BEFORE THE PANEL

IN THE MATTER	of the Fast-track Approvals Act 2024
AND	
IN THE MATTER	of an application for approvals under the FTAA by The Point Solar Farm

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COMMENTS OF THE ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED

19 February 2025

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INTRODUCTION

1. These are the Environmental Defence Society's (**EDS**) comments on Far North Solar Farm Limited's (**Applicant**) substantive application (**Application**) under the Fast-track Approvals Act 2024 (**FTAA**) for The Point Solar Project (**Project**). EDS's interest in the Application relates to approvals required under the Resource Management Act 1991 (**RMA**), including matters of national importance relevant to indigenous biodiversity and landscape. EDS has also been involved in litigation (and policy analysis) promoting renewable energy in appropriate locations.

2. EDS supports renewable electricity generation, in the right location. That includes areas where development will not adversely impact significant ecological values and outstanding natural landscape values.

3. The Panel is entitled to ask whether this is the right location.[1] The Project is located within both a significant natural area (**SNA**), and an outstanding natural landscape (**ONL**), relevantly triggering consideration of sections 6(b) and 6(c) RMA, as well as the planning framework for the Mackenzie District.[2]

4. There is an important interrelationship between the two. The ONL status for Te Manahuna | Mackenzie Basin relies in part on the natural values present, including indigenous dryland ecosystems, and Threatened and At Risk flora and fauna.

5. The large glacial outwash plains of the Mackenzie Basin are home to numerous nationally Threatened and At Risk plant species and other rare fauna which have been under pressure from land use intensification for decades. EDS has engaged Dr. Susan Walker to provide an ecological assessment of the effects of the Project on the receiving environment. Dr Walker's evidence has identified material issues relating to the Project site, including:

    a. Collision risk for Threatened or At Risk inland breeding wading birds, terns and gulls (Charadriiformes). The site is one of the busiest known bird flyways in the Mackenzie Basin, and located adjacent to numerous breeding sites.

    b. The Project site forms part of the Pukaki outwash ecosystem. Inland outwash gravels are naturally uncommon ecosystems, ranked as Critically Endangered in New Zealand, and ecologically significant in the Canterbury Regional Policy Statement. The Pukaki outwash includes nationally significant plants and fauna, including Threatened and At Risk species.

    c. The Application has provided inadequate information (including field surveys), and (subject to EDS / Dr Walker having opportunity to review any further survey data), there is a material risk of at least moderate probability to Threatened and At Risk plant species and their habitats.

[1] Consideration of alternative locations in the Mackenzie Basin is not precluded by national direction standards, such as the NPS-REG, which (in context of the relevant values under s6 RMA) must be read alongside other policy provisions
[2] Clause 17, Schedule 5 of the Fast-track Approvals Act 2024 (**FTAA**)

d. The critical and endemic flora and fauna values are still largely unknown.

6. In light of Dr Walker's evidence (and subject to any further caucusing process or information exchange), EDS submits that significant terrestrial ecology, invertebrate and avifauna values have not been identified by the Applicant, and approving the proposal will result in unacceptable risk of material adverse impacts.

7. The absence of sufficient information on matters of national importance under s 6 RMA, relevantly imports s 104(6) RMA (which enables decline of a proposal, absent adequate information on material issues of national significance). In this case, Sch 5, cl 17(1)(b) FTAA imports s 104(6) RMA as a relevant consideration under s 81(2)(b) and (3) FTAA. Unless the Applicant can address these information gaps, then the Panel should decline the proposal under s85 FTAA.

8. The Project site sits within the wider Mackenzie Basin, and forms part of an ONL, recognised under s 6(b) RMA, and the regional and district planning framework. Past intensification of the Basin has resulted in a strengthened planning regime to protect its outstanding natural landscapes and significant indigenous biodiversity. EDS was directly involved in this multi-year litigation, which incorporated landowner and consent authority agreements to manage risks to these values.

9. While the Panel must undertake its own merits assessment, for the purposes of the FTAA, it is entitled to treat prior findings of the Environment Court on the interrelated ecological and natural landscape values as persuasive, particularly as to context, the requirement for bespoke protection, and the sensitivity of the receiving environment.

10. EDS relies on factual findings made by the Environment Court in the Mackenzie Plan Change litigation, particularly the Court's final decision on PC13[3] and its decision on PC18,[4] as contextually relevant to the Panel's assessment.

