyards, farm buildings, water troughs and associated reticulation piping, or airstrips;</u> or</i>

b. Any other relief to like effect, including consequential amendments that the Court considers appropriate;

c. Costs.

8. I attach the following documents to this notice:

- (a) a copy of my submission (Annexure A – Relevant Parts of the Director-General’s Submission).
- (b) a copy of the relevant parts of the decision (Annexure B – The Relevant Decision of Mackenzie District Council).
- (c) a list of names and addresses of persons to be served with a copy of this notice (Annexure C – Parties served with this notice)

TABLE 1 - PART OF DECISION APPEALED, REASONS FOR APPEAL AND RELIEF SOUGHT

	PROVISION	REASONS FOR APPEAL	APPEAL – RELIEF SOUGHT
	Definitions		
1.	1	Improved pasture	
		<p>Forest & Bird consider a more appropriate approach to ensure the protection of significant indigenous biodiversity is to map all fully converted areas where no to very little indigenous biodiversity exists. This is located in the evidence of Mr Harding to the Commissioners. Rather than relying on a definition of improved pasture.</p> <p>However if improved pasture is retained the following matters must be addressed.</p> <p>The Commissioners adopted NPS-FM definition for ‘improved pasture’ to give effect s75(3)(a). The Commissioners could have made the definition specific to dryland ecosystems more suitable to the Mackenzie Basin. The NPS-FM definition is a nationally focussed definition in relation to freshwater ecosystems, that may be difficult or inappropriate to apply in all situations across the country. It is a bottomline definition in terms of fresh water bodies and Council’s should not use more exclusive (permissive) definitions. However, Council’s may use more specific and inclusive definitions to better meet local council obligations. In this case the NPS-FM definition of improved pasture is not the best option. The new definition is an improvement on the notified definition but it is too exclusive resulting in provisions being too permissive and will lead to further loss of indigenous biodiversity. The</p>	<p>In the first instance delete and replace with a reference to a map all fully converted areas as identified in the evidence Mr Harding which indicates all improved pasture</p> <p>In the alternative if not successful above have two definitions for the Mackenzie District. One for the Mackenzie Basin Subzone and one for all other areas of the district.</p> <p>The one for all other areas is the one proposed by the Commissioners</p> <p>The other one for the Mackenzie Basin Subzone is similar but as amended below:</p> <p>Improved Pasture within the Mackenzie Basin Subzone: means an area of land where exotic pasture species have been deliberately sown or <u>and</u> maintained for the purpose of pasture production <u>of an existing crop; or for hay, bailage or silage; or the areas of land covered by an existing farm irrigating system (excluding flood irrigation type systems);</u> and species composition and growth has been modified and is being managed for livestock grazing.</p> <p>Or such other amendments to address Forest & Bird’s</p>

		<p>problem in the Mackenzie Basin is that a great majority of the basin contains significant biodiversity even where pasture was deliberately sown. There is no spatial context in this definition. Deliberately sown pasture may not have been maintained for quite some time and the paddock could have been sown as a one off many years ago, allowing indigenous biodiversity to re-establish Also depending on the mechanism used for sowing a pasture it may be that some significant biodiversity still persists and should be protected. While in some of these areas current land use may be appropriate to continue, they are not appropriately defined as “improved pasture” or managed as such under the rule framework which would allow intensification through vegetation clearance. The only certain way to ensure significant biodiversity is protected is to map areas of improved pasture where ecological assessments have determined that no significant biodiversity exists or somehow exclusively define improved pasture so that it does not capture significant indigenous biodiversity.</p>	<p>reasons and relief in regards to the definitions on vegetation clearance, and significant indigenous vegetation and significant habitats of indigenous fauna.</p>
2.	Indigenous Vegetation	<p>Partially support the definition because the definition goes beyond what is required. It includes exclusions that should be located in their own rule. This relates to the exclusions for domestic gardens, amenity planting, shelterbelts and exotic woody pest plants.</p> <p>The RMA Quality Planning Resource “Plan Steps: Writing Provisions for Regional and District Plans” (2013) section on definitions, page 18 says to avoid: <i>writing definitions in such a way that change the status of activities or that deal with matters that should be dealt with in a rule (readers expect definitions to only relate to matters interpretation or meaning)</i></p>	<p>Amend-</p> <p>Indigenous Vegetation: means a community of vascular plants, mosses and/or lichens that includes species native to the ecological district. The community may include exotic species, but does not include vegetation that has been planted as part of a domestic garden, for amenity purposes or as a shelterbelt, or exotic woody pest plants</p>

