

Application by Mackenzie District Council for a 12-month extension of time to issue a decision on proposed Plan Change 18

Date Submitted:	27 February 2020	Tracking #: 2019-B-06302	
Security Level	In confidence	MfE Priority:	Non-Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Sign approval letter	5 March 2020

Actions for Minister's Office Staff	Return the signed report to MfE Send the signed letter to Mackenzie District Council
Number of appendices and attachments 3	Titles of appendices and attachments (ie separate attached documents): 1. Application from Mackenzie District Council 2. History of managing vegetation clearance and indigenous biodiversity under Mackenzie District Plans 3. Letter to Mackenzie District Council approving the 12-month extension of time
Note any feedback on the quality of the report	

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Harriet Cruden		
Responsible Manager	Beth Le Roux	022 493 0020	✓
Director	Katherine Wilson		

Application by Mackenzie District Council for a 12-month extension of time to issue a decision on proposed Plan Change 18

Context for the application

1. The purpose of this briefing is to seek your decision on an application by Mackenzie District Council (MDC) requesting a 12-month extension of the statutory two-year timeframe for issuing its decision on Plan Change 18 (PC 18) to the Mackenzie District Plan (refer Appendix 1).
2. MDC are unable to complete PC 18 within the two years required under the Resource Management Act 1991 (RMA).
3. PC 18 is an Indigenous Biodiversity Plan Change that includes controlling indigenous vegetation clearance. The extension requested would extend the previous deadline of 20 December 2019 to 20 December 2020. The application for extension was received on 17 December 2019, within the two-year timeframe set under clause 10A(1), Schedule 1 of the Resource Management Act 1991 (RMA).
4. From a statutory perspective, the options available to MDC if no extension is granted are to either:
 - a) withdraw PC 18 and start a new plan change to manage indigenous biodiversity and vegetation removal
 - b) continue with PC 18 knowing that they have exceeded the statutory timeframe and the risk that you may choose to exercise your other statutory Ministerial powers (ss 24A-27).
5. Planning to manage vegetation removal and biodiversity has a long and complex history in the Mackenzie District. A summary is provided in Appendix 2.
6. In making a decision on a request, you need to consider the duration of the extension requested and the reasons for their request.
7. You may only decide to agree or decline the extension for the duration of time requested. You do not have the discretion through this process to amend the duration of the extension proposed, or to address the content of the planning document. Under the RMA there are no specific powers or consequences if the timeframe is breached. Your decision does not impact on the continued legal status of the relevant plan provisions that are subject to the extension request.
8. Clause 10A of Schedule 1 outlines the time limits for making an application, matters the applicant must include in their application, and matters the local authority must take into account before applying for an extension. Mackenzie District Council have complied with these requirements.

Mackenzie District Council's reasons for requesting a 12-month extension

9. MDC Planning Manager, Ann Rodgers, in her Statement in support of the application (dated 17 December 2019) has requested a 12-month extension for issuing a decision on PC 18 for the following reasons:
 - a) PC 18 has some important protections provided by an Environment Court declaration. The declaration identifies that Rules 1.1 to 1.3 of PC 18 have legal effect from notification. These rules control vegetation clearance in areas of indigenous vegetation or habitats of indigenous fauna within the Mackenzie Basin

Subzone. If PC 18 was withdrawn the provisions under PC 13 would have legal effect instead. PC 13 did not fully address vegetation clearance rules. Consequently the original 'vegetation clearance exemption' provisions¹ provided under the 2004 Mackenzie District Plan would once again come into force.