11. Relevant factors identified in the final PC13 decision on ONL values include:

    a. Mackenzie Basin has, for some time, been at a tipping point in respect of the ONL values, particularly those based on natural ecological values;[5]

    b. The relevant natural ecological values were identified by the Environment Court in its PC13 decision.[6] Appendix B to that decision provides a list of Threatened and At Risk plants in habitats that occur in basin floor moraine and outwash habitats; and Appendix C (which was produced by Dr Susan Walker) provides a list of ecological components of the natural landscape character of the Mackenzie Basin subzone.

[3] *Federated Farmers & Ors v Mackenzie District Council* [2017] NZEnvC 53 (**the PC13 decision**)
[4] Plan Change 18 related to Section 19 – Ecosystems and Indigenous Biodiversity to the Mackenzie District Plan. The decision is *Royal Forest & Bird, EDS & Ors v Mackenzie District Council* [2025] NZEnvC 125 (**the PC18 decision**). Note in particular, the summary of evidential findings at [78]-[80], and related Annexure 1 to the PC18 decision
[5] An argument advanced by EDS, such as at [23]-[24] of the 2017 decision
[6] Such as at Appendices B & C to the PC13 decision

c. The question of cumulative degradation of landscape and ecology values in the Mackenzie Basin has been at the forefront of Environment Court and District Plan review processes for several decades (at least). It reinforces the importance of consideration of cumulative effects for the proposed Project, both in the orthodox RMA sense articulated by the Court of Appeal in *Dye*[7] (the cumulative effects of a particular application are effects which arise from that application, and not from others); as well as in the extended sense, which EDS submits is an available consideration under the FTAA but not the RMA, of the cumulative prospect of 5 or more solar farm proposals in the Basin.

12. While the PC18 decision related to a different statutory framework, nonetheless there are a range of relevant findings on ecological values, with the Court noting that the Basin is an environment of extremes, with the harsh environment of the Tekapo outwash plains being home to some 36 nationally Threatened plant species and 55 nationally At Risk plant species, as well as other unique or rare fauna.[8]

13. As with other forms of intensification, the ecological and landscape effects of solar farms require careful management within the Mackenzie Basin.

14. To prevent further degradation of the Basin's values, the planning framework now seeks to avoid, as a priority, adverse ecological and landscape effects. Only those developments that are appropriate, and have a functional or operational need to locate in high value areas are provided for.

15. The Mackenzie Basin is a 'hot spot' for solar radiance, and the Project is only one of many solar farm proposals currently being progressed in the area. This is relevant to the question of cumulative (and accumulative) effects, discussed below.

16. In summary, EDS submits that the Panel is not precluded from considering the effects of this Project in combination with other proposed projects. This is particularly relevant to landscape and ecological effects over the Basin as a whole. While the Panel cannot predetermine whether other solar projects will be approved under the FTAA, the Panel must assess the appropriateness of the Project location, in contradistinction to other potential locations with lesser biodiversity (and, thus, natural landscape) values.

17. EDS submits that renewable generation should avoid material adverse impacts, including cumulative impacts, on nationally significant ecological values and outstanding natural landscapes. This avoidance imperative applies, even in circumstances where functional or operational need for a particular location is established.

18. Dr Susan Walker's ecological evidence establishes that there are serious information gaps in the ecological assessment provided to date, generating unacceptable risk of

[7] *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA) at [38]; discussed in *Queenstown Lakes DC v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA) at [83]
[8] Supra at [8]-[16]

adverse impacts to nationally significant biodiversity. This has not been addressed by the proposed consent conditions framework.

19. As regards the landscape assessment, EDS submits that the Panel cannot reach a concluded view on the natural landscape effects without understanding the ecological and habitat values present. These are, to a large degree, interrelated questions.

20. Because of the interrelationship between ecological effects and natural character landscape values of the basin, a failure by the Applicant to address matters raised by Dr Walker means that the benefits of proposed landscape mitigation, including ecological and biodiversity enhancements, are potentially overstated or may not be realised.

21. The FTAA framework provides a discretion to decline consent. As currently proposed, the Application's benefits are not in proportion to its adverse impacts, and the project should therefore be declined.

DECISION-MAKING FRAMEWORK FOR RESOURCE CONSENT APPROVALS

22. Under the FTAA, a panel must decide whether to grant (with or without conditions) or decline each approval sought in a substantive application.[9] Section 81(2) of the FTAA steps through that decision-making process. These comments focus on the statutory requirements of s 81(2)(b), (d) and (f) of the FTAA, read in light of the wider statutory purpose, namely:

    a. When making a decision, a panel must apply the applicable clauses set out in s 81(3) of the FTAA. Of relevance here is cl 17 and cl 18 of Sch 5 of the FTAA (relating to approvals for a resource consent that would otherwise be applied for under the RMA);[10]

    b. When imposing conditions of consent, they cannot be more onerous than necessary to address the reason for which they are set in accordance with the provision of the FTAA that confers the discretion;[11] and

    c. An approval may be declined under s 85 of the FTAA.[12]

