

Environment Canterbury Response to Minute 7

Staff have considered the details of Minute 7 issued by the Hearing Panel on 27 November and provide a response to the matters raised below.

Staff have considered the written comments provided by the Ministry for Primary Industries (MPI) on the revised interim Draft Plan and have considered a proposed pest agent rule with a defined scope that may be considered for inclusion in the plan. In order to achieve the clarity and certainty required for a rule to be enforceable, this consideration has involved reducing the geographic extent of the rule by specifying a setback distance and removing the flexibility around what trees may be considered to be a pest agent.

The key elements of a proposed pest agent rule considered by Staff are set out below in response to Matter 3. This addresses many of the matters raised by MPI. However, a response to specific matters raised by MPI is also provided.

Matter 2: We ask that Council, as a matter of urgency, provide us with an update on its position regarding the further comment from the Ministry of Primary Industries on technical and workability matters.

1. Staff have considered the written comments provided by the Ministry for Primary Industries (MPI) on the revised interim Draft Plan and have considered a proposed pest agent rule with a defined scope.
2. In this response, Staff address those comments relating to the wilding conifer pest agent rule. These comments are addressed both in this section and in response to Matter 3 set out in the Panel's minute. Staff seek to respond to the remainder of MPI's comments following further instruction from the Hearing Panel.
3. Staff appreciate and agree with MPI's comments regarding non-regulatory approaches being effective in many situations. Staff also agree that a regulatory provision may also be required in some situations.
4. Staff acknowledge MPI's statement regarding the cost allocation issues involved in the developing a regulatory approach for pest agent conifers. Staff note MPI's offer for further assistance with rule drafting and addressing some of the issues around cost allocation.
5. MPI highlights an issue with the pest agent rule capturing species that are already listed as pests in the interim Draft Plan. Staff agree that the pest agent conifers should not include the named pest species and address this in response to Matter 3 below. Staff note that the named species will be managed through rules 6.3.1 and 6.3.2 and therefore do not require inclusion in rule 6.3.4.
6. Staff agree with MPI's comments regarding the duplication in the suggested rule and conditions for pest agent. Staff consider that greater specificity is required in the rule element and definition of a pest agent conifer. Staff would recommend a rule with a

defined scope as set out below in response to Matter 3. This includes the removal of the proposed conditions set in proposed Plan Rule 6.3.4 that are required to be met for a tree to be specified as a pest agent.

7. MPI has indicated that boundary distance should be provided to give greater rule certainty. Staff agree with the need for this, and also agree on the 200m distance suggested by MPI. We consider that aligns well with the other Draft rules, and provides adequate protection from spread for the majority of conifer seed dispersal.
8. Staff consider that a more appropriate way to address excluding plantation forestry from the rule is through the definition of Pest Agent Conifer. Pest Agent Conifer would include any planted introduced conifer species that is capable of helping the spread of wilding conifers and is not otherwise specified as a pest in the RPMP and is not located within a plantation forest.
9. MPI suggest amending the reference of 'tree or group of trees' to 'planted conifer tree or group of planted conifer trees' for clarity. Staff agree that further clarity is required and would recommend referring to Pest Agent Conifer. Staff do not see the need to reference 'groups of trees', and consider that this specification as unnecessary.

Matter 3: We ask the Council to provide us with the following:

- a. **Does the Council recommend to us, if a rule or group of rules to manage conifers as a pest agent in the Wilding Conifer Containment Area were to be included in the RPMP, that sufficient consultation has been undertaken that would allow us to include such a rule or group of rules?**

10. The Panel is required to be satisfied under section 71(1) of the Biosecurity Act 1993 that:

- a. if Ministers' responsibilities may be affected by the plan, the Ministers have been consulted; and
- b. if local authorities' responsibilities may be affected by the plan, the authorities have been consulted; and
- c. the tangata whenua of the area who may be affected by the plan were consulted through iwi authorities and tribal runanga; and
- d. if consultation with other persons is appropriate, sufficient consultation has occurred.