		<p>The exclusions in this definition already have their own permitted rule 19.1.1.1.(4).</p> <p>As written the definition would make the rule nonsensical.</p> <p>In the Report and Recommendations of the Hearing Commissioners at [177] accepted that exemptions should be contained within relevant rules. However, at [180] the Commissioners go onto a rely on a reply report from Ms White recommending exemptions be added to the definition. Forest & Bird has not seen the reply s42A and it does not appear on the Mackenzie District Council webpage. Forest & Bird prefers the definition recommended by Ms White in her initial s42A report without any exclusions.</p>	
3.	Significant indigenous vegetation and significant habitats of indigenous fauna	<p>Figure 1 does not show the improved pasture areas within the ecosystems. The extent of improved pasture in the Mackenzie Basin is unclear under its notified and decisions version definitions.</p> <p>This definition of Significant indigenous vegetation and significant habitats of indigenous fauna will exclude an unknown amount of land which may meet the criteria for significance.</p> <p>This is because the improved pasture definition is wide ranging and can include any piece of land that has ever been sown for pasture.</p> <p>It is important to get this definition correct because it sets the rule framework for permitted, restricted discretionary and non-complying activities.</p> <p>The definition needs to go further and fully acknowledge</p>	<p>Amend</p> <p>...</p> <p>c) includes any areas that do not comprise improved pasture within the glacial derived or alluvial (depositional) outwash and moraine gravel ecosystems of the Mackenzie Basin as shown on Figure 1.</p> <p>Or such other amendments to address Forest & Bird's reasons and relief in regards to the definitions on improved pasture , and vegetation clearance.</p>

		<p>the significance of the glacial derived or alluvial outwashes and moraine gravel ecosystems as identified in Figure 1. If areas of improved pasture determined without significant indigenous biodiversity (as explained above) can be identified they should be mapped and shown within Figure 1 as such.</p>	
4.	Vegetation Clearance	<p>Figure 1 does not show the improved pasture areas within the ecosystems. The extent of improved pasture in the Mackenzie Basin is unclear under its notified and decisions version definitions. The vegetation clearance definition will exclude an unknown amount of land. This is because the improved pasture definition is wide ranging and can include any piece of land that has ever been sown for pasture.</p> <p>The only way that the DV of this definition works is to exclusively define the area of improved pasture in the Mackenzie Basin.</p> <p>Also the RMA Quality Planning Resource “Plan Steps: Writing Provisions for Regional and District Plans” (2013) section on definitions, page 18 says to avoid: <i>writing definitions in such a way that change the status of activities or that deal with matters that should be dealt with in a rule (readers expect definitions to only relate to matters interpretation or meaning).</i></p> <p>Including improved pasture in this definition creates serious implications in Rule 19.1.1.1.</p> <p>Firstly (although we do not agree with this approach) it would mean that permitting vegetation clearance for improved pasture nonsensical and effectively there would</p>	<p>Amend</p> <p>Vegetation Clearance: means the felling, clearing or modification of trees or any vegetation by cutting, crushing, cultivation, spraying, burning, irrigation, artificial drainage, and mob stocking. It includes oversowing, topdressing or overplanting on land that is not improved pasture. Clearance of vegetation shall have the same meaning.</p> <p>And such other amendments to address Forest & Bird’s relief in regards to the definitions on improved pasture, and significant indigenous vegetation and significant habitats of indigenous fauna.</p>