- b) Submissions received on PC 18 identified the need for additional policy work and more detailed evidence to be provided. Work is currently being progressed on:
 - i. mapping all Sites of Natural Significance (SONS). This work has been progressed over the past 18 months by ecologist Mike Harding, and is continuing (152 SONS have been mapped, of which 71 are new)
 - ii. a methodology to manage the overlap between biodiversity, ecology and landscape values.
- c) MDC wish to ensure PC 18 and the Generation 2 District Plan Review process (DPR) are well integrated to ensure there are no gaps in the future. With the stage 2 DPR due to be notified in the latter part of 2020, MDC consider this integration can be achieved with a 12-month extension to PC 18.
- d) Where possible, MDC would like to implement the National Planning Standards. They also wish to integrate any direction in the proposed National Policy Statement on Indigenous Biodiversity (NPS-IB) and the Department of Conservation's (DoC) review of the Biodiversity Strategy 2020 into PC 18. MDC consider that this will be achievable if a hearing is held in October 2020 and a decision issued by 20 December 2020.

Officials' advice

- 10. Progress and decisions on PC 18 are occurring in conjunction with a range of other projects. Its progress is one of the key deliverables under the Mackenzie Basin Alignment Programme.
- 11. The Mackenzie Basin Alignment Programme was developed as a result of a gap analysis report produced by Dr Hugh Logan and John Hutchings of Boffa Miskell, released in June 2019 (2019-B-05750 and 2020-B-06442 refer). The gap analysis report identified a range of potential misalignments in the RMA planning framework that covers the Mackenzie Basin.
- 12. The purpose of the Alignment Programme is to make a transformational shift in the way that agencies join together to undertake their statutory functions, leading to improved environmental and social outcomes for the Mackenzie Basin. Through the Alignment Programme, timing and work on the review of the Canterbury Regional Policy Statement, Mackenzie District Plan and Waitaki District Plan is being programmed in a way to ensure the planning and enforcement frameworks managed by these councils work together. The content of PC 18 has been assessed as part of this work, with gaps in the management of biodiversity identified.
- 13. The 12-month extension would enable MDC to progress a variation to PC 18, consistent with the Alignment Programme's approach to filling the identified gaps. This would contribute to achieving better biodiversity management in Mackenzie Basin as a whole.
- 14. While MDC have identified a preference to integrate the NPS-IB and DoC's review of the

¹An explanation in the difference of provisions and the exemption is provided in Annexure I of the Bundle of Documents appended to Ann Rogers Statement.

Biodiversity Strategy 2020 if possible, these documents are not at the stage where their content can be relied on or delivery dates guaranteed. MDC will have additional time as part of the stage 2 DPR to ensure compliance with the National Planning Standards as well.

15. We recommend you approve the 12-month extension until 20 December 2020 to issue a decision on PC 18 because:

- a) The protection provided by the operative provisions of PC 18 enables a level of protection to indigenous biodiversity while more robust work (as outlined in point b) below) is completed. The environmental risk resulting from withdrawing the plan change is significant
- b) a robust decision will require a completed assessment and mapping of SONS and a clear methodology for dealing with the overlap between biodiversity, ecology and landscape values. Evidential work required for PC 18 is not yet finished and is necessary to ensure the hearing panel has sufficient good quality information to make a robust decision on this plan change
- c) Better planning outcomes will be achieved for the Mackenzie District if PC 18 integrates well with the stage 2 DPR (to be notified in late 2020), as this would result in less risk of gaps or duplication, and more effective management of indigenous biodiversity and vegetation.

The impacts of delaying PC 18

16. While a 12 month delay is a relatively long time, it will enable MDC to prepare a variation to PC 18 if required by the additional evidence and policy work underway. This will result in less complexity, time and cost associated with additional submission and hearing processes and the potential for appeals, compared to progressing PC 18 now and then progressing an additional plan change in late 2020 as part of the stage 2 District Plan Review.

17. While the extension of time will extend a period of uncertainty for the parties involved in this plan change, the environmental outcomes for the district and the interests of the community as a whole are likely to be better served by enabling PC 18 to be progressed with a more complete evidence base and policy thinking that integrates with the Generation 2 DPR.

Legal issues

18. A judicial review risk exists when any statutory decision-making power is exercised. However, in this instance, the risk of successful judicial review in either deciding or approving the extension timeframe is low, given the relatively unfettered decision-making criteria.

