

## **SUMMARY OF PC18 CASE – MT GERALD STATION AND THE WOLDS STATION**

- 1 Introductions – Dr Peter Espie, Mr Michael Burtscher (Mt Gerald Station) and Mr John and Mrs Bronwen Murray (the Wolds Station) and Mr Martin Murray (Maryburn Station)
- 2 Order of presentation:
  - 2.1 Legal submissions and evidence taken as read. Please seek out clarification as required.
  - 2.2 Critical that you fully understand the impact of the proposed provisions on the life blood of the Mackenzie Basin – the farming community – only three of which have elected to appear before you – suspect the balance are suffering from regulation fatigue – tenure review – conservation land returned to crown, PC13 - controls on pastoral intensification and agricultural conversion in the Basin, and the Government Freshwater package.
  - 2.3 Please take on board the robust ground-truthed evidence of Dr Espie who has traversed the Basin for several weeks updating previous survey plots to ensure the best evidence is available to you to make an informed decision.
  - 2.4 Dr Peter Espie – to cover rebuttal evidence of Dr Susan Walker and Mr Nick Head along with a summary of key matters addressed in his brief of evidence. A slide show of photographic images has also been prepared to assist his presentation.
  - 2.5 Mr John Murray – key point summary.
  - 2.6 Mr Michael Burtscher – key point summary.
  - 2.7 Questions.

### **Legal submission overview**

- 3 From the perspective of the farming community PC18 as notified is a vast improvement on the now morphed version currently being presented by Ms White, the Council Officer.
- 4 The definitions now proposed seek to introduce age old traditional farming practices of 'TD and OS' as clearance activities and have revised the definition of improved pasture' to require full removal of indigenous vegetation in order to meet the permitted activity pathway provided by Rule 1.1. This definition does not align with the definition proposed in the NPS Freshwater.
- 5 I note the questions that have been posed to other Counsel and submit that yes, you are entitled to adopt the NPS-FW definition however there is nothing to prevent you from deviating from this to adopt more stringent measures than required by the NPS-FW. However, it is important to acknowledge that in this context the definition of 'improved pasture' is to preserve NZ's freshwater resources.
- 6 I cannot stress enough the importance of getting the definitions right. You must be guided by the evidence of Dr Espie who has worked tirelessly to dispute and rebut the conclusions made by other ecologists (Harding, Walker and Head). Dr Espie's evidence and his conclusions are based on science rather than unjustified allegations and assumptions.
- 7 Dr Espie's field work concludes that the environmental outcomes sought by PC18 – to halt the decline of indigenous biodiversity – will not be achieved without active management from landowners. I will leave Dr Espie to tease this out further.
- 8 Example at Maryburn Station – where an area of 'tussock recovery area' was identified as an 'off-set' to irrigation development. This area was required to be destocked, with no OS or soil

cultivation allowed. Land was managed in this state for approximately 3 years and exotic species took over to the extent that ECan has recently required part of the area to be re-grazed. This is a real-life example that illustrates that removal of farming inputs will not achieve biodiversity outcomes.