		<p>be no rule for oversowing, topdressing or overplanting on land that is improved pasture.</p> <p>Secondly the current definition of improved pasture says it could be anywhere that pasture has been deliberately sown (with no spatial context). This could potentially cover a large area of Figure 1. This definition of vegetation clearance does not include oversowing, topdressing or overplanting on land that is improved pasture. Rule 19.1.1.1 would allow oversowing, topdressing or overplanting over a potentially large area of the Mackenzie Basin.</p>	
Objectives			
5.	Objective 1 intro	The objective now refers to land use and development. It is not clear if this covers all forms of activities that may have an effect on indigenous biodiversity. For example it is not clear if Objective 1 relates to subdivision activities	<p>Delete the intro (i.e. “Land use and development activities are managed to”) and retain objective 1(a) and 1(b) but separate them into individual objectives. And then reword 1(b) to read as follows:</p> <p><u>Maintain and enhance indigenous biodiversity outside areas of significant indigenous vegetation and significant habitats of indigenous fauna</u></p>
6.	Objective (c)	RMA, s 6 provides for matters of national importance and decision makers must recognise and provide for the protection of significant indigenous biodiversity. The efficient use and development of natural and physical resource is a s7(b). Section 7 matters only require decision makers to have particular regard. Recognising and providing for the Waitaki Power Scheme in Objective 1 elevates it to the same level as a s6 matter of national importance. This is not in accordance with Part 2.	Delete

Policies			
7.	Policy 2	<p>Policy 2 is the protection mechanism which gives effect s6(c).</p> <p>RMA, s 6 provides for matters of national importance and decision makers must recognise and provide for the protection of significant indigenous biodiversity. The efficient use and development of natural and physical resource is a s7(b). Section 7 matters only require decision makers to have particular regard. Recognising and providing for the Waitaki Power Scheme in Objective 1, and providing for priority over policy 2 elevates it to the same level as a s6 matter of national importance. This is not in accordance with Part 2</p>	Amend: ... or is otherwise consistent with Policy 5.
8.	Policy 3 & 4	<p>Significant residual adverse effects has a different meaning to that as normally understood in a RMA context.</p> <p>The wording significant residual adverse effects comes from the <i>New Zealand Government - Guidance on Good Practice Biodiversity Offsetting in New Zealand (August 2014)</i>. The first principle of this document states:</p> <p><i>Adherence to the mitigation hierarchy:</i> <i>A biodiversity offset is a commitment to compensate for significant residual adverse impacts on biodiversity identified after appropriate avoidance, minimisation and on-site rehabilitation measures have been taken according to the mitigation hierarchy.</i></p>	<p>Either amend:</p> <ul style="list-style-type: none"> • By deleting the word significant from in front of all references to residual adverse effects (e.g., significant residual adverse effects <p>Or define significant residual adverse effects to reflect the intention of the term in the <i>New Zealand Government Guidance on Good Practice Biodiversity Offsetting in NZ</i></p> <ul style="list-style-type: none"> • Significant residual adverse effects refers to effects that are ecologically meaningful or of non-minor ecological importance. This will need to be determined on a case-by-case basis

		<p>The New Zealand Government Guidance on Good Practice Biodiversity Offsetting in NZ (August 2014) section 4.3 page 18 states that:</p> <p><i>It should be noted that the term ‘significant residual adverse impacts’ is taken from the BBOP and is not analogous to the use of the term ‘significant’ under the RMA or the CA. Rather, it can be thought of as referring to effects that are ecologically meaningful or of non-minor ecological importance. This would need to be determined on a case by case basis. Box 2 provides a comparison of BBOP and RMA terminology with the mitigation hierarchy. If the total residual impact is very small (taking into account that a number of small effects may still accumulate into a significant effect), it may not be worth the investment in a comprehensive good practice biodiversity offset, particularly if the relevant legislative tests allow for minor adverse effect occur. ...</i></p> <p>Retaining a BBOP term such as significant residual adverse effects in an RMA Plan creates confusion for plan readers and administrators. By just using the term residual adverse effects the plan ensures that effects which are less than significant in an RMA context can be considered for offsetting and it removes any assumption created by retaining the term significant.</p> <p>If the term significant is retained – Forest & Bird suggests that a definition of “significant residual adverse effects” is added to the pMEP.</p>	
9.	Policy 3	It is not clear if environmental compensation is part of the	If it is intended to include environmental compensation as