Next steps

19. If you agree, a draft decision letter to approve the extension is attached in **Appendix 3** for your signature. Once your decision has been served in writing on the local authority, we will monitor MDC's compliance with the new timeframe.

20. It is also noted that MDC have already exceeded the 2-year time-frame for making a decision on PC 18. The purpose of the provisions in 10A of Schedule 1 of the RMA are to provide you with oversight of where a local authority is taking longer than the 2-year

timeframe to make a decision on a plan change, and where necessary to provide you with the opportunity to consider intervention options. In this instance, we consider the request for an extension is consistent with the steps underway through the Mackenzie Basin Alignment Programme.

21. If you are considering not granting the 12-month extension of time for MDC to continue to progress PC 18, we suggest you discuss this matter with officials.

Recommendations

22. We recommend that you:

- a. **note** Mackenzie District Council's (MDC) application for a 12-month extension of time until 20 December 2020, for issuing a decision on Plan Change 18 (PC 18) to the Mackenzie District Plan (refer Appendix 1)
- b. **note** MDC have met the requirements of clause 10A(1) and (2) of Schedule 1 of the Resource Management Act 1991 (RMA) and have advised that prior to lodging the application, they met the requirements of clause 10A(3)(a)(b)(c) of Schedule 1 of the RMA
- c. **agree** to grant MDC a 12-month extension of time for issuing a decision on PC 18 to the Mackenzie District Plan, from 20 December 2019 to 20 December 2020, under Clause 10A(4) of Schedule 1 of the RMA

Yes/No

- d. **agree** that your reasons for granting MDC a 12-month extension to issuing a decision on PC 18 are:
 - i. the protection provided by the operative provisions on PC 18 enables a level of protection for indigenous biodiversity while more robust work is completed. The environmental risk resulting from withdrawing PC 18 is significant
 - ii. the decision on PC 18 should be based on the best evidence. It is appropriate that Sites of Natural Significance identification and mapping be completed, and policy work undertaken around the overlap between biodiversity, ecology and landscape values
 - iii. better planning outcomes will be achieved for the Mackenzie District if PC 18 integrates well with the stage 2 District Plan Review (to be notified in late 2020), as this would result in less risk of gaps or duplication and more effective management of indigenous biodiversity and vegetation

Yes/No

- e. **note** the 12 month extension creates an ability to prepare a variation to PC 18 if required. This will result in less complexity, time and cost than progressing PC 18 now followed by an additional plan change in late 2020 as part of the stage 2 District Plan Review

either

- f. **sign and send** to MDC the letter attached to this briefing, serving notice of your decision under Clause 10(5) of the RMA (Appendix 3)

Yes/No

or

- g. **meet** with officials to discuss

Yes/No

- h. **agree** that this briefing and appendices will be released proactively on the Ministry for the Environment's website within eight weeks following your signature

Yes/No

Signature

Katherine Wilson
Director
National and Built Systems

Hon David Parker
Minister for the Environment

Date

Appendix 1: Application by Mackenzie District Council

Proactively released

Proactively released

17 December 2019

To
The Hon David Parker
Ministry for the Environment
Parliament Buildings
Wellington

Attention
Harriet Cruden

Copy To
David Caldwell

From
Alanya Limmer
Jenna Silcock

By Courier and Email
Harriet.cruden@mfe.govt.nz
david.caldwell@bridgesidechambers.co.nz

Dear Hon David Parker

Application for an extension of time to make a decision on Plan Change 18 on behalf of Mackenzie District Council

1. Please find **attached** the following documents on behalf of Mackenzie District Council for your consideration:
 - (a) Application to the Minister for the Environment on behalf of Mackenzie District Council for an extension of time to **make a decision on Plan Change 18** to the Proposed Mackenzie District Plan dated 17 December 2019; and
 - (b) Statement of Ann Fiona Rodgers in support of the above Application dated 17 December 2019; and
 - (c) Bundle of Documents referred to in Ms Rodger's statement.
2. Plan Change 18 (**PC18**) was notified on 20 December 2017 and accordingly, Council is required under the Resource Management Act 1991 (**Act**) to give a decision on PC18 and the submissions on it by 20 December 2019. The Council considers it is unable to make a decision on PC18 by 20 December 2019. Accordingly, it is making an Application for an extension of time pursuant to Clause 10A, Schedule 1 of the Act.
3. We have also arranged for the hard copies of the above documents to be couriered to your office.

