

Lochiel McKellar

From: Verity Halkett
Sent: Monday, 20 November 2017 4:49 PM
To: Lochiel McKellar
Cc: Marcus Langman; Chris Keeling; Michelle Mehlhopt
Subject: Staff Comments on the Interim Draft Plan
Attachments: Staff comment on interim draft RPMP.pdf; Map_1_Progressive_Containment_WildingConifer_20171103.pdf; Map_2_Sustained_Control_Wallaby_20171103.pdf; Map_4_Sustained_Control_GorseBroom_HillHighCountry_20171103.pdf; Map_5_Sustained_Control_Nassella_Tussock_20171103.pdf

Hi Lochiel,

Please find attached the Staff comments for the Interim Draft Plan. There are also four maps attached, which are to replace the existing maps in the Interim Draft (this is noted in the Staff comment).

If you have any questions, please feel free to let me know.

Verity

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Staff comment on interim draft Regional Pest Management Plan

20 November 2017

Staff appreciate the opportunity to comment on the directions issued by the Hearing Panel in Minute 5. These comments focus on technical and workability matters. Staff have first specially addressed matters contained in the Minute (a. - q.) from a technical and workability perspective. This includes consideration of;

- cost
- the ability to implement
- likelihood of success
- legal tests (enforceability and compliance with the Biosecurity Act and the NPD¹)
- appropriateness for the Plan document.

Staff have then also identified some further technical and workability issues in the remainder of the interim draft Plan.

Staff have compiled the recommended amendments to the interim draft Plan from the document into a single table attached as Appendix One for ease of reference.

1. Staff consider that the possible drafting provides useful context for pest management in Canterbury. This covers a wide range of activities, more than those managed in the Plan.
2. Staff recommend that this paragraph is repositioned to be at section 1.1 (preceding 'The Purpose of the Plan'), to avoid any confusion regarding the prioritisation of activities outside of the Plan.
3. Staff also note that the source of the Pest management incursion continuum and pest infestation stages figure (Figure 1.) is unknown. There are many varying iterations of this diagram in use by regional councils. This diagram was previously published without citing its source in the 2015 Discussion Document. Staff propose including the following statement in the Plan regarding the source of the model.

Original source of diagram unknown, modified by Environment Canterbury
November 2017

b. Insert new para into 3.1 to the effect that an operational plan is required, such as:

Under section 100B(1)(a) of the Act, Environment Canterbury as the management agency must prepare an operational plan, to be reviewed annually, within 3 months of this Plan being approved.

¹ National Policy Direction for Pest Management 2015

4. The preparation of the operational plan and its review is briefly referenced in section 2.2.1 and outlined in greater detail in section 7.2. Staff consider that this addition is unnecessary duplication and recommend that this paragraph is removed.
- c. ***Insert a new paragraph into 3.3.4 that signals that a consistent policy across Road Controlling Authorities will be undertaken as part of the 10 year review of the Plan, recognising the immediate potential financial impact and enabling time for this to be provided for.***
5. Staff note that discussion has been undertaken with Council staff but has not occurred at a Council level with the Territorial Authorities regarding a change to the road reserve responsibility. Staff recommend that consultation occurs with Territorial Authorities within a timeframe that enables potential financial impacts to be managed and effective implementation of the Regional Pest Management Plan (RPMP).
- d. ***In 6.1 make provision so that, where a pest that has been identified under an exclusion programme, as being located in the Canterbury Region, the pest shall become a pest to be managed for eradication, and the objectives and principal measures to be used for managing the pest shall apply.***
6. Staff appreciate the intent behind this direction, and note that technically, there are a number of factors which may result in a more immediate response than an eradication programme under the RPMP, or a longer-term management response.
7. Upon the confirmed presence of an exclusion pest, an incursion response will be undertaken and a management plan will be developed. This will include an assessment of the level and distribution of the infestation and the ability and options available for control.
8. Staff recommend the following amendment:

~~Where an exclusion pest is found to be present in Canterbury, the pest shall be managed for eradication. The eradication objectives and principal measures will be applied.~~

Where an exclusion pest is found to be present in Canterbury, an incursion response will be undertaken and a management plan will be developed. This includes assessment of response actions and timeframes for the removal/destruction of the pest. Factors determining the feasibility of immediate removal/destruction include the level and distribution of infestation, the ability and options available for control. If a newly detected pest is found to be wide-spread, it may not be feasible to eradicate it immediately.
- e. ***Rule 6.4.9 – amend (b) to state “be party to a Written Management Agreement that has not been terminated (unless the Regional Council determines such an agreement is not required). Delete 2 iii, as these matters will be covered by the mandatory CNG Management Plan in Rule 6.4.8.***

Agreement is not required, then the occupier will comply with Rule 6.4.9. This reserves to the Council the discretion to decide whether an occupier requires an agreement and therefore whether condition (b) is complied with. This is not appropriate in circumstances where non-compliance with the rule creates an offence under the Biosecurity Act 1993.

10. Further, Staff are unable to identify any situations where a land occupier with Chilean needle grass would not be required to either control infestations, or be part of a management agreement.

11. If there are circumstances where it would not be appropriate to be party to a Written Management Agreement and compliance with condition (a) of the Rule is not necessary, then the occupier could apply for an exemption from the Rules under section 78 of the Act.

12. Therefore, Staff recommend that the insertion in condition (b) is removed.

f. Provide greater clarity around which rules are pest rules, and which rules are pest agent rules. Include recognition of this in the objectives. Amend headings and content in Section 6 where both pests and pest agents have rules. Include a new paragraph 4.2 which describes what a pest agent is, and which species are identified as pest agents in the Plan.

13. Amendments have been made to the interim draft Plan to address this.

g. Provide for planted conifers within the Wilding Conifer Containment Area to be identified as pest agents in certain circumstances where they present a risk for wilding conifer management. Suggested drafting is contained in Appendix 2.

14. In order to achieve the intention of the Panel in a rule that is enforceable, the rule needs to specify the circumstances where a planted conifer presents a risk for wilding conifer management so that a user of the Plan can objectively ascertain whether the rule applies.

15. Staff have identified a number of challenges with the scope and enforceability of the suggested rule in Appendix 2 of Minute 5. In particular, there are a number of parts of the rule which reserve to the Council the discretion to determine outside of this plan process, whether a tree or group of trees is captured by this rule. Staff acknowledge the Panel's recognition through its suggested drafting that flexibility is required in the management of wilding conifers depending on the circumstances. However, this does give rise to issues of enforceability.

16. Staff have attempted to amend the rule to achieve the Panel's intention set out in Minute 5, including sufficient flexibility and consultation with land owners and occupiers, in a manner that is sufficiently certain and enforceable. However, Staff have encountered a number of workability and enforceability issues and have not been able to achieve this. Therefore, Staff consider that it is more appropriate for the Council to work with partners and occupiers proactively and pragmatically to address the impacts of planted conifers and recommend that the rule be removed in its entirety. This will include working with Territorial Authorities during the review of their

district plans to ensure that appropriate controls are placed on new plantings, not regulated by the NES, in order to minimise the risk of wilding tree spread.