		<p>mitigation hierarchy of PC18</p> <p>If it is part of the hierarchy PC18 should provide policy guidance and also provide limits to compensation</p>	<p>part of mitigation hierarchy then include policy framework when it can be used and the limits to compensation.</p>
10.	Policy 4 (formerly 6)	<p>There are no recognition to the limits of offsetting. Also there is no recognition of the concept of additionally.</p> <p>Also there is no requirement in the policy that the applicant actually demonstrate to the Council how an offset will meet the policies requirement.</p> <p>This is accordance with the <i>New Zealand Government Guidance on Good Practice Biodiversity Offsetting in NZ</i> (August 2014)</p>	<p>Amend:</p> <p><u>For any indigenous biodiversity offsets apply the following criteria-Except where adverse effects are required to be avoided in accordance with the policies of this plan, where a biodiversity offset is proposed, the applicant must apply and demonstrate how the following will be met in order for the proposal to qualify as a biodiversity offset:</u></p> <p>...</p> <p><u>(h) the offsetting will not be applied to justify impacts on vulnerable or irreplaceable biodiversity; or where the effects of the proposed activity on biodiversity are uncertain, unknown, or little understood, but potentially significantly adverse;</u></p> <p><u>(i) that actions undertaken as a biodiversity offset are demonstrably additional to what otherwise would occur, and are additional to any remediation or mitigation undertaken in relation the adverse effects of the activity;</u></p>
11.	Policy 5	<p>This policy now states: “Despite Policy 2,”. Policy 2 is the protection mechanism which gives effect s6(c).</p> <p>RMA, s 6 provides for matters of national importance and decision makers must recognise and provide for the protection of significant indigenous biodiversity. The</p>	<p>Amend: Despite Policy 2...</p>

		efficient use and development of natural and physical resource is a s7(b). Section 7 matters only require decision makers to have particular regard. Recognising and providing for the Waitaki Power Scheme in Objective 1, and providing for priority over policy 2 elevates it to the same level as a s6 matter of national importance. This is not in accordance with Part 2	
Rules			
12.	19.1.1.	Relying on Rule 1.3.2 under the current definitions does not provide appropriate protection for significant indigenous biodiversity. There is a significant issue with the way in which improved pasture is defined and mapped in PC18. At the moment the definition will include an unknown amount of significant indigenous biodiversity. This rule will permit removal of indigenous biodiversity including significant indigenous biodiversity which policy 2 specifically directs the avoidance of.	Until “improved pasture” can be accurately defined or mapped within Figure 1 replace references to Rule 1.3.2. as amended in the below relief for Rule 19.1.3.2
	19.1.2.2	Condition 1(a) fails to capture all areas of significant indigenous biodiversity because the definition for significant indigenous vegetation or a significant habitat of indigenous fauna excludes improved pasture from Figure 1. There is a significant issue with the way in which improved pasture is defined and mapped in PC18. At the moment the definition will include an unknown amount of significant indigenous biodiversity. This rule will make the removal of indigenous biodiversity including significant indigenous biodiversity, which policy 2 specifically directs the avoidance of, a restricted discretionary activity.	Until “improved pasture” can be accurately defined or mapped within Figure 1 amend Rule 1.2.2 condition 1(a) as follows: a) an area of significant indigenous vegetation or a significant habitat of indigenous fauna <u>as defined in (a) and (b) (but not including (c) of its definition) and Figure 1 areas of glacial derived or alluvial (depositional) outwash and moraine gravel ecosystems of the Mackenzie Basin,</u>
13.	19.3.2	The rule refers to significant indigenous vegetation or	Until “improved pasture” can be accurately defined or

	<p>significant habitat of indigenous fauna. As discussed above the definition of significant indigenous vegetation or significant habitat of indigenous fauna relies on an inadequate definition of 'improved pasture'. Until the definitions are adequately defined the rule should refer specifically to areas that remove the ambiguities related to the definition of improved pasture. This will protect significant indigenous biodiversity as required by s6(c) and objective 1 and policy 2.</p>	<p>mapped in Figure 1 replace references to Rule 1.3.2(1):</p> <p>Within an area of significant indigenous vegetation or a significant habitat of indigenous fauna <u>as defined in (a) and (b) (but not including (c) of its definition) and Figure 1 areas of glacial derived or alluvial (depositional) outwash and moraine gravel ecosystems of the Mackenzie Basin</u></p>
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Appeal by EDS

ENV-2021-CHC-94 Environmental
Defence Society Incorporated

Annexure A

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

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

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

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

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

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