11. In considering whether the Panel is satisfied that sufficient consultation has occurred with other persons in accordance with section 71(1)(d), the Panel must have regard to the following:

- a. the scale of the impacts on persons who are likely to be affected by the plan; and

- b. whether the persons likely to be affected by the plan or their representatives have already been consulted and, if so, the nature of the consultation; and
 - c. the level of support or, or opposition to, the proposal from persons who are likely to be affected by it.
12. The scope of the proposed pest agent rule will determine the scale of the impacts on persons likely to be affected by the plan and whether those persons likely to be affected have already been consulted.
13. In order to consider whether sufficient consultation has occurred, Staff have considered a pest agent rule with the following defined scope:
- The rule applies within the Wilding Conifer Containment Area shown on Map 1 in Appendix 3.
 - The rule applies on receipt of written direction from an Authorised Person.
 - The rule requires the destruction of any Pest Agent Conifer within a specified distance.
 - The specified distance is within 200m of an adjoining property boundary where publicly funded control operations have been undertaken on the adjoining property within 200m of the boundary.
 - Pest Agent Conifer is defined as any planted introduced conifer species that is capable of helping the spread of wilding conifers and is not otherwise specified as a pest in the RPMP and is not located within a plantation forest.
 - Plantation forest is defined as a forest deliberately established for commercial purposes, being at least 1 ha of continuous forest cover of forest species that has been planted and has or will be harvest or replanted.¹
 - Forest species is defined as a tree species capable of reaching at least 5m in height at maturity where it is located.²
 - A breach of the rule creates an offence under section 154N(19) of the Act.
14. Staff consider that sufficient consultation has been undertaken to include a rule in the RPMP within the defined scope set out above.
15. The Proposal, which has been publicly notified, set out the objectives for the Plan and clearly identified an objective over the duration of the Plan, to progressively contain and reduce the geographic distribution or extent of wilding conifers within the Canterbury region (Objective 4). A number of people that submitted on the Proposal took the opportunity to comment on how the objectives should be achieved through

¹ This is part of the definition of plantation forestry in the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.

² This definition is from the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.

rules or other non-regulatory measures. In particular, MPI and DOC³ sought that pest agent rules be inserted to achieve Objective 4 relating to wilding conifers. Submitters have had an opportunity to comment on the inclusion of pest agent rules throughout the hearing, including an opportunity to comment specifically on the proposed rule 6.3.4 suggested by the Panel in Minute 5.

16. The key elements of a proposed pest agent rule set out above ensure that the pest agent rule is consistent with the other rules in the draft Plan relating to wilding conifers. In particular, in relation to the location and circumstances in which the rule applies. Given the defined scope of the rule and that it will only apply upon written direction, the scale of impacts on occupiers will be minimised.

b. If the Council recommends that there has been sufficient consultation, what timeframe and process would be required to develop an appropriate rule or group of rules, including appropriate consideration of allocation of costs?

17. Staff seek to provide a draft Pest Agent Conifer rule to the Hearing Panel by 8 December 2017. However, additional time will be needed to undertake a cost benefit analysis and assessment of cost allocation. Staff anticipate that it would be more efficient to seek feedback from the Panel on the key elements of the draft rule before undertaking the cost analysis. This would ensure that analysis is only completed once, rather than requiring further consideration as a result of changes. Due to availability constraints in December and January, Staff anticipate that this cost analysis may be provided in February. However, technical input is required, and Staff will be in a position to confirm the delivery timeframes next week.

c. If the Council recommends that it considers insufficient consultation has taken place, what timeframe and process would be recommended to develop an appropriate rule or group of rules, including appropriate consideration of allocation of costs, after the plan has been made.

18. As above, Staff consider that sufficient consultation has occurred (subject to the defined scope of the rule set out above).

³ Nick Ledgard, Fraser Bell, Waimakariri Ecological Landscape Restoration Alliance, Land Information New Zealand, Forest and Bird all sought to manage further species of conifers (most often Douglas fir and pinus radiata are cited).