17. The specific issues raised by the suggested rule are addressed in more detail below.

Geographical extent of rule

18. In relation to the geographical area to which the rule applies, the tree or group of trees is to be located within or adjacent to an area which has had control operations carried out. It is not clear what 'adjacent to an area' means and how far this may extend in distance.
19. In order for the rule to be sufficiently certain and enforceable a distance should be specified. However, the difficulty with specifying a distance is that if the rule is applied to protect control operations on a neighbouring property, what is a reasonable distance that a planted conifer tree may be considered to threaten that investment will depend on a number of different factors such as the spread vigour of the tree species, the physical topography of the site, the nature of the receiving environment and the likely prevailing wind conditions.
20. There is also a tension between clause (a) of the rule and Clause 3(a) and (b) which states that the tree or group of trees is located in or adjacent to an area that either:
- a. is not currently affected by wilding conifer incursion; or
 - b. there has been, or will be, significant investment to clear wilding conifers trees.
21. Clause 3(a) relates to an assessment of an area that is not currently affected by wilding conifer incursion. This does not appear to relate to the purpose of the rule which is to prevent impacts on publicly funded control operations. Further, Environment Canterbury is not currently able to identify all those areas that are not currently affected by wilding conifer incursion. In relation to clause 3(b), it is also not clear what level of investment would qualify as 'significant' investment.

Tree species captured by the rule

22. As drafted, the rule gives the Council the discretion to decide outside of this plan process whether a tree or group of trees is a pest agent and therefore captured by the rule, without reference to objective criteria. Therefore, an occupier reading the plan cannot determine on the face of the rule whether the rule is applicable.
23. A definition of wilding conifer pest agent could be included in the plan to address these certainty issues. That definition would need to include objective criteria against which a tree would be assessed to determine whether it is a wilding conifer pest agent and thus captured by the rule. The decision would not be left to the Council. Rather, a reader of the plan would be able to look at the criteria and determine for themselves whether the relevant tree met the criteria and was a wilding conifer pest agent for the purposes of the rule.

topography of the site, the nature of the receiving environment (for example, the likelihood of seed to germinate) and the likely prevailing wind conditions. However, Staff have not been able to achieve this as consideration of these matters on a case by case basis, introduces a subjective evaluation into the definition.

The Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017

24. Clause 1 of Rule 6.3.4 refers to:

the tree or group of trees is not a plantation forest as defined by cl 2 of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017;

25. The definition of plantation forest is in clause 3 of the NES, not Clause 2. Clause 2 refers to the commencement of the regulations.

26. It is also not clear whether the rule is intended to manage conifers not controlled under the NES or to manage non-plantation forests. The key difference being that the NES applies only to afforestation or replanting, not to existing plantation forestry.

Existing planted conifers

27. It appears on the face of the rule that it is intended to apply to existing planted conifers. Ms Page on behalf of MPI set out the potential issues associated with pest agent rules in relation to existing planted conifers at paragraphs 45 to 50 of her evidence. In particular, in relation to cost allocation and the exacerbator-pays principle. Clause 7(2)(d)(i) of the National Policy Direction (NPD) requires that the legislative responsibilities and rights of beneficiaries and exacerbators be considered in determining cost allocation. The NPD Guidance Document states that:

[133] If individuals who are exacerbating the problem have a legislative right to do an activity that spreads the pest or do not have a legislative responsibility to control the pest, then beneficiaries should, in general, bear the costs of the Plan.

[134] For example, a landowner may have a resource consent under the Resource Management Act 1991 to grow pine trees, without particular conditions about how to manage the spread to other properties. In this situation, beneficiaries of preventing the spread should bear the costs.

28. It is likely that most existing planted conifers have been lawfully established and many, particularly amenity plantings and shelter belts, would not be subject to conditions about how to manage wilding tree spread. Therefore, the suggested rule gives rise to costs allocation issues.

29. It is noted that the inclusion of Clause 4 attempts to resolve some of these potential issues by ensuring that the benefits of the removal of the tree outweigh the costs of retention. Whilst staff acknowledge this attempt to resolve this issue, the NPD and section 74 of the Act require that this cost benefit analysis be undertaken as part of the plan making process, rather than by the Council outside of this process on a case by case basis.

30. Further, the reference to 'in the opinion of Environment Canterbury' introduces an element of subjective discretion into the rule which is not appropriate and may render the rule invalid. Further, there is no definition of who the benefits and costs relate to (for example, are these the direct costs and benefits to the land occupier, or wider regional benefits, or benefits to neighbouring properties). Depending on the way this is rationalised, this can have a major impact on the outcome of the consultation.