Clause 17 of Schedule 5 of the FTAA

23. Under cl 17 of Sch 5, when considering a resource consent approval, a panel must "take into account", relevantly:

[9] FTAA, s 81(1)
[10] FTAA, ss 81(2)(b) and 81(3)(a)
[11] FTAA, ss 81(2)(d) and 83
[12] FTAA, ss 81(2)(f) and 85

a. The purpose of the FTAA to "facilitate the delivery of infrastructure and development projects with significant regional or national benefits" (s 3 of the FTAA);[13]

b. The following decision-making provisions of the RMA:[14]

i. Sections 5, 6, and 7 (the purpose and principles of the RMA);[15]

ii. Part 3 relating to duties and restrictions on land, including the s 17 RMA duty to avoid, remedy or mitigate adverse effects; and

iii. Part 6 (resource consents), including s 104 (but not s 104D) of the RMA which requires the panel to have regard to:

- Any actual and potential effects on the environment
- Conditions that offset or compensate for any adverse effects on the environment
- Relevant provisions of national environmental standards, national policy statements, regional policy statements and plans.

24. The direction to "take into account" means that each matter must be given genuine consideration.[16] This includes directive language used in policy instruments, directed at avoiding adverse impacts to nationally significant values. When taking the above matters into account, a panel must give the "greatest weight" to the purpose of the FTAA.[17] But this does not require a Panel to grant approval - a merits assessment is required.

25. Other FTAA panels[18] have taken guidance on what this means from the Court of Appeal decision of *Enterprise Miramar Peninsula Inc v Wellington City Council*,[19] which considered similar directive weighting in s 34 of the Housing Accords and Special Housing Areas Act 2013:[20]

a. While the greatest weight is to be placed on the purpose of the FTAA, panels must be careful not to rely solely on that purpose at the expense of due consideration of the other matters listed in cl 17 of Sch 5;

[13] FTAA, Sch 5, cl 17(1)(a)
[14] FTAA, Sch 5, cl 17(1)(b)
[15] FTAA, Sch 5, cl 17(2)(a) excludes s 8 of the RMA from consideration
[16] See Waihi North FTAA decision at Part G para [3] and Kings Quarry Expansion – Stages 2 and 3 FTAA decision at [112] with reference to *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC. EDS reserves its position on the correctness of aspects of the Waihi North FTAA decision, including as noted below
[17] FTAA, Sch 5, cl 17(1)
[18] See Bledisloe North Wharf and Fergusson North Berth Extension FTAA decision [121], Dury Quarry Expansion – Sutton Block FTAA decision at [114], Mildale – Stages 4C and 10 to 13 FTAA decision at [60]
[19] *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541
[20] The difference between the Housing Accords and Special Housing Areas Act 2013 (**HASHAA**) formulation and that of the FTAA is that the HASHAA created a hierarchy of criteria, with the greatest weight to be given to criterion (a) and the least weight to be given to criterion (e), whereas in the FTAA the requirement is simply for the decision maker to give the greatest weight to criterion (a) (the purpose of the FTAA)

b. Clause 17 requires a panel to consider the matters listed in cl 17(1) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified direction; and

c. The purpose of the FTAA is not logically relevant to the assessments otherwise required under the RMA, including an assessment of environmental effects. None of those matters become irrelevant, insignificant, or less than minor simply because of the purpose of the FTAA. What changes is the weight to be placed on them - they may be outweighed by the purpose of the FTAA, or they may not.[21]

26. The purpose in s 3 FTAA is to 'facilitate' projects of national and regional significance. This does not mean 'grant' projects. Facilitation is procedurally focused on an efficient one-stop process for all relevant approvals applied for; it does not mean 'grant' or 'approve'. There is no presumption in favour of the approval of projects under the FTAA.

27. Other matters, individually or collectively, can take precedence over the purpose of the FTAA in the weighting exercise. Alternatively, the purpose of the FTAA is consistent with such an approach. There is no inherent conflict, particularly given the requirement to assess net regional or national benefit.

28. Clauses 17(3) and (4), read in conjunction with s 85(4) of the FTAA, are instructive when navigating the intersection between the purpose of the FTAA and directive avoidance policies in planning instruments:

> "Clause 17(3): Subclause (4) applies to any provision of the Resource Management Act 1991 (including, for example, section 87A(6)) or any other Act referred to in subclause (1)(c) that would require a decision maker to decline an application for a resource consent."
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> "Clause 17(4): For the purposes of subclause (1), the Panel must take into account that the provision referred to in subclause (3) would normally require an application to be declined, but must not treat the provision as requiring the Panel to decline the application the Panel is considering."
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> "Section 85(4): To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2)."

