

Amendment to the Regional Pest Management Plan

Response to Minute 2

Note – all references to Rule numbering is as per the Proposal. This numbering will change as future drafting of any amended RPMP takes place.

To: Hearing Panel

Request 1 - Section 2(a) of the Minute - how the Regional Pest Management Plan (RPMP) applies to Crown land.

Response – the report writer agrees that while reference to Crown agencies (as occupiers of Crown land) is referenced within Council’s Biosecurity Strategy, it is not referenced clearly within the operative RPMP or proposed amendment specifically related to pest conifers. In summary, the Crown cannot be bound by any provision within a RPMP, except for a Rule designated as a Good Neighbour Rule – such as the proposed Rule 5.22.2.3. As a result, the following insertion could be made into the RPMP should be panel wish to do so:

Recommendation – an amendment to section 1.3 of the operative RPMP.

This change would need to be captured by way of a minor change under 100G of the Act given this section of the RPMP was not subject of the current review. However, it is the most appropriate place to make the clarification and clearly meets the definition of a minor change.

1.3 Coverage

Unless otherwise stated in an individual pest programme, the RPMP will operate within the administrative boundaries of the Marlborough District, including territorial waters, and covers a total area (land and sea) of 1,768,886 hectares.

Of note is that in accordance with section 69(5) of the Act, a good neighbour rule within the RPMP is the the only way in which the RPMP may cause the Crown to be bound to meet obligations. There is however no limitation on the Crown agreeing in principle to fund, support, or voluntarily meet obligations associated with RPMP programmes and Council will continue to foster this approach.

Request 2 - Section 2(b) of the Minute – presentation of the handover process associated with proposed Rule 5.22.2.1.

Response – the report writer wishes to emphasise that the intent behind the current note associated with proposed Rule 5.22.2.1, outlines that occupiers will be notified before any such ‘handover’ occurs. The intent was that this notification would in practise involve a period of discussion. However, this could be made clearer to provide greater certainty to occupiers over what this would involve.

Recommendation: While there are two potential approaches to provide that clarity outlined below, Option 1 is the recommended approach.

Option 1 - Re-word Rule 5.22.2.1 and associated explanatory note to read:

Rule 5.22.2.1 Occupiers shall destroy all pest conifers present on land they occupy, prior to cone bearing, if the pest conifers are located within an area on that land which has had a control operation carried out on it, or in accordance with a negotiated handover agreement.

A breach of this rule will create an offence under section 154N(19) of the Biosecurity Act.

Note: For the purposes of Rule 5.22.2.1, control operation means an operation to remove pest conifers from the land to a point where there are no mature, coning trees remaining and also no

seed rain from adjacent land that could cause unreasonable levels of re-infestation. Occupiers will be notified by the management agency should a control operation meet this threshold. A period of handover can be negotiated and documented via a negotiated handover agreement. The agreement acknowledges the likely variation in situations associated with pest conifer management. Should the occupier of the land change before the obligation under Rule 5.22.2.1 is triggered, any such agreement in place will end, and require renewal with the new occupier.

Option 2 - Re-word Rule 5.22.2.1 and associated explanatory note to read AND utilise an additional Appendix to outline the handover process.

Rule 5.22.2.1 Occupiers shall destroy all pest conifers present on land they occupy, prior to cone bearing, if the pest conifers are located within an area on that land which has had a control operation carried out on it, or in accordance with a negotiated handover agreement.

A breach of this rule will create an offence under section 154N(19) of the Biosecurity Act

Note: For the purposes of Rule 5.22.2.1, control operation means an operation to remove pest conifers from the land to a point where there are no mature, coning trees remaining and also no seed rain from adjacent land that could cause unreasonable levels of re-infestation. Occupiers will be notified by the management agency should a control operation meet this threshold, triggering the negotiated handover process outlined in Appendix 3. The resulting agreement would determine when the obligation under Rule 5.22.2.1 commences.

Appendix 3 Process of reaching a negotiated handover agreement (Rule 5.22.2.1)

Background

Rules 5.22.2.1 contains a provision where there is an obligation placed on the occupier of land, in relation to the destruction of pest conifers, after control operations has been carried out. This transition to the occupier can be managed via a negotiated handover agreement.

The process below articulates how this transition occurs:



Request 3 - Section 4 of the Minute – High Risk Management Area

Response – as previously reported, any such obligation on occupiers under 5.22.2.1 would not be triggered until control operations are carried out upon land they occupy, and in effect that land is free from pest conifers and not receiving seed rain from nearby source areas creating unreasonable levels of re-infestation.

By the way of the private land being inside the High Risk Management Area, this indicates that the infestations affecting these landholdings are long-standing legacy infestations, are difficult to manage, and should control operations be explored (by the NWCCP or other intervention), these would require significant resources and be undertaken over a long period of time.

Due to these reasons, it is extremely unlikely - nearing certainty - control operations (meeting the explanation under Rule 5.22.2.1.) will not be carried out over the life of the RPMP, which would trigger the obligation on private land occupiers inside the High Risk Management Area.

Recommendation: No modification necessary. However, alternative considerations are outlined below.

The uses of spatial zones or areas were considered as a means to provide clarity or certainty. However, this type of approach is very granular and relates to specific infestations of pest conifers. It is considered that this type of approach is not appropriate given the very wide-reaching nature and intent of the proposed programme to provide a regional framework.