Notice requirement in Clause 5

31. Staff consider that Clause 5 of Rule 6.3.4 is not necessary as this is covered in the introduction to the rule which requires receipt of written direction.

Breach of rule

32. For completeness, Staff note that the rule does not include a reference that 'a breach of this rule creates an offence under section 154N(19) of the Act.'

Conclusion

33. Given the above technical and workability issues, Staff recommend that Rule 6.3.4 be removed from the Plan.

j. Include a rule that requires the destruction of feral goats within the containment area in Appendix 3 Map 14 on receipt of written direction from an authorised agent.

34. Staff consider that this rule is unnecessary as the Council can use the relevant powers under Part 6 of the Act. As feral goats within the containment area as shown on Map 14 are identified as a pest in the Plan, the Council has the power under section 122(1)(b) to direct an occupier of any place or the owner or person in charge of a feral goat to destroy the feral goat. If that direction is not complied with, then the Council could destroy the feral goat using its power to act on default under section 128 of the Act.

35. Given that the rule is an unnecessary duplication of the Council's powers under Part 6 of the Act, the inclusion of the rule is also unlikely to meet section 74(e) of the Act which requires that each rule will assist in achieving the plan's objectives.

l. Amend Rule 6.4.24 relating to Russell lupin planting to apply to all of the Canterbury Region, not just rural zones.

36. The widening of the geographic application of this rule is anticipated to greatly increase the effort required to respond to urban complaints. Staff had intentionally restricted the application of rule 6.4.24 to rural, Crown and Conservation land to reduce costs responding to urban neighbour complaints. Staff also consider that it may be very difficult in urban garden settings to differentiate between wilding and planted Russell lupins (rule 6.4.24 only manages wilding Russell lupins).

m. Reduce the timeframe for objective 19 for feral goats to indicate they will be removed in 10 years.

37. Removing all feral goats from Banks Peninsula within a 10-year timeframe would require significant resources. The 10% objective for feral goats was set as a conservative target, not taking into consideration the proactive control undertaken by the Banks Peninsula Goat Working Group.
38. High level estimates of the costs to eradicate feral goats within 10 years could be up to \$500,000 (including control, inspection, monitoring, advice and advocacy). This would also require additional Staff resource. This is unlikely to be achievable under this Long Term Plan and therefore it is unlikely that section 74(d) of the Act would be met which requires that for each subject of the plan, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years. This objective may also be very costly for land occupiers to muster and tag or eradicate all populations of feral goats within the next 10 years.
39. Should there be an ongoing commitment from all parties of the Banks Peninsula Goat Working Group, Staff consider that a 50% reduction over the next 10 years would be achievable.

Further technical and workability matters

Map areas including all Waitaki District

40. It has been identified that Maps 1, 2, 4 and 5 in Appendix 3 incorrectly show the entire Waitaki District in zone. Staff have resolved this, and include new maps to replace the existing maps.

Service Delivery

41. Staff have identified that the description of Service Delivery in section 5.3 - Principal measures to manage pests, is overly restrictive and does not allow for funding by the regional community. Staff recommend the following amendments:

3. Service delivery

Environment Canterbury may deliver the service:

- (a) where it is funded to do so by a targeted or general rate;
- (b) on a user pays basis;
- (c) by providing control tools, including sourcing and distributing biological agents, or provisions (eg, traps, chemicals)

Funding

42. Staff are continuing to gather the information requested by the Hearing Panel of alternative scenarios for allocating costs between occupiers and the regional community.
43. Staff seek the ability to make further recommendations to section 9 – Funding Analysis upon the request of the Hearing Panel for Staff to prepare the Draft Plan.

