BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Queenstown Lakes District Council Proposed District Plan

SYNOPSIS OF LEGAL SUBMISSIONS FOR THE DIRECTOR-GENERAL OF CONSERVATION

Submitter number 373/1080

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MAY IT PLEASE THE PANEL:

1. The Director-General of Conservation (Director-General) submitted on the proposed QLD plan and the submission is generally supportive of the proposed provisions.

Functions of the Director-General and the Department of Conservation

2. The Director-General is the administrative head of the Department of Conservation (Department), and as such is the person who is able to make submissions under the RMA.

3. The functions of the Department are set out in section 6 of the Conservation Act 1987, and relevantly include:

    (a) to manage for conservation purposes all land and all other natural and historic resources, for the time being held under this Act, and all other land and natural and historic resources whose owner agrees with the Minister that they should be managed by the Department;

    (b) to advocate the conservation of natural and historic resources generally;

    ...

    (g) every other function conferred on it by any other enactment.

4. In relation to the above functions, the Director-General's powers include all those reasonably necessary or expedient to enable the Department to perform its functions.

Indigenous vegetation and biodiversity – Chapter 33 PDP

5. The decisions sought by the Director-General are primarily intended to address section 6(c) of the Resource Management Act 1991 (RMA) which, as a matter of national importance, requires the District Council as a decision maker under the RMA to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. In these submissions and in the proposed plan such areas are referred to as significant natural areas or SNAs.

6. As the Environment Court stated in *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Plymouth District* [2015] NZEnvC 219, the requirement in section 6(c)of the Act is both directive and obligatory (at para 65 of that decision) and section 6(c) applies to areas and habitats of both regional and district significance (at 23).

7. Mr Deavoll and Mr Rance have observed that the Council has identified many SNAs which are proposed to be listed in a schedule to the plan and which will then be subject to provisions of the plan, and that this is a significant improvement on the operative district plan.

8. However, there are additional sites, such as the two described by Mr Rance in his evidence, which are not included in the scheduled list despite meeting the criteria for identification as SNA. The two sites described by Mr Rance in his evidence are examples of such sites.

9. Furthermore, other submitters have sought to remove sites from the scheduled list, or alter their boundaries, despite those sites meeting the criteria for classification as SNAs.

10. The Director-General's submission seeks to ensure that areas of significant indigenous vegetation and significant habitats of indigenous fauna are recognised and that adequate provision is made in the plan for their protection, even if they have not (or not yet) been identified as SNAs in the schedule to the plan. That can be achieved by including provisions, as discussed by Mr Deavoll, for identifying SNAs in the course of assessing new development proposals. The Department's concern is to ensure that as-yet unidentified SNAs are not lost, and in my submission the requirement to make provision for areas of significant indigenous vegetation and significant habitats of indigenous fauna applies whether or not such areas have been formally identified at the time of promulgation of the plan.

11. The Act does not provide any exemption from the section 6(c) obligation for SNAs that have not yet been identified. Therefore, as the Plan's list of SNAs is incomplete, DOC's submission is that section 6(c) obligation can be discharged by including a regime that will provide for the ongoing recognition and protection of SNAs.

12. As stated by Mr Deavoll in his evidence, the proposed new provisions in Table 2 of Chapter 33 provide some assurance that previously unidentified SNAs will be identified in the course of assessing proposals, because the presence of any threatened species will trigger a requirement for restricted discretionary consent. In the absence of that triggering provision, an alternative mechanism would be required to provide for the protection of as yet unidentified SNAs.

Clearance of vegetation

13. DOC's submission regarding the definition of clearance of vegetation seeks to ensure that all of the means by which vegetation may be cleared are captured. The proposed definition already acknowledges that vegetation may be cleared by applying water (and DOC has submitted in support of that definition). However, the proposed definition does not include over- sowing. As discussed in Mr Rance's evidence, over-sowing and irrigation are both methods of clearing indigenous vegetation.

14. In my submission, the proposed definition of vegetation clearance applies to all methods of clearance, because the list of methods included in the definition is not exhaustive. However, understanding of the plan is likely to be improved by expressly including reference to clearance methods such as irrigation and over sowing. That will enable the provisions relevant to protection of indigenous biodiversity to be implemented effectively.

Biodiversity offsetting

15. By submitting on the inclusion in the plan of provisions for biodiversity offsetting, the Department seeks to ensure that the plan's provisions are consistent with current national and international understanding and implementation of biodiversity offsetting.

16. Dr Barea's evidence regarding biodiversity offsetting includes a discussion of the BBOP principles. The Environment Court, in its decision on appeals on the Manawatu-Whanganui Regional Council's One Plan[1] concluded that the BBOP principles are a sound basis for policy.

17. The Court in that case also observed that the proposed National Policy Statement on Indigenous Biodiversity reflects BBOP principles, and considered that, notwithstanding that it has no statutory effect, the document is worthy of respect as a reflection of considered opinion, particularly as it reflects international best practice[2].

Conclusion

18. The Director-General now seeks the relief as set out in submissions and as further set out in the evidence of Mr Deavoll. In my submission the amendments sought will address the Council's section 6(c) obligation as well as meeting its section 31(1)(b)(iii) function to control any actual or potential effects of the use, development, or protection of land for the purpose of the maintenance of indigenous biological diversity.

Susan Newell
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[1] *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182 at page 3-39
[2] Ibid at para 3-59