29. Together, these provisions mean that directive avoidance policies are to be taken into account by:[22]

[21] Maitahi Village FTAA decision at [70], Tekapo Power Scheme – Application for Replacement Resource Consents FTAA decision at [48] and Kings Quarry Expansion – Stages 2 and 3 FTAA decision at [111]
[22] Waihi North FTAA decision at Part G, para [5]

a. Recognising that they would usually require applications for consent to be declined based on the bottom line approach in *King Salmon*;[23]

b. They do not require the panel to decline an application; and

c. May be a sufficient basis to decline, when relied on in combination with relevant evidence of adverse impacts.

30. Accordingly, the Panel retains a discretion to decline an application if it breaches a directive avoidance policy, but only if the breach is accompanied by another adverse impact, such as adverse effects on the environment.

31. In that regard, EDS disagrees with the Waihi North FTAA decision that "there are no "bottom lines" of the kind applied in *King Salmon*".[24] Policies must still be given their normal interpretation (having regard to purpose, context and text), and a proposal may well breach a policy bottom line (such as, for example, the avoidance directive in Policy 11 of the New Zealand Coastal Policy Statement). This structured analysis is required by Sch 5, cl 17, and conclusions should be reached on the relevant directive language in policy instruments, and what is required by those instruments, as this will be relevant to the proportionality assessment in s 85 FTAA. At that point in the decision-making process, s 85(4) FTAA confirms that the Panel may not solely decline a proposal on the basis of a policy bottom line. However, it may still operate as a relevant factor in any decision to decline.

32. Finally, when giving the greatest weight to the purpose of the FTAA, a panel must consider the "extent" of the project's regional or national benefits.[25] That requires a "forensic exercise", whereby a project's benefits are identified and then assessed for significance.[26] It requires an assessment of the net benefits (by cost-benefit analysis) which are then assessed against the relevant adverse impacts (where those impacts cannot be the subject of cost-benefit analysis, such as intrinsic values).

33. In weighing up whether adverse impacts are sufficiently significant to be out of proportion to a project's benefits, it is particularly important that the benefits analysis is robust and independently verified. The panel should assure itself that all costs (including the potential irreplaceability of any ecological values) are accounted for and appropriately evaluated.

Section 85 of the FTAA

34. Panels have a discretionary ability to decline an approval under s 85(3) of the FTAA:

> *A panel may decline an approval if, in complying with section 81(2), the panel forms the view that—*

[23] *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38
[24] Waihi North FTAA decision at Part M, para [12(c)]
[25] FTAA, s 81(4)
[26] Maitahi FTAA decision at [84]

(a) there are 1 or more adverse impacts in relation to the approval sought; and

(b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account—

(i) any conditions that the panel may set in relation to those adverse impacts; and

(ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

35. A panel's discretion to decline is not a standalone consideration of adverse impacts proportionate to benefits. Rather, import of the words "in complying with section 81(2)" means that the discretion must be exercised in the context of a panel's s 81(2) FTAA assessment.

36. This is confirmed by:

a. Section 85(5) of the FTAA, which states that "adverse impact" means any matter considered by a panel in complying with s 81(2) that weighs against granting the approval. Thus, adverse impacts include the matters listed in cl 17 of Sch 5 (via s 81(2)(b) of the FTAA); and

b. Section 85(4) of the FTAA, which as stated above, means that a panel may not form the view that an adverse impact meets the threshold in s 85(3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with s 81(2).

Overall decision-making

37. In practice, this means that when making a decision a panel must:[27]

a. Take into account all the matters listed in cl 17 and cl 18 of Sch 5 of the FTAA;

b. Give the greatest weight to the purpose of the FTAA when taking the matters into account;

c. When taking into account the purpose of the FTAA, consider the extent of the project's benefits;

[27] This list only includes the matters relevant to these submissions i.e. s 81(2)(b), (d) and (f) of the FTAA. Other parts of s 81 are also relevant to a panel's decision i.e. effect of Treaty settlements and other obligations as per s 81(2)(c) and s 82 of the FTAA

d. Step back and consider all the adverse impacts raised by the matters listed in s 81(2), which relevantly includes the matters listed in cl 17 and cl 18 of Sch 5 listed above;

e. Form a view on whether those global adverse impacts are sufficiently significant to be out of proportion to the extent of the project's benefits (after taking into account any conditions). Noting that inconsistency with a provision of a specified Act or other document is not enough on its own to qualify; but may be a sufficient basis to decline, when taken in combination with evidence of other adverse impacts.