Appendix One

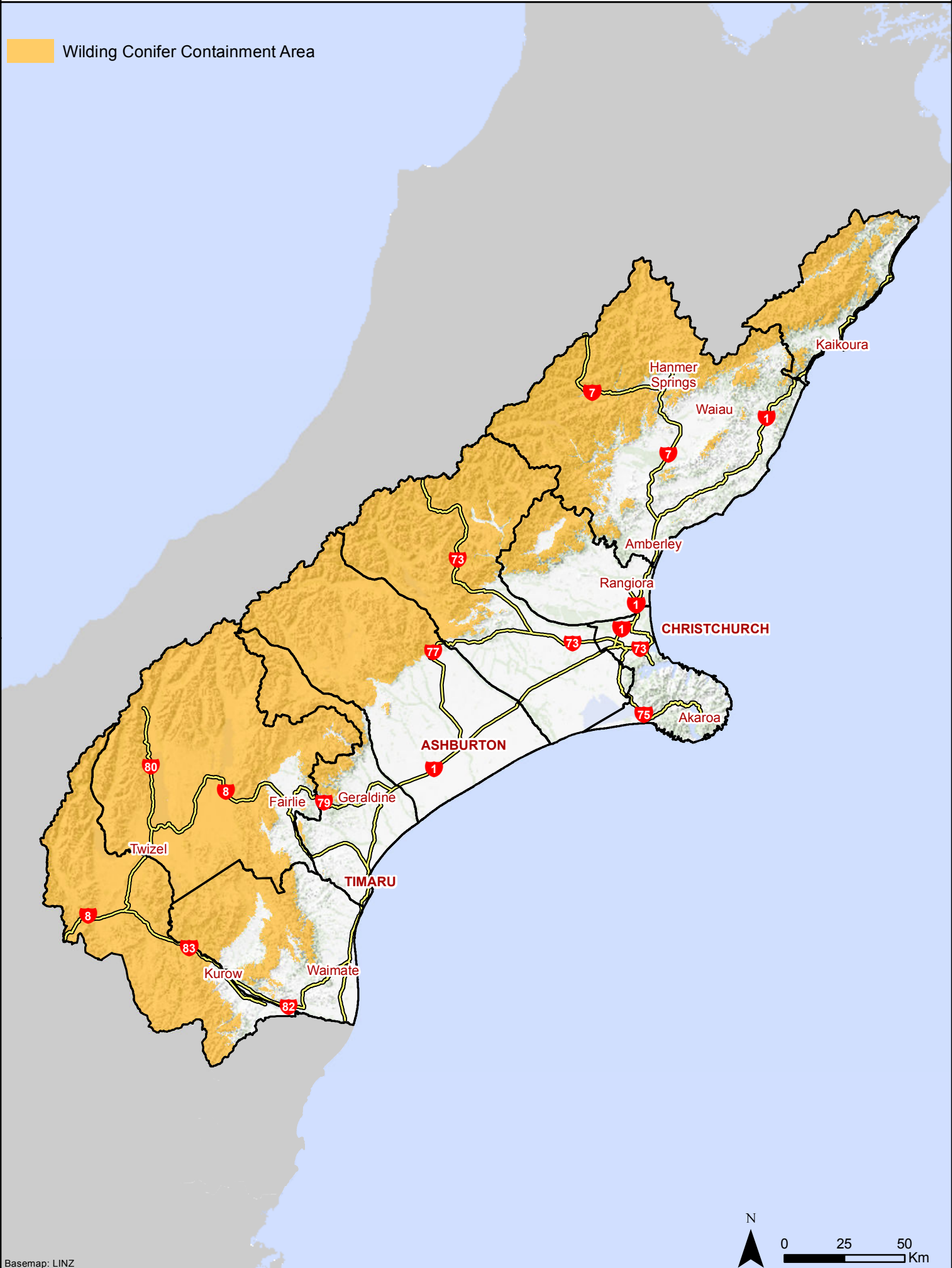
Summary of recommendations resulting in changes to the interim draft Plan

