

Lochiel McKellar

From: Sherman Smith <Sherman.Smith@mpi.govt.nz>
Sent: Tuesday, 21 November 2017 12:56 AM
To: Lochiel McKellar
Cc: Verity Halkett; Tamsin Page
Subject: Canterbury Regional Pest Management Plan - revised Interim Draft Plan and Panel's Sixth Minute
Attachments: MPI Comment on Environment Canterbury Interim Draft PRPMP (Revised).docx

Hi Lochiel,

Please find attached further comment from MPI – specifically focusing on matters relating to wilding conifers.

Please let me know if we can be of further assistance.

Regards,

Sherman

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Comments on the Interim Draft Canterbury Regional Pest Management Plan 2017-2037

by Tamsin Page on behalf of the Ministry for Primary Industries (MPI)

The following comments on the Interim Draft Canterbury Regional Pest Management Plan 2017-2037 (the Plan) relate primarily to the wilding conifer pest management provisions of the Plan.

1. Plan Objective 4

There has been no change to the first part of Plan Objective 4. This part of the Objective remains ambiguous and we refer to the specific comments regarding the wording of this part of the Objective at paragraph 6 of the Statement of Evidence of Tamsin Page in support of the original MPI submission. If no amendment is intended to be made to this first part of the Objective to provide greater clarity, specificity or measurability (or even to limit it to the Wilding Conifer Containment Area rather than 'within the Canterbury region'), then consideration should be given to removing it. This would focus the Objective on the far more specific second part, which appears to be what will be used to measure achievement of the objective (Part 7.1 of the Plan). Some consequential minor wording amendments to the second part may potentially be necessary to ensure consistency with the NPD requirements for Objectives.

2. Plan Rule 6.3.1

Some constructive amendments have been made to Rule 6.3.1, however the wording of clause (a) of the Rule remains unclear. We understand that the intent of this rule is to impose an obligation to remove wilding conifers only. Therefore, it is unnecessary (and confusing) to list the pest conifer species in the first part of clause (a). As per the original MPI submission and the supporting statement of evidence, we suggest that clause (a) of Rule 6.3.1 be amended as follows:

Within the Wilding Conifer Containment Area shown on Map 1 in Appendix 3, occupiers shall destroy all wilding conifers present on land they occupy prior to cone bearing, if –

(a) The wilding conifers, ~~contorta, Corsican, Scots, mountain and dwarf mountain pines and/or larch~~ are located within an area which has had control operations carried out to destroy wilding conifers, contorta, Corsican, Scots, mountain and dwarf mountain pines, larch and/or other planted conifer species; and

3. Plan Rule 6.3.2

The 'trigger' for this rule should be only if wilding conifers have been destroyed on the neighbouring property. This is because there are many reasons why planted conifers (even those species specified as pests) may be removed by an occupier, and if the reason is not due to issues relating to wilding conifer control or management, then the rule potentially triggers an inequitable requirement. For example, if several Corsican pine trees located within 200m of a boundary are removed due to a growing danger of windfall, but no wilding conifer control is or has been undertaken, this would trigger a requirement for a neighbour to destroy all wilding conifers or pest species conifers within 200m of their side of the boundary.

Consequently, Rule 6.3.2 should be amended as follows:

Within the Wilding Conifer Containment Area shown on Map 1 in Appendix 3, occupiers shall, on receipt of a written direction from an Authorised Person, destroy all wilding conifers, contorta, Corsican, Scots, mountain and dwarf mountain pines and larch present on land they occupy within

200m of an adjoining property boundary prior to cone bearing, if wilding conifers, ~~contorta,~~ Corsican, Scots, mountain or dwarf mountain pines and/or larch have previously been destroyed through control operations on the adjoining property, within 200m of the boundary, since 1 July 2016.

A consequential amendment to the Explanation to Rule 6.3.2 will also be required as follows:

Over the duration of the Plan, to ensure that the spread of wilding conifers does not cause unreasonable costs to the occupiers of adjoining properties, where wilding conifers, ~~contorta,~~ Corsican, Scots, mountain and dwarf mountain pines and/or larch have previously been destroyed through control operations on the adjoining property.

4. Plan Rule 6.3.3

MPI supports the inclusion of a Good Neighbour Rule (GNR) in the wilding conifer and pest conifer programmes. However, it is unclear why an additional rule is necessary, and why Rule 6.3.2 is not simply designated a GNR. As currently drafted, the only difference between Rules 6.3.2 and 6.3.3 is the reference in the latter to 'reasonable steps'. We suggest that the inclusion of Rule 6.3.3 creates unnecessary duplication and that a more appropriate approach would be to make a minor amendment to Rule 6.3.2 to incorporate reference to 'reasonable steps', and to designate it a GNR. We note that the original MPI submission sought the inclusion of 'reasonable steps' in Rule 6.3.2 and this issue is addressed at paragraph 27 of the Statement of Evidence of Tamsin Page.

If Rule 6.3.3 is retained, the same points apply to it, as those outlined above in relation to Rule 6.3.2.

5. Plan Rule 6.3.4

MPI is encouraged by the Hearing Panel's introduction of Rule 6.3.4 in recognition of the issue of non-pest species planted conifers posing a risk in some circumstances of re-infestation of areas cleared of wilding conifers. This is a complex and challenging issue without a single solution, and which requires different approaches for different types of pest agent plantings (ie large plantations vs small plantings, shelterbelts, individual trees). It is anticipated that non-regulatory approaches will be appropriate and effective in many situations. However, there is the potential for scenarios to arise where the availability of a regulatory provision will be important in ensuring that valuable gains in wilding conifer control are not lost.

