

**MEMO**

**TO:** Panel Chair, the Honourable Raynor Asher KC  
**FROM:** Phil Page  
**SUBJECT:** Haldon Application – Cumulative Effects  
**DATE:** 12 February 2026

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1. I refer to your email of 3 February and the Panel Meeting on 4 February during which legal advice has been sought from me. The need for legal advice stems from comments received on the substantive application that raise legal issues in common. You have asked:

The Panel seeks legal advice on the way in which it should approach the issues of the cumulative effects arising from the grant of an application,

The lack of assessment of cumulative effects is raised in the Canterbury Regional Council and Aoraki comments on the Haldon application, with respect to ecological, cultural and landscape issues. It is also raised in the submissions of EDS and Forest and Bird, and DOC has devoted some pages of its comments to the issue, (5.34 - 5.47). DOC has proposed that there should be an overview effect, taking into account that while there are only two current applications proceeding at present, there are at least eight solar proposals for developments in the McKenzie basin.

Essentially, we need to know to what extent the panel(s) should be considering cumulative effects, and if so the approach to be taken. Can there be a notional assumption of multiple solar farms, and how many if any are acceptable and how many reach the point of a conclusion that the adverse effects are out of proportion to a Project's regional or national benefits.

The alternative is that each application is considered solely on its own merits and effects, without consideration of any cumulative consequences should other solar farms be established. However for the later applications, the fact of the existing prior solar farm and its effects would be taken into account. For the Haldon application, this would mean confirmation that being first to lodge means there does not need to be a consideration of cumulative effects. This is what the Haldon applicant contends. That would mean for the Point that effects would have to be assessed assuming the existence of Haldon.

2. Under the Resource Management Act 1991, a cumulative effect is expressly included within the definition of "effect" in section 3 of that Act:

**3 Meaning of effect**

In this Act, unless the context otherwise requires, the term **effect** includes—

- (a) any positive or adverse effect; and
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effect; and
- (d) any cumulative effect which arises over time or in combination with other effects—regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
- (e) any potential effect of high probability; and
- (f) any potential effect of low probability which has a high potential impact.

3. The Court of Appeal in *Dye v Auckland Regional Council* [2002] 1 NZLR 337 took a strict approach to cumulative effects, being things that “will occur” rather than something that may occur in the future, being a species of potential effect. A cumulative effect relates to the gradual build-up of consequences as a result of the combination of effects, and does not include potential or “precedent” effects. In *Kuku Mara Partnership v Marlborough District Council* (2005) 11 ELRNZ 466, the Environment Court explained cumulative effects as being the synergetic impacts on the environment of an existing effect with that which is proposed.
4. Identifying what the “environment” is, is not always straight forward. The Court of Appeal has held that the “environment” includes permitted activities that don’t yet exist, and the exercise of resource consents that have been granted, and are likely to be exercised: *Queenstown Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 (CA).
5. To my knowledge, there are no solar farms that exist or are either permitted or subject to existing resource consents that are likely to be exercised in the Mackenzie Basin. Thus there are no solar farms that are part of the environment that must be considered in conjunction with the Haldon application.
6. The Royal Forest and Bird Protection Society Inc comment acknowledges the *Fleetwing* line of cases which arose in relation to competing applications for water rights in Canterbury. Strictly speaking, *Fleetwing* is not a cumulative effects line of authority, but rather deals with the problem of how a consent authority deals with competing applications for the same resource. As the Forest and Bird comment explains, the cases effectively established a first in time approach. In the present case, if decided under the RMA, Haldon would be treated as going first ahead of The Point. Strictly speaking, *Fleetwing* is not authority for how that Fast Track Approvals Act 2024 must be applied to competing applications for a limited resource, although I can see no obvious reason to depart from that approach.
7. The comments acknowledge that the Fast Track Approvals Act (“FTA”) is a different piece of legislation. An “effect” is not defined, but defaults to the RMA definition through section 4(2) of the FTA. That definition is relevant to the decision-making criteria in Clause 17(1)(b) and (c) of the Schedule 5 of the FTA. However, those considerations are expressly subject to the purpose of the FTA.
8. Sections 81(2) and (3) set out mandatory considerations for making a decision, which includes cl 17 of Schedule 5. And it includes the content of any comment received. To that extent, cumulative effects (if they exist) under the RMA are now relevant to this Panel’s function under the FTA.
9. One way in which the FTA departs from the RMA is that the Panel’s power to decline an application are set out in separate deliberative section: section 85. In that section, an “effect”, let alone a cumulative effect, is not referred to. Instead, the FTA uses the term “adverse impact”, which “means any matter considered by the panel in complying with section 81(2) that weighs against granting the approval”.<sup>1</sup>
10. Section 85(3) shares a similar feature to clause 17(1) of schedule 5 in that it introduces a hierarchy of considerations. An “adverse impact” can only justify refusal of consent if it is “sufficiently significant to be out of proportion to the project’s regional or national benefits”.