Paragraph of Staff commentary	Area of interim draft RPMP	Action
2.	Section 1.2	Reposition paragraph to be section 1.1
3.	Section 1.2	Include the following statement regarding the source of the pest incursion continuum: <u>Original source of diagram unknown, modified by Environment Canterbury November 2017.</u>
4.	Section 3.1	Remove the new paragraph describing the requirement to prepare and review an operational plan.
8.	Section 6.1	Replace the new paragraph describing the action that will be taken upon identification of an exclusion pest to: <u>Where an exclusion pest is found to be present in Canterbury, an incursion response will be undertaken and a management plan will be developed. This includes assessment of response actions and timeframes for the removal/destruction of the pest. Factors determining the feasibility of immediate removal/destruction include the level and distribution of infestation, the ability and options available for control. If a newly detected pest is found to be wide-spread, it may not be feasible to eradicate it immediately.</u>
12.	Section 6.4, Rule 6.4.9	(b) be party to a Written Management Agreement that has not been terminated (unless the Regional Council determines such an agreement is not required) . For the purpose of this rule, prevent mean the preclusion of the plant's ability to release panicle seed.
33.	Section 6.3, Rule 6.3.4	Remove rule 6.3.4 in its entirety
34.	Section 6.5, Rule 6.5.3	Remove rule 6.5.3 in its entirety