We acknowledge that there are challenges inherent in the development of pest agent provisions in this context, as outlined in the Statement of Evidence of Tamsin Page in support of the MPI submission. In particular, issues associated with the allocation of costs where a rule requires the removal of existing, planted trees were outlined. It is envisaged that Rule 6.3.4 is unlikely to be required in more than a small number of instances, and that the costs imposed relative to the wider regional and national programme costs will be relatively small, however as drafted the rule will still impose direct costs on occupiers, and therefore the aforementioned cost allocation issues do require consideration.

Given the level of wilding conifer control investment being made in the Canterbury region, MPI considers that the security of the National Wilding Conifer Control Programme will benefit considerably from the availability of a pest agent provision in this context. Consequently, we strongly encourage the Hearing Panel to continue to endeavour with the development of a pest agent provision, and we would welcome the opportunity to work with staff and/or others to review the drafting of Rule 6.3.4 to further address some of the issues around cost allocation.

At a more specific level, there are a number of drafting issues within proposed Rule 6.3.4 which should be considered in the event that the rule, or a version of it, is retained. We set these issues out below.

As currently drafted, a pest agent for the purposes of Rule 6.3.4 could include any of the species listed in Table 3 of the Plan. This means that some species that are already specified as pests in the Plan¹ would also be 'captured' by the pest agent provision. In the new section 4.2 of the Plan, an explanation of what constitutes a pest agent is provided, including clarification that pest agents in the Plan "...are distinct from other organisms which are classified as pests", and are not classified as pests or subject to the consequent statutory obligations under the Act.

Consequently, reference within Rule 6.3.4 to Table 3 of the Plan should be changed to reference to Table 4 of the Plan, and Table 4 should be consequentially amended to include either all the species from Table 3 that have not been specified as a pest in the Plan, or, a sub-set of the highest spread-prone (in the Canterbury region) non-pest species from Table 3. We note that Rule 6.3.2 has the capacity to address issues of wilding conifer infestation/re-infestation from planted pest species conifers on adjoining properties.

There is an element of duplication and/or conflict within Rule 6.3.4, between the rule part and the subsequent 'conditions' of a pest agent part. One of the 'conditions' of a pest agent is that the tree/group of trees is within or adjacent to an area either not affected by wilding conifers, or where significant investment to clear wilding conifers has been or will be made. But the first, rule part, only applies if the pest agent is within or adjacent to an area where publicly funded control operations have been undertaken. It appears that the principal intention of the rule is to protect areas that have been cleared of wilding conifers from re-infestation. If this is the case, we suggest that clause 3 of the 'conditions' of a pest agent is unnecessary and should be removed.

The words "...within or adjacent to..." in sub-clause a) of the Rule may not be sufficiently clear to provide certainty for Plan users about whether they are subject to the Rule. This element of the rule requires further consideration around building in greater specificity regarding the location of potential pest agent trees. One component of this is consideration of whether the rule is intended to apply when the pest agent is on the same property as that where control operations have been undertaken. It is possible that such a situation may arise, however the obligation imposed by Rule 6.3.1, should provide a level of incentive around the management of pest agent trees on the same property. Additionally, there would ideally be close engagement with land owners/occupiers regarding future and ongoing wilding spread risk issues as a precursor to any publicly funded operations being undertaken on their property. Therefore, it may only be necessary for the rule to apply when the pest agent tree(s) are located near a boundary with a property on which publicly funded operations have been undertaken.

As with Rule 6.3.2, rule certainty requirements mean that a distance from the boundary should be prescribed. We understand the 200m in 6.3.2 is based on the distance recommended in the MPI Wilding Conifer RPMP Rule Guidelines document. The guidelines document explains that this distance is based on consideration of the most common spread characteristics of conifers (wind borne and gravity seed dispersal) and the distance within which the majority of seed dispersal occurs, even though it is possible, under certain conditions, for conifer seed to be dispersed over much greater distances. For consistency, we suggest that consideration should be given to

¹ Contorta, Corsican pine, mountain and dwarf mountain pine, Scots pine, Larch.

prescribing the same setback distance in Rule 6.3.4 for pest agents, as that prescribed in 6.3.2 for wilding and pest species conifers.

Rule 6.3.4 refers to a provision in the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (the NES) in prescribing an exclusion from the rule. We suggest that a more appropriate approach would be to specify the particular exclusion(s) in the rule itself, rather than using a reference to other regulations. If the intention is to exclude conifer plantations, we suggest that the definition of 'forest plantation' in Section 3 of the Wilding Conifer RPMP Rule Guidelines², or, part or all of the definition of 'plantation forest or plantation forestry' in clause 3 of the NES may be appropriate.

We also suggest that for clarity, the exclusion component of the rule should be separated from those parts that outline the conditions for inclusion.

Given that Rule 6.3.4 relates to the pest programme for introduced conifers (either wilding or the six species specified as pests), Rule 6.3.4 should be clear that it is addressing planted conifer trees, rather than just 'trees'. Consequently, we suggest that the words 'tree or group of trees' in Rule 6.3.4 be replaced with 'planted conifer tree or group of planted conifer trees'.

6. Minor Edits / Amendments

- In the Explanation to Rule 6.3.1:
"Over the duration...where wilding conifers, contorta...species ~~that~~ have previously..."
- In Footnote 10:
"Wilding conifers are any introduced conifer..."
- In Table 13, Principal Measures column:
Add 'requirement to act' to the list of principal measures in bold type, given that these are included in the wilding conifer programme.

² "a forest plantation is an area of 1 hectare or more of predominantly planted trees"