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<sup>1</sup> FTA, section 85(5).

11. Although the RMA concept of cumulative effects is a relevant consideration under the FTA, the weight to be attributed to that matter is one for the Panel's assessment, but is expressly subservient to the achievement of the purpose of the FTA. That statutory direction is starkly different to the lack of direction in any of the planning instruments as to how a decision maker decides when cumulative effects justify a decision to decline consent.
12. The High Court in *Tasti Products* held that the assessment of adverse effects does not occur in isolation, and must be informed by the objectives and policies of the relevant statutory instruments.<sup>2</sup> That issue is important here because of the National Policy Statement for Renewable Energy Generation 2011, as amended in 2025.

### **2.1 Objective**

1. The objective of this National Policy Statement is to:
  - (a) ensure the national, regional and local benefits of REG are provided for;
  - (b) enable REG capacity and output to significantly increase;
  - (c) enable REG to support the social, economic and cultural wellbeing of people and communities, and for their health and safety;
  - (d) enable REG to provide greater security of electricity supply and resilience to supply disruptions to all people and communities;
  - (e) enable REG to support achieving New Zealand's emission reduction target and implementation of the emissions reduction plan under the Climate Change Response Act 2002; and
  - (f) ensure REG is developed and operated in a safe, efficient and effective manner while managing the adverse effects from or on REG activities.
13. The sole objective of that NPS is to enable REG, while "managing" the adverse effects of REGs on the environment. It would seem inconsistent with that single objective to arrive at a point at which one REG proposal must be declined to avoid, rather than "manage", the cumulative adverse effect on the environment of that REG in conjunction with another REG project that is already consented.
14. Policy F of the NPS REG is:

#### **Policy F: Enabling and managing the effects of REG assets and activities on the environment**

1. Decision-makers must enable REG assets and activities in all locations and environments.
2. Where REG assets and activities are proposed to locate in or are likely to have adverse effects on environments and values provided for in section 6 of the Act, the provisions of this policy must be read alongside other relevant national direction, regional policy statements and regional and district plans.
3. Where (2) does not apply, the adverse effects of REG assets and activities must be, where practicable, avoided, remedied or mitigated.

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<sup>2</sup> *Tast Products Limited v Auckland Council* [2024] NZHC 1673. That case concerned an application for judicial review of a notification decision.

4. Decision-makers must have particular regard to the use of adaptive management measures.
  5. When considering any residual adverse effects of REG assets and activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to offsetting measures or environmental compensation, including measures or compensation that benefit the local environment and community affected.
15. Several of the commenting parties produce expert evidence to establish that the Haldon site qualifies as an area of significant indigenous vegetation and a habitat for significant indigenous fauna under section 6(c) of the RMA. If the Panel accepts that evidence, then policy F(2) is engaged, although subject to the hierarchy of considerations in the FTA.
16. The sequence of considerations in Objective 2.1 and Policy F of the NPS REG is consistent with the approach in the FTA itself, which is that the primary purpose is to facilitate the delivery of [REG] infrastructure projects. When the limited function of the Panel in relation to the instant substantive application is added to the mix, it does not seem to be intended that the Panel has been tasked by Parliament to decide when the cumulative effects of a sequence of REG proposals may reach a tipping point beyond which further adverse effects must be avoided.
17. What is clear from the way in which the Panel's function is defined in section 81(1) of the FTA is that it does not have any broader function than determining the application that is referred to it. Unlike a Local Authority, the Panel does not have any wider policy-making function or resource allocation function. The Panel does not have the implementation obligations of a Local Authority under the NPS Indigenous Biodiversity 2023 (As amended in December 2025). It can only decide the approval sought on the substantive application referred to it.
18. Although there is overlapping membership with The Point Panel, the Haldon Panel is separately appointed and must limit its decision to the substantive application before it. There is no scope to accept the suggestion made in comments that some kind of comparative merits assessment should be undertaken between the Haldon and The Point applications.
19. To answer your questions directly:
  - (a) Cumulative adverse effects may be relevant under clause 17 of the 5<sup>th</sup> Schedule and section 81(2) of the Act. That is a fact specific judgment in each case.
  - (b) Cumulative adverse effects on the environment are adverse effects that accumulate with activities that already form part of the environment. No account needs to be taken of proposals that are still to be approved.
  - (c) The extent to which weight should be given to the likelihood of cumulative adverse effects (say in the assessment of The Point in the event that Haldon is granted) is a matter for the Panel but should be informed by the NPS REG and the FTA.
  - (d) The Panel is not tasked with a wider policy function about the extent to which REG has benefits generally, or is appropriate for the Mackenzie Basin specifically. That is a task reserved to others with policy making functions.