ADVERSE IMPACTS OF THE PROJECT

38. The fast-track legal framework means there is scope for a greater than usual focus on the actual and potential scale of effects that are in issue.[28]

39. Adverse impact on the ecological values of the Project site and associated planning provisions is a primary issue in contention for the panel. The other is impacts on landscape values and associated planning provisions.

Ecological impacts

40. As noted, EDS has filed Dr Susan Walker's ecological evidence with these comments. Dr Walker's evidence has confirmed that:

a. The Project's ecological surveys are inadequate;

b. The critical and endemic flora and fauna values present, are still largely unknown. This may result in an underestimation and underrepresentation in reporting on fauna and flora present at, or transiting through, the Project site, including Threatened and At Risk species;

c. Even on the Applicant's own (limited) ecological evidence, the Project site is ecologically significant as habitat for Threatened or At Risk bird species; and

d. Proposed effects management, including landscape screening and ecological restoration, may result in additional negative impacts on remnant significant ecological values (an additive effect).

Adverse impact: ecological effects

41. Solar farms present direct and indirect threats to indigenous biodiversity, including:

a. Direct loss from construction activities;

[28] Waihi North FTAA decision at Part M, para [12(d)]

b. Direct loss during operation from bird strike and electrocution;

c. Direct loss of habitat due to infrastructure; and

d. Indirect loss due to changes in conditions such as shade, moisture and temperature.

42. These threats, and their actual and potential impact on the flora and fauna of the Project site, are discussed by Dr Walker and other ecological experts before the Panel. There remains a substantial difference of view on the values of the receiving environment and it is submitted that expert caucusing should be required to address this.

43. The Application proposes substantial ecological enhancement, with restoration intended to be representative of indigenous Mackenzie Basin ecosystems. There is some irony in seeking to create new areas of restoration, if existing areas are being damaged or lost as a result of the Project. Whether the 'benefits' of restoration will be realised, depends on an accurate assessment of the existing ecological and biodiversity values. The restoration benefits identified by the Application, otherwise appear overstated, or at least optimistic.[29] EDS submits that further information is required on the adequacy of the Applicant's proposed ecological enhancement, so that it can be properly evaluated by the relevant ecological experts, including Dr Walker. EDS seeks directions for further information/evidence exchange on this issue, to be followed by (or in tandem with) expert caucusing.

44. As set out below, the planning regime for the Project requires consideration of offsetting and compensation when adverse effects cannot be avoided, remedied or mitigated.

Adverse impact: contrary to ecology plan provisions

45. The Canterbury Regional Policy Statement seeks to halt the decline in the quality and quantity of Canterbury's ecosystems and indigenous biodiversity (Objective 9.2.1) and to restore or enhance ecosystem functioning and indigenous biodiversity (Objective 9.2.2).

46. This is to be achieved by protecting areas of ecological significance (which the Project site is) to ensure *no net loss* of indigenous biodiversity or its values (Policy 9.3.1).

47. The Application omits reference to Policy 9.3.6,[30] which sets criteria for the use of offsets, including, the requirement for no net loss. Indeed, with respect to areas of priority for protection (which the Project site is because of the presence of habitats for Threatened and At Risk species - Policy 9.3.2), the offset must deliver a *net gain* for biodiversity (Policy 9.3.6).

[29] See for example, the Substantive Application at [6.3] Ecological Enhancement which suggests that The Point reserve has the potential to be an "exemplar" for high-country restoration, albeit reliant on adaptive management to 'gauge what works'. There is no intention to plant the whole site, with the Project reliant on protected enclaves as seed source

[30] See Substantive Application at p74

48. Whilst renewable energy is generally encouraged in the Canterbury Regional Policy Statement, there is still a requirement that adverse effects on significant natural and physical resources from renewables are avoided, as a first priority, then remedied or mitigated when that is not practicable (Policy 16.3.5).

49. The proposed Mackenzie District Plan includes several moving pieces, including Plan Change 18 provisions (which includes avoidance directives with respect to clearance of indigenous vegetation and adverse effects on indigenous habitats), and Plan Change 26 (relating to the provision of infrastructure and renewable energy). EDS was involved in Plan Change 18, appeals on which have been withdrawn since the Application was lodged. It was not involved with Plan Change 26, but understands that it is now subject to a consent order before the Environment Court (which EDS has not seen).

50. As a result of these changes, the relevant district plan framework needs to be clearly identified as a starting point, to avoid error of law, and to ensure that cl 17 of Sch 5 of the FTAA is adhered to. It is otherwise unclear what plan provisions apply to the Project, nor is it clear from the Application whether the latest versions of the provisions are referred to. EDS encourages the Panel to undertake a careful analysis of the Project against the latest planning provisions.