- 9 PC13 was a lengthy 10 years litigation challenge which exhausted the resources of many in the District and still now under the guise of PC18 (an indigenous biodiversity Plan Change) we see some parties seeking to incorporate reference back to landscape matters. This is inappropriate and you must keep the scope of PC18 front of mind when considering the evidence and arguments before you.
- 10 Likewise, the maps proposed by Mr Harding are not fit for purpose to be entertained for inclusion in PC18 at this point in time. The obvious bar to introducing the 'converted' and 'partially converted' maps is that these were not part of the Plan Change as notified and accordingly submitters (who elected not to submit on PC18) will be denied an opportunity to participate in potentially crippling decisions being made about the future use of their properties. *Palmerston North CC v Motor Machinists* is the authority here.
- 11 The s32 analysis lacks any consideration of the impact of PC18 as notified on the farming community and Station landowners, let alone the extensive changes now proposed by Ms White and supported in the evidence of other parties.
- 12 When assessing the efficiency and effectiveness of the provisions there is a requirement to assess the risk of acting or not acting where there is insufficient information about the subject matter of the provisions. It is submitted that you simply cannot rely on the evidence of Harding, Walker and Head when presented with ground truthed assessment prepared by Dr Espie which counters conclusions reached and presents alternatives.
- 13 The case for the Wolds and Mt Gerald raises the relationship of PC18 with EUR. It is poor resource management practice to write plan provisions that cut-over the overarching provisions codified in the RMA. EUR cannot be ignored and a pathway to provide for maintenance activities must be provided for.
- 14 Importance of the Canterbury Regional Policy Statement (CRPS) - you have not been asked to make a finding on whether the Mackenzie Basin meets the criteria for "significance" – this must be reserved for the experts after extensive assessment still to come, but you have been asked to make a decision on the planning framework that most efficiently provides a mechanism for areas of significant indigenous vegetation and habitats of significant fauna to be identified and protected and more widely indigenous vegetation to be maintained and where appropriate enhanced.
- 15 Some parties rely heavily on the Environment Court's finding in its 11<sup>th</sup> decision on PC13 that the outstanding natural landscape is a significant natural area:

At Para 236 and 237

*"[when discussing Appendix 3/ criterion 4 – Rarity/ Distinctiveness] In large parts of the Mackenzie Basin there is not simply one species but 83 species of indigenous plants which qualify. Accordingly, we find on the balance of probabilities that much of the ONL meets the area of significant vegetation criterion, notwithstanding the presence of introduced plants or weeds. This is not a policy decision, simply a determination of fact. Then Policy 9.3.1(2) of the CRPS says that those (extensive) parts of the Mackenzie Basin are significant areas.*

*Consequently, the ONL is a significant natural area under Policy 9.3.1 of the CRPS"*

- 16 It is important to note that Dr Espie's evidence was not before the Court and emphasis must be placed on the words "in large parts" and "much of" – it is inappropriate to view the Court's finding as meaning that all of the ONL is significant i.e. a blanket approach ought to be adopted. Reference to "large parts" and "much of" suggests that further fine-grained ground-truthing is required to confirm significance. This is an exercise for the experts.

- 17 Relationship between PC18 and PC13 landscape values. We are not here to protect the ONL as has been suggested by Forest & Bird and Mackenzie Guardians. PC13 provisions have already addressed this and these matters should not be re litigated. Landscape is about the views and vistas – these are protected by the outcomes of PC13 – scenic grasslands, lakeside protection areas and scenic viewing areas and provisions that manage agricultural conversion and pastoral intensification.
- 18 To be clear, you have not been tasked with adopting a blanket protection approach across the District where the Council has delayed revisiting and identifying areas of significant indigenous vegetation and habitat of significant indigenous fauna. It is concerning that Mr Harding has invested time mapping converted and partially converted areas when the critical requirement is to update the SONS database.
- 19 Note also that Dr Espie’s evidence refers to additional (to identified SONS) expansive areas where significant indigenous vegetation and habitats of significant indigenous fauna are protected – conservation land, QEII covenant and other land managed with reserve/ research status. We are not saying that all areas of significance have been provided for, simply that there is a process to follow to identify and confirm significance that has not been followed here – the development of PC18.
- 20 The CRPS does not seek to ‘wind back’ a history of land use intensification, rather it seeks to halt further decline. A hold the line approach is appropriate with respect to new development but should not go further to control existing activities or you run the risk of decommissioning the one activity (active management) that has been identified in Dr Espie evidence as supporting indigenous biodiversity. The fact that indigenous vegetation is still present is due to the generations of stewardship – the farmers have contributed to what is left.
- 21 Here I would like to make a correction to my submissions at para 71 where the concept of ‘not net loss’ is discussed, and similarly to the relief sought for Policy 2 of Appendix 1. I wish to clarify that reference ought to be to “no net loss within the relevant ecological District” rather than on a site/property basis. This is in line with Appendix 3 of the CRPS.
- 22 The concept of sustainable management – I will leave you with this and beseech you to keep this front of mind when considering the options presented to you.