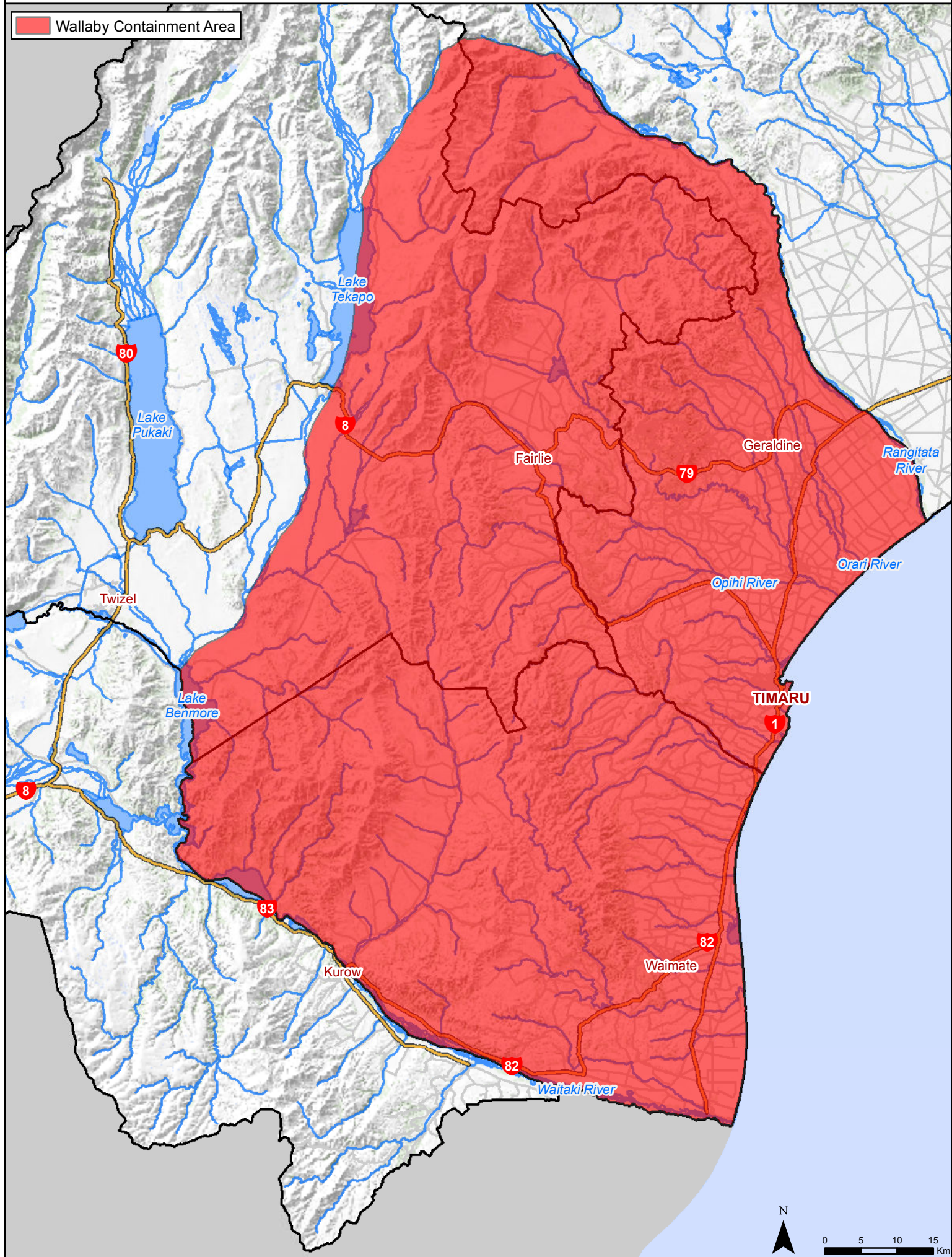
36.	Rule 6.4.24	<p>Insert the following into rule 6.4.24</p> <p>All occupiers <u>on rural zoned land and crown owned and public conservation estate land</u> within the Canterbury Region shall, on receipt of a written direction from an Authorised Person, eliminated all wild Russell lupin within 10 metres of the adjoining property boundary where the occupier is taking reasonable steps to eliminate wild Russell lupin within 10m of that boundary.</p>
39.	Section 6.5, Objective 23	<p>Amend the objective to reference a percentage reduction for the feral goat population to <u>either</u>:</p> <ol style="list-style-type: none"> 1. 10%; or 2. 50% and acknowledge the contribution that will be made to reduce the population of feral goats by the other parties in the Banks Peninsula Goat Working Group. <p>For example:</p> <p>Manage domestic and farmed goats, and <u>reduce</u> the population of feral goats within the Containment Area shown on Map 14 in Appendix 3 to prevent adverse effects on the environmental values.</p> <p>Within the Containment Area shown on Map 14 in Appendix 3, the population of feral goats will be <u>reduced by 10%</u> within 10 years of the commencement of the Plan.</p> <p>Or:</p> <p>Manage domestic and farmed goats, and <u>reduce</u> the population of feral goats within the Containment Area shown on Map 14 in Appendix 3 to prevent adverse effects on the environmental values.</p> <p>Within the Containment Area shown on Map 14 in Appendix 3, the population of feral goats will be <u>reduced by 50%</u> within 10 years of the commencement of the Plan. <u>This reduction will be achieved in partnership with the Banks Peninsula Goat Working Group.</u></p>
40.	Appendix 3	Replace maps incorrectly showing the entire Waitaki District with new maps (provided by Staff)
41.	Section 5.3, 3. Service Delivery	<p>Amend part (a) of 3. Service delivery as below:</p> <p>(a) <u>where it is funded to do so by a targeted or general rate;</u></p>