51. The updated National Policy Statement for Renewable Electricity Generation 2011 (amended December 2025) deals with renewable energy locating in or having an impact on section 6 RMA matters, which includes areas of ecological significance (s 6(c) RMA) and outstanding natural landscapes (s 6(b) RMA). Policy F of the statement states that decision makers must enable renewable electricity generation assets in all locations and environments, but that this direction should be read alongside other relevant planning instruments. Here, that includes the directions in the Canterbury Regional Policy Statement and the Mackenzie District Plan to protect areas of ecological significance. Policy F does not of itself preclude an alternative sites assessment, particularly where there are multiple or competing solar proposals in the Mackenzie Basin.

52. Policy F of the NPS REG also requires decision-makers to have regard to offsetting measures or environmental compensation when considering residual adverse effects that cannot be avoided, remedied or mitigated. This direction is aligned with the regional and district planning instruments in play as discussed above.

53. With respect to those planning instruments, the Application says that:

    a. The Project has a functional and operational need to be located at the site. That is not correct. EDS knows of at least five[31] other solar farm proposals in the Mackenzie Basin, four of which are shown generally in the map below (along with the Project in blue).[32]

[31] A submission by Te Rūnanga o Ngāi Tahu on the Haldon Solar Project has identified up to 9 such applications: refer letter dated 02 February 2026 at [3.24]

[32] Haldon Solar Project (shown in purple, proceeding via fast track), The Point Solar Farm (shown in red, proceeding via fast track), Twizel Solar Project (shown in blue, proceeding via fast track), Twizel Solar Farm (shown in green, possible fast track referral application), Ohau A Solar farm (shown in yellow, possible fast track referral application), Grampians (proceeding via fast track, not shown on map)

b. The Project will not result in more than minor adverse ecological effects, and the proposed ecological enhancement zones and initiatives will provide significant ecological benefits for the immediate and wider area. Dr Walker's evidence has raised reasonable questions as to that assertion.

54. EDS considers that the Application cannot proceed without offsetting and compensation measures which result in biodiversity *net gain*. This is a minimum requirement anticipated by the planning framework and should be a precondition for any decision to approve the Project. EDS further submits that the Project cannot demonstrate consistency with the relevant planning instruments, in respect of ecological effects, absent the further information recommended / identified by Dr Walker in her evidence.

Landscape impacts

55. The Application states that the site's location within the Basin and the placement of the panels will result in a reduction to the open character of the South Basin area. There will also be a range of perceptual effects, with acceptance of moderate adverse visual effects from 3 public locations (McAughtries Road, Greta Track, and the Benmore Range Easement track). The Application accepts that the proposed solar farm and substation will have a more than minor adverse effect on the outstanding landscape values of the Mackenzie Basin. These adverse effects will be reduced by proposed landscape mitigation and ecological and biodiversity enhancements, which will benefit the natural character landscape values of the basin.[33]

[33] Refer Substantive Application (Updated, Sept 2025) at page 46 which states:

> Based on the above, the proposed solar farm has been located, and its associated landscape mitigation has been designed, so as to mitigate its potential visibility from all but three public places. Unavoidably, the farm will be seen from McAughtries Road, Greta Track and the Benmore Range Easement Track in which its resulting adverse visual effects will be of a moderate degree.
>
> Once the mitigation vegetation has matured, the project will also have no to a very low degree of adverse visual effects on people travelling / spending time in all other public places. This is because the project will be screened from view by the proposed vegetation or will be seen from so far away it will be difficult to distinguish.

56. This appears to be an in-principle acceptance of an adverse impact on ONL values, albeit subject to the identified mitigation / enhancement proposed. EDS submits this reinforces the importance of the Panel interrogating whether the ecological assessment is adequate and fit for purpose, as well as the underlying assumptions (and achievability of the restoration package proposed). If those assumptions are wrong, then there will be an adverse impact on ONL values, which must be included in the proportionality assessment under s85(3) FTAA.

57. The Panel is well placed to assess landscape effects and therefore adverse impact on planning instruments.

58. Of relevance for that determination is:

    a. The Project site is located within an ONL. The planning direction for ONLs is to protect ONLs from inappropriate development, including by avoidance of adverse effects;

    b. The Canterbury Regional Policy Statement seeks to protect the values of ONLs from inappropriate development (Objective 12.2.1 and Policy 12.3.2);

    c. The proposed Mackenzie District Plan appears to now provide for renewable energy in an ONL only where there is a functional or operational need, and where adverse effects are avoided as far as practicable (REG-P6); and

    d. Offsetting and compensation are unlikely to address landscape effects on nationally significant ONL values.