Should there be a desire to offer absolute certainty to occupiers in the High Risk Management Area, so that there would be absolutely no possibility of triggering obligations under 5.22.2.1, this could be captured by way of additional alterations to Rules 5.22.2.1 and 5.22.2.2 as outlined below.

1. Further re-word of Rule 5.22.2.1 (highlighted)

Occupiers shall destroy all pest conifers present on land they occupy except land within the High Risk Pest Conifer Management Area, prior to cone bearing, if the pest conifers are located within an area on that land which has had a control operation carried out on it, or in accordance with a negotiated handover agreement.

A breach of this rule will create an offence under section 154N(19) of the Biosecurity Act.

2. Re-word of Rule 5.22.2.2

Occupiers shall destroy all pest conifers listed as individual subjects in Table 1, present on land they occupy, prior to cone bearing, unless the land they occupy falls within the High Risk Pest Conifer Management Area identified in Map 10.

A breach of this rule will create an offence under section 154N(19) of the Biosecurity Act.

Note: The High Risk Pest Conifer Management Area identifies an area of land that contains infestations of high risk pest conifer species where an obligation on occupiers to destroy them is considered unreasonable given the history and nature of infestations. ~~However, should a control operation occur within the High Risk Pest Conifer Management Area, Rule 5.22.2.1 takes precedence over Rule 5.22.2.2.~~

Request 4 - Section 8 of the Minute – Relationship between Rule 5.22.2.1 and Rule 5.22.2.3

Response – by the very nature of pest conifer management, there are a multitude of different scenarios that could be applied to the application of the proposed programme Rules. In the report on submissions, the suggested inclusion of new wording (at, or close to, zero density) was in response to the potential inability to remove absolutely all coning trees during a control operation - for example due to safety reasons.

Where this approach may cause a disparity, as shown in the illustration, Council has the ability to use other implementation tools to address specific scenarios that might fall outside the 'norm' the Rules are intended to capture.

Firstly, should there be unreasonable levels of infestation, from that small number of coning trees on an adjoining property; an exemption under section 78 of the Act to the Good Neighbour Rule (5.22.2.3) could be used acknowledging the 200m requirement may be unreasonable or inappropriate.

Secondly, if the small number of coning trees (at, or near, zero density) are:

1. Clearly causing unreasonable levels of re-infestation to surrounding areas, and;
2. There are no clear and obvious safety risk or other risks generated through removing the trees, then;

Council can use administrative powers with the Act to see that those few remaining coning trees are removed. This could be in the form of direction to the occupiers or default works by Council and cost recovery.

In summary, it is suggested that addressing any such case-by-case inconsistencies can be managed through the operational implementation of the proposed programme and tools available to Council as management agency under the Act.

Recommendation: No modification necessary (except that outlined in the staff report on submissions).

To assist the Hearing Panel, an addendum is supplied over-page that shows how Rules 5.22.2.1 and 5.22.2.2 may read incorporating the recommendations contained within the staff report and those within this response to Minute 2.

Dated 13 March 2020



JONO UNDERWOOD

BIOSECURITY MANAGER

Addendum – Rule suite incorporating alterations

The rule suite below takes into account recommended alterations within the staff report on submissions (highlighted yellow) and also recommendations within this response to Minute 2 (highlighted blue).

5.22.2 Rules

Rule 5.22.2.1

Occupiers shall destroy all pest conifers present on land they occupy (except land within the High Risk Pest Conifer Management Area)¹, prior to cone bearing, if the pest conifers are located within an area on that land which has had a control operation carried out on it, or in accordance with a negotiated handover agreement.

A breach of this rule will create an offence under section 154N(19) of the Biosecurity Act.

Note: For the purposes of Rule 5.23.2.1, control operation means an operation to remove pest conifers from the land to a point where infestations have been managed to a level where coning trees are at, or close to, zero density and there is also no seed rain that could cause unreasonable levels of re-infestation². This assessment to determine unreasonable levels of re-infestation will take into account risk of seed dispersal from sources that can affect the property, vulnerability and nature of the land cover on the property³.

Occupiers will be notified by the management agency should a control operation meet this threshold. A period of handover can be negotiated and documented via a negotiated handover agreement. The Agreement acknowledges the likely variation in situations associated with pest conifer management. Any such Agreement will end, and require renewal, should the occupier of the land change before the obligation under Rule 5.22.2.1 is triggered.

Rule 5.22.2.2

Occupiers shall destroy all pest conifers listed as individual subjects in Table 1, present on land they occupy, prior to cone bearing, unless the land they occupy falls within the High Risk Pest Conifer Management Area identified in Map 10.

A breach of this rule will create an offence under section 154N(19) of the Biosecurity Act.

Note: The High Risk Pest Conifer Management Area identifies an area of land that contains infestations of high risk pest conifer species where an obligation on occupiers to destroy them is considered unreasonable given the history and nature of infestations. However, should a control operation occur within the High Risk Pest Conifer Management Area, Rule 5.23.2.1 takes precedence over Rule 5.23.2.2⁴.

¹ Only if the alternative option is considered.

² Submission point 7c.

³ Submission point 10b.

⁴ Paired with footnote # 1 - only if the alternative option is considered.