AUCKLAND // PwC Tower, 188 Quay Street, PO Box 1433, Auckland 1140, New Zealand, DX CP24024 // P. 64 9 358 2555
WELLINGTON // Aon Centre, 1 Willis Street, PO Box 2694, Wellington 6140, New Zealand, DX SP20201 // P. 64 4 499 4242
CHRISTCHURCH // 83 Victoria Street, PO Box 322, Christchurch 8140, New Zealand, DX WX11135 // P. 64 3 379 1747

4. Please do not hesitate to contact us should you have any questions or require any assistance.

Yours faithfully
Buddle Findlay



Jenna Silcock
Senior Associate

Direct: 64 3 353 2323
Mobile: 64 27 259 2001
Email: jenna.silcock@buddlefindlay.com

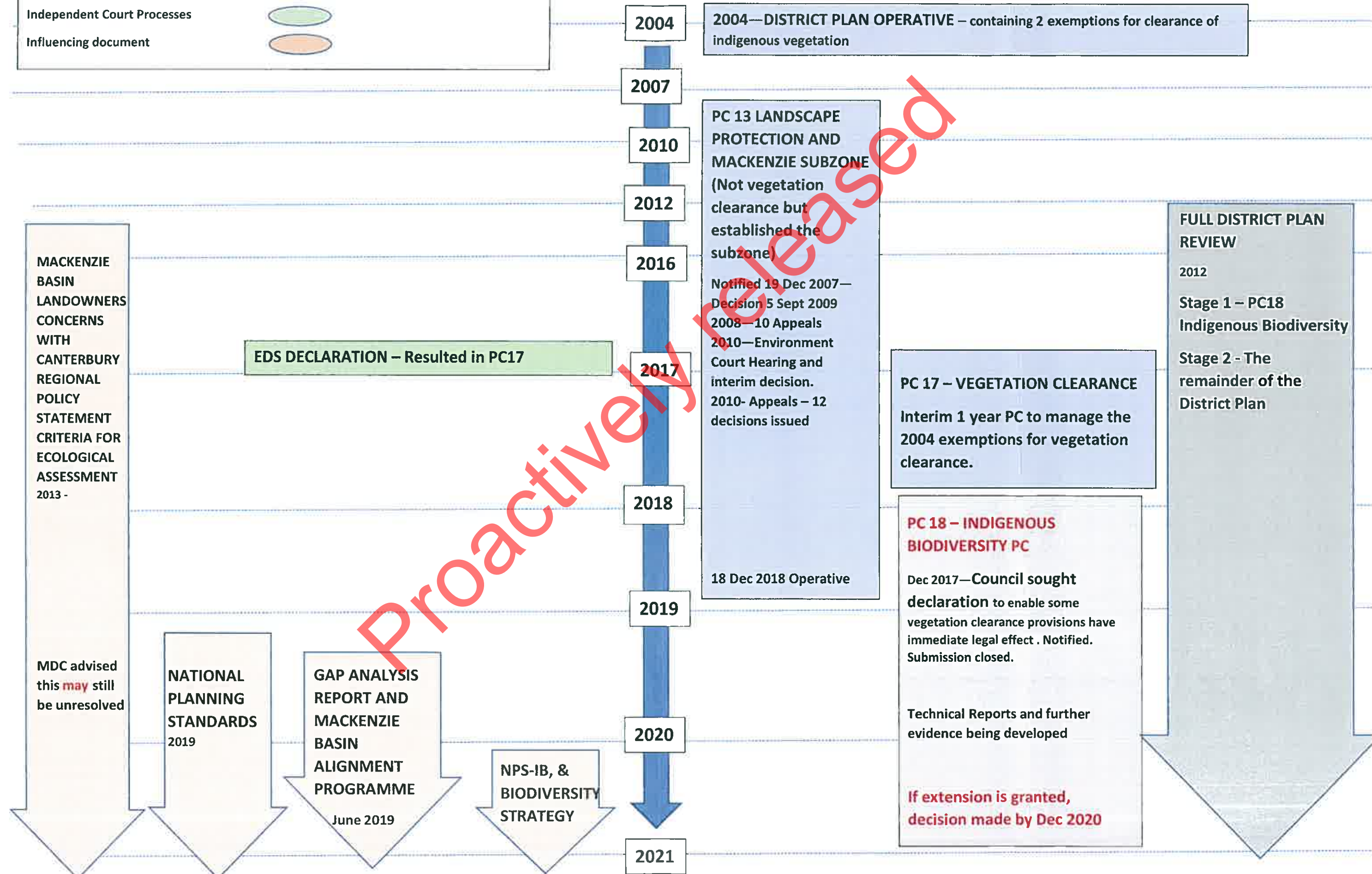
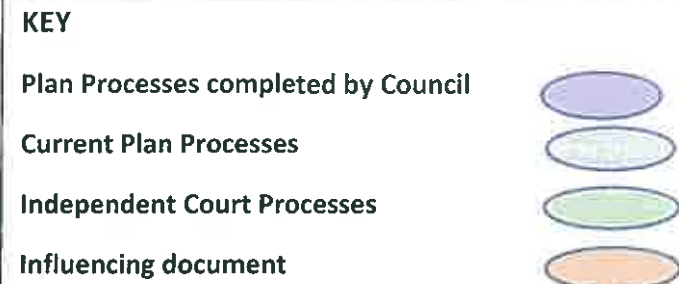
Proactively released