Cumulative impacts

59. The Panel is aware of the actual and potential cumulative adverse impacts arising from the Project as a result of its proximity to other proposed solar farms within the Mackenzie Basin. These cumulative effects are relevant to the Project by virtue of the RMA definition of "effects". The FTAA adopts this definition.[34] While the same definition of "effects" applies, the FTAA uses different statutory language; for example, referring to "impacts" in s 85 FTAA, as distinct from the reference to "actual and potential effects" in s 104(1) RMA.

60. The Panel has already identified, as an issue for consideration, whether it should have regard to the existence of other solar farm proposals in the Mackenzie Basin as part of any consideration of cumulative effects (notably the Haldon Solar proposal). EDS submits that it would be useful to hold a mini-hearing on this legal issue, as it is relevant to a number of FTAA solar projects, including both The Point Solar and Haldon Solar farm.

[34] FTAA, s 4(2) and RMA, s 3

61. The starting point for the FTAA process, is that the Panel is not bound by RMA case law on the meaning of cumulative effects, when considering all relevant impacts under s 85 FTAA, albeit it is accepted that such case law should be treated as persuasive.

62. The definition of "impacts" in s85 FTAA is wider than the meaning of "effects" in s3 RMA, and the constraints identified in *Dye*, *Hawthorn*, and other case law as to the orthodox meaning of 'cumulative effects' does not strictly apply to the s85 proportionality assessment. Moreover, the Court of Appeal decision in *Dye* noted that the s104(1) RMA definition of "effects" differs to that used in s3 RMA: refer *Dye* at [40]-[42].

63. It is not immediately obvious that the FTAA legislation intended to carry-over the "first in, first served" presumption under the RMA, in circumstances where there are competing FTAA applications. A material difference between the consenting regime under the RMA, and the FTAA, is that the FTAA has included listed projects in Schedule 2. No necessary priority as between these projects has been identified (including whether first in time applications receive precedence).

64. While there are some uncertainties around consentability of future projects not presently before the Panel (and the Panel cannot of course predetermine their outcome), EDS submits that the proposed location of other solar farms is relevant to the question of the suitability of the location of this Project. The Panel is entitled to inquire as to whether there are better locations, with lesser effects on nationally significant values.[35, 36]

65. Expert landscape evidence in the Haldon Solar project has already identified that there is potential for cumulative landscape and visual effects within the moderate range when considering the effects of the two solar projects together, from specific public views:

> "Overall, key findings in regards to cumulative landscape and visual effects are:
>
> - When compared with the Haldon Solar Project, The Point is located closer to and more visible from accessible public viewpoints.
> - There is potential for cumulative landscape and visual effects within the moderate range when considering effects of the two projects together ,particularly from these more accessible views in which The Point will appear in the foreground and more visually prominent."[37]

[35] There is substantial case law relating to whether there is a duty to consider alternative sites in an RMA context; this issue remains for determination in the FTAA context. In light of time constraints, and without being comprehensive, see for example, the discussion in *EDS v King Salmon* (SC) [2014] NZSC 38 of the duty to consider alternative sites in context of a plan change process, where s6 matters of national importance arise for public domain values

[36] Policy F(1) of the NPS-REG is not determinative. This Policy relevantly states that decision-makers must enable REG assets and activities in all locations and environments. By contrast, Policy F(2) of the same national direction instrument identifies that, where proposed locations are likely to have adverse effects on s6 RMA environments and values, then the NPS-REG is to be read alongside other national and regional/district policy frameworks. EDS submits that, where these other instruments require assessment of location in light of the s 6 values, then a structured analysis and reconciliation of policy provisions will be required. Put another way, in order to protect the s6(b) and s6(c) RMA values, an alternative location may be required.

[37] Haldon Solar Project, Boffa Miskell Memorandum dated 22 January 2026 prepared by Sue McManaway and Rhys Girvan

CONDITIONS OF CONSENT

66. The FTAA provides opportunity for an applicant to voluntarily offer a reduction in its project's development footprint or other conditions to militate against a consent decline, whether in whole or part:

    a. Section 69 of the FTAA, which states that if a panel proposes to decline an approval, the Environmental Protection Authority must invite the applicant to "propose conditions on, or modifications to, any of the approvals sought";

    b. Section 68A of the Fast-track Approvals Amendment Act 2025, which provides an applicant with an opportunity to reduce the scope of its application by modifying an approval sought at any time before a decision is made;[38] and

    c. Section 85(3)(b)(ii) of the FTAA, which requires the proportionality assessment to be undertaken after taking into account "any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts."