Map 1 Wilding Conifer:
Progressive Containment Programme


Wilding Conifer Containment Area

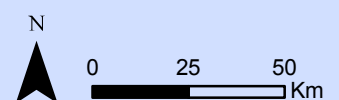
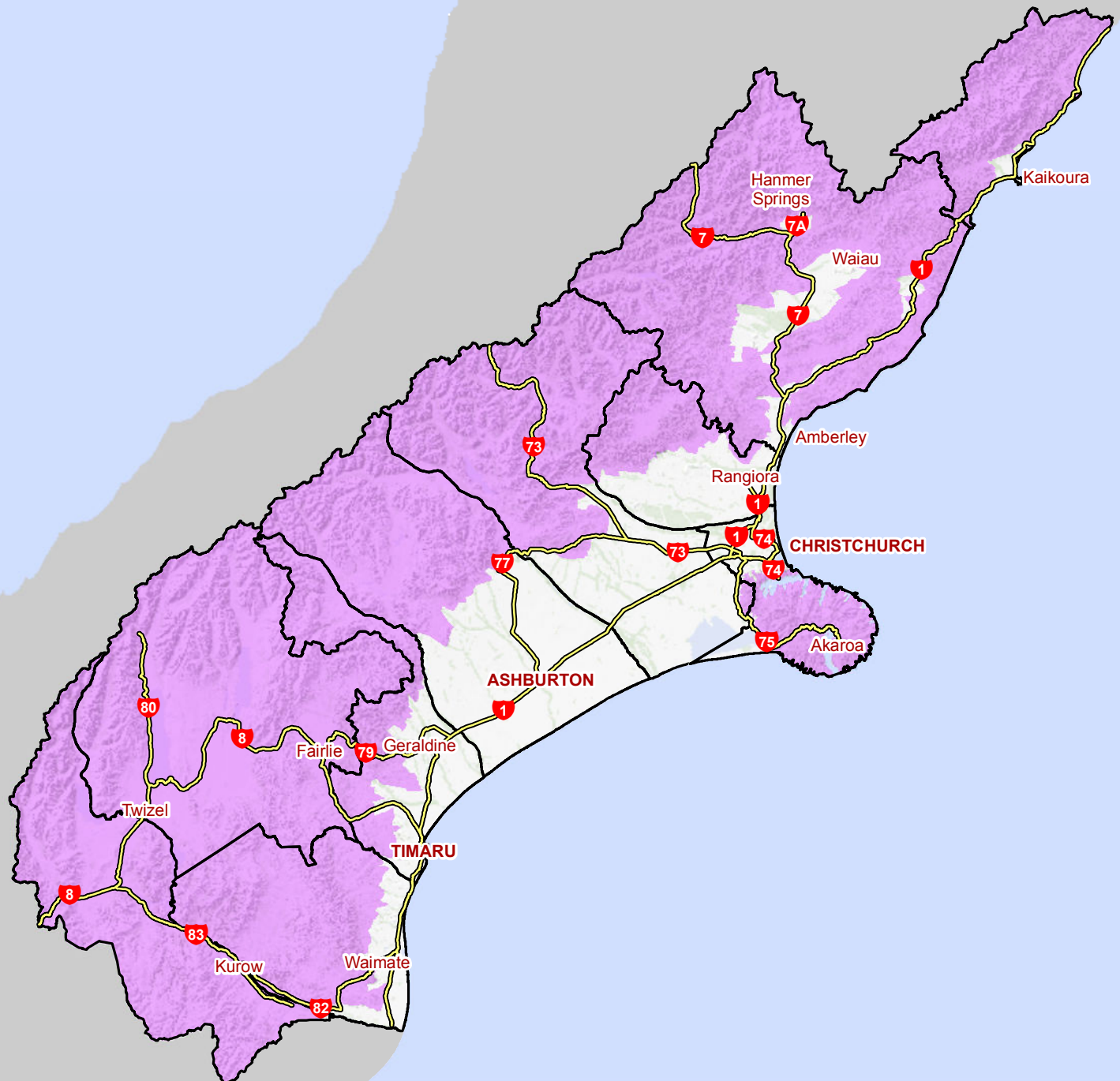


Map 2 Wallaby: Sustained Control Programme



Map 4 Gorse and Broom: Sustained Control Programme

 Gorse and Broom Hill and High
Country Zone



Map 5 Nassella Tussock: Sustained Control Programme

