

BEFORE THE ENVIRONMENT COURT

ENV-2016- -

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an application for declarations under Part 12 of
the Act

BETWEEN

**ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED**

Applicant

AND

MACKENZIE DISTRICT COUNCIL

Respondent

**FIRST MEMORANDUM OF COUNSEL FOR ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED IN
RELATION TO DECLARATION PROCEEDINGS**

17 November 2016

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MAY IT PLEASE THE COURT

- 1 The Environmental Defence Society Incorporated (**EDS**) has filed this application in light of recent information pointing to significant clearance of protected indigenous vegetation in the Mackenzie Basin. Clearance appears to be taking place arguably unlawfully, in breach of vegetation clearance rules in Chapter 7 of the Mackenzie District Plan (**District Plan**). In consequence, matters of national importance under s6(b) (outstanding natural features and landscapes associated with indigenous vegetation) and s6(c) (significant ecological areas, whether identified in the District Plan or not) are permanently removed, without regulatory oversight. The extent of the problem is undefined, because Council has failed to monitor or prevent the activity.
- 2 The relevant rules, Rule 12.1.1.g (Short Tussock Grasslands) and Rule 12.1.1.h (Indigenous Cushion and Mat Vegetation and Associated Communities) are “*An interim rule that will be revised three years after the Plan becomes operative*”. The revision (due 2007) never occurred and EDS’s evidence is that Mackenzie District Council (**Council**) has adopted a wrong interpretation of these rules, resulting in unlawful vegetation clearance in breach of Rule 12 (on its proper interpretation).
- 3 In parallel, EDS’s evidence is that Council has issued certificates of compliance for pastoral intensification, by topdressing and oversowing. These activities result in vegetation clearance and EDS’s contention is that resource consent is therefore required. If consent is not required, then pastoral intensification has resulted in significant harm to nationally and internationally significant ecosystems and biodiversity in the Mackenzie Basin, with consequential impacts on outstanding natural landscape values. This outcome is untenable and does not give effect to sustainable management.
- 4 The outcome of the proceedings has the potential to change the existing environment which may affect the intended outcomes of Plan Change 13. EDS respectfully submits that these issues merit an urgent fixture to resolve the interpretation questions raised, if possible in December 2016. If the Court is unable to facilitate an urgent fixture, then

EDS will consider separately applying for directions for interim relief. Alternatively, there may be merit in a decision on the papers, or a short fixture with submissions exchanged in advance. The suggested timetable adopts the latter course.

5 The issues raised by the declarations are separate to the Plan Change 13 process, however it seems likely that parties to the Plan Change 13 process are most likely to have interest (or potential interest) in the declaration, and would be a good starting point for any directions as to service, together with public notice being given on the Council's website and media.¹

6 Counsel propose the following timetable steps:

- Court to convene a teleconference as soon as convenient;
- Court to make directions as to notification and service of interested parties that seek to be heard within 5 working days of teleconference;
- Council (and any interested parties) to file reply affidavits within 10 working days of teleconference;
- EDS to file rebuttal affidavits (if any) within 13 working days of teleconference;
- EDS to file submissions 5 working days prior to fixture date (if it can be convened in December 2016);
- Council and interested parties to file submissions 2 working days prior to fixture date;
- 1 day hearing to be convened in mid-late December 2016.²

Dated this 17th day of November 2016


R B Enright / M C Wright
Counsel for Applicant

¹ While there are obvious differences in scale and issues, use of the Council's website was endorsed as one means to notify the public at large in the recent Environment Court decision providing directions for notification of appeals on the Proposed Auckland Unitary Plan: Decision [2016] NZEnvC 153.

² If possible, Counsel seeks to avoid 1,2 December (due to 5 day High Court fixture commencing 28 Nov); 5, 6 December (High Court fixture); 12, 13, 14 December (Environment Court fixture).