67. Conditions of consent must be:

    a. No more onerous than necessary to address the reason for which they are set (which is largely equivalent to the RMA requirement for conditions to be 'appropriate' under the thresholds in ss 108 and 108AA);[39] and

    b. Have regard to s 108 (conditions of resource consents), s 108AA (requirements for conditions of resource consents) and s 108A (bonds) of the RMA.

68. It is important to emphasise that the ability to reduce a project's development footprint or impose conditions is not subject to the proportionality test in s 85 of the FTAA. Rather, the imposition of conditions must be assessed against the matters listed above - being no more onerous than necessary, and in accordance with the well settled legal principles for conditions of consent i.e., that they are appropriate, certain, enforceable, directly connected to specific issues (including adverse effects on the environment) and reasonable.[40]

69. EDS's overarching concern with the Project is the extent to which its infrastructure will adversely impact the significant ecological and outstanding landscape values of the site. EDS's primary relief is therefore that the Project in its current form is not approved.

70. If, contrary to that primary relief, the Panel is minded to grant the Application, EDS considers that the Applicant's proposed conditions need significant reworking. As currently proposed, they are inadequate to address actual or potential effects.

[38] Fast-track Approvals Amendment Act 2025, s 68A
[39] FTAA, ss 81(2)(d) and 83
[40] FTAA, Sch 5, cl 18

71. EDS seeks the following amendments to the conditions of consent:

    a. Robust offsetting and compensation so the Project results in an indigenous biodiversity net gain, in light of the actual and potential values present;

    b. Reduced scope of solar footprint, pending demonstration that the intended ecological restoration and enhancement will actually deliver net gains;

    c. Enhanced monitoring of ecological impact, including vegetation changes as a result of different site conditions, and impact on birds and invertebrates.

    d. Enhanced flora, avifauna and invertebrate management plans, which are standard for developments of the scale of this Project and that address monitoring, management responses and the avoidance of adverse effects.

    e. Other steps are likely to be required to address impacts on outstanding natural landscape values.

    f. EDS submits that expert ecological caucusing is required to provide greater detail on the above matters.

72. Further, if monitoring shows up significant and ongoing degradation of the ecologically significant values of the site, the Applicant needs to retreat. EDS therefore seeks:

    a. An adaptive management condition (including relevant triggers) requiring that all solar panels and associated infrastructure be removed from all or part of the site if monitoring necessitates that, and that the area be remediated; and

    b. A bond to address the remediation costs in the event that the Project does not proceed, in whole or part, or there is a requirement to remove infrastructure. This is required to ensure that Canterbury Regional Council (or the equivalent consent authority) has the ability to intervene to remediate the site.[41]

73. Duration of consents: A minor discrepancy relates to the requested term of approvals. The application states that the solar farm lease arrangement is for 30 plus 30 years, and that a 60 year concession is sought. However the Application (in the next paragraph) also states that a 35-year lease has been signed between the Applicant and property owner. These appear to be inconsistent, and may be relevant to duration of concessions. [42]

74. Finally, wildlife approvals may be required to address direct and consequential loss of protected species present on the Project site. The Applicant appears to accept this.

[41] In addition, a bond should be adopted to cover decommissioning of the project at its end of life

[42] Refer Substantive Application, at [1.5] to [1.6] at pp10; this discrepancy may have been subsequently resolved

CONCLUSION

75. The FTAA framework provides opportunity for panels to decline projects on a discretionary basis. The Panel's discretion extends to the ability to reduce the development footprint in response to adverse impacts or to impose conditions of consent to address those impacts. The test for doing so is not the proportionality one in s 85 of the FTAA, but rather the requirements in s 83 of the FTAA and ss 108 and 108AA of the RMA with respect to conditions of consent.

76. The ability to undertake adaptive management if long-term or permanent effects arise to protected values after the solar farm is built is very limited. EDS submits that the Panel must have sufficient certainty that adverse impacts to indigenous biodiversity and landscape values of national importance will be avoided, or can be adequately offset or compensated, prior to granting approval, and when imposing consent conditions. This is reflected in the national planning framework.

77. EDS's primary position is that the solar farm should avoid the Project site, unless it can be demonstrated that the overall ecological effect results in a net gain, particularly in respect of Threatened and At Risk flora and fauna. However, if the panel is inclined to approve the Application, then EDS has identified recommended changes to consent conditions as set out above.

78. Deployment of renewable electricity generation needs to occur at scale and pace to transition the economy to net zero by 2050. That ambition should not come at the expense of significant indigenous biodiversity or outstanding natural landscapes.