Appendix 2: History of managing vegetation clearance and indigenous biodiversity under Mackenzie District Plans

Proactively released

Proactively released

CONTEXT AND HISTORY INFLUENCING PLAN MAKING IN MACKENZIE DISTRICT



Appendix 3: Letter to Mackenzie District Council approving the 12-month extension of time

Proactively released

Proactively released

Mackenzie District Council
c/o Alanya Limmer
Buddle Findlay
PO Box 322
CHRISTCHURCH 8140

Dear Alanya Limmer

Application from Mackenzie District Council for a 12-month extension of time (until 20 December 2020) to give decisions on Plan Change 18 of the Mackenzie District Plan under clause 10A Schedule 1 of the Resource Management Act 1991

On 17 December 2019, Mackenzie District Council lodged an application for a 12-month extension of time (until 20 December 2020) to issue a decision on Proposed Plan Change 18 of the Mackenzie District Plan.

I agree to this extension under clause 10A(4)(a) of Schedule 1 of the Resource Management Act 1991 (RMA). Decisions on the Proposed Mackenzie District Plan Change 18 must be made on or before 20 December 2020. The reasons for my decision are the following:

- a. the protection provided by the operative provisions of PC18 enables a level of protection for indigenous biodiversity while more robust work is completed. The environmental risk resulting from withdrawing PC18 is significant
- b. the decision on PC18 should be based on best evidence. It is appropriate that Sites of Natural Significance identification and mapping be completed, and policy work undertaken around the overlap between biodiversity, ecology and landscape values
- c. better planning outcomes will be achieved for the Mackenzie District if PC 18 integrates well with the stage 2 DPR (to be notified in late 2020), as this would result in less risk of gaps or duplication and more effective management of indigenous biodiversity and vegetation.

In accordance with clause 10A(6) of Schedule 1 of the RMA, you are now required to publicly notify this extension.

I wish you well with the remainder of your plan-making process.

Yours sincerely

Hon David Parker
Minister for the Environment

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