

Queenstown Lakes District Proposed District Plan – Stage 1

Section 42A Hearing Report For Hearing commencing: 2 May 2016

Report dated: 7 April 2016

Report on submissions and further submissions
Chapter 33 Indigenous Vegetation and Biodiversity

File Reference: Chp. 33 S42A

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I also have referred to, and relied on the following evidence filed alongside this section 42A report:

Mr Glenn Davis, Ecology – statement dated 6 April 2016.

1. EXECUTIVE SUMMARY

1.1. The framework, structure and majority of the provisions in the Proposed District Plan (**PDP**) Indigenous Vegetation and Biodiversity Chapter (33) (**Indigenous Vegetation Chapter**) should be retained as outlined and supported in the section 32 (**s32**) assessment. I consider that the provisions are more effective and efficient than the changes requested by submitters, except where recommended to be accepted, and more appropriate than the provisions in the Operative District Plan (**ODP**). The Indigenous Vegetation Chapter also better meets the purpose of the Resource Management Act 1991 (**RMA**), in the Revised Chapter:

- (a) Significant indigenous vegetation and significant habitats of indigenous fauna (referred to as **Significant Natural Areas - SNA**) are identified and scheduled;
- (b) Updates the schedule of threatened plants compared to the ODP;
- (c) Includes definitions and rules that are practical to administer and instil confidence in the administration of the PDP;
- (d) Includes rules (Standard 33.5.3) that have regard to chronically and acutely threatened land environments identified by the Land Care Research, Land Environments of New Zealand Threatened Environment Classification ; and.
- (e) Will be effective and efficient at maintaining indigenous biodiversity and protecting both identified SNAs, and also those that are not scheduled but instead identified through the resource consent process.

1.2. Several changes are considered appropriate, and these are shown in the Revised Chapter attached as **Appendix 1 (Revised Chapter)**. I have shown all recommended changes in ~~strikethrough~~ and underlined text.

2. INTRODUCTION

2.1. My Name is Craig Alan Barr. I am employed by the Queenstown Lakes District Council (**Council / QLDC**) as a senior planner and I am a full member of the New Zealand Planning Institute. I hold the qualifications of Bachelor of Science and Master of Planning from the University of Otago. I have been employed in planning and development roles in local authorities and private practice since 2006.

2.2. I am the principal author of the notified PDP Indigenous Vegetation Chapter and Rural Zone Chapters (Chapters 21-23) of the PDP.

3. CODE OF CONDUCT

- 3.1. Although this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. I am authorised to give this evidence on the Council's behalf.

4. SCOPE

- 4.1. My evidence addresses the submissions and further submissions received on the proposed Indigenous Vegetation Chapter. In this evidence I have grouped submissions on the Indigenous Vegetation Chapter together by topic. Where I recommend substantive changes to provisions I assess those changes in terms of s32AA of the RMA. The Table in **Appendix 2** outlines whether individual submissions are accepted, accepted in part, rejected, considered out of scope or deferred to another hearing stream.
- 4.2. Although this evidence is intended to be a stand-alone document and also meet the requirements of s42A of the RMA, further information can be obtained from reading the s32 report for Indigenous Vegetation and the material referenced in that report. The s32 report is attached as **Appendix 3**.
- 4.3. Due to the breadth of the PDP and the submissions on the PDP, the hearing of submissions is separated into their respective chapters or grouped into themes as much as practical. Submissions associated with rezoning requests are deferred to a later hearing stream. Some submissions have requested amendments to the identification, location and area of SNAs in conjunction with rezoning requests.¹ The merits of whether any SNAs should be amended will be addressed in this evidence, however the recommendation on the associated rezoning and any perceived or actual compensatory incentives associated with indigenous vegetation that relate directly to the rezoning will be deferred to the hearing stream on mapping.
- 4.4. An example is the relief sought by submitter 806 (Queenstown Park Limited (**QPL**)):

(a) That a special zone is applied to Queenstown Park and the SNAs be removed from QPL's land; or

¹ For example Submitter 502 Allenby Farms Limited.

- (b) *If the request for a Special Zone to apply to Queenstown park is declined, then QPL requests that the SNAs are deleted from the site and the clearance of indigenous vegetation is permitted.*
- 4.5. The analysis of submissions in this report is on the Indigenous Vegetation Chapter and therefore include the merits of the SNA listing, the request that the SNA be deleted from the site, and the request for a rule permitting the clearance of indigenous vegetation. However, the merits of a new special zone and the management of the resources within it will be considered at the rezoning hearing.
- 4.6. I have read and considered the evidence of Mr Glenn Davis dated 6 April 2016. I have taken into account his position in recommending changes to the Revised Chapter.

5. BACKGROUND – STATUTORY AND NON-STATUTORY DOCUMENTS

- 5.1. The Indigenous Vegetation s32 is attached as **Appendix 3** and provides a detailed overview of relevant legislation and the higher order planning documents applicable to the Indigenous Vegetation Chapter. In summary, the following documents have been considered:

(a) The RMA:

- i. Section 6(c) 'Matters of national importance' of the RMA states in achieving the purpose of the RMA, to recognise and provide the protection of areas of significant indigenous vegetation and habitats of indigenous fauna; and
- ii. Section 31(1)(b)(iii) 'Functions of territorial authorities under this Act', requires that a function of councils is the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the maintenance of indigenous biological diversity.²
- iii. The purpose and principles in Part 2, in particular emphasise the requirement to sustainably manage the use, development and protection of the natural and physical resources for current and future generations, taking into account the 'four well beings' (social, economic, cultural and environmental).

(b) The Local Government Act 2002:

- i. In particular s14, Principles relating to local authorities; and

2 Referred to herein as indigenous biodiversity.

- ii. The provisions emphasise a strong intergenerational approach, considering not only current environments, communities and residents but also those of the future. They demand a future focussed policy approach, balanced with considering current needs and interests. Like the RMA, the provisions also emphasise the need to take into account social, economic and cultural matters in addition to environmental ones.

(c) The New Zealand Biodiversity Strategy 2000 (non-statutory):

- i. The New Zealand Biodiversity Strategy February 2000 was prepared in response to the state of decline of New Zealand's indigenous biodiversity and reflects New Zealand's commitment, through ratification of the International Convention on Biological Diversity, to help stem the loss of biodiversity; and
- ii. The strategy has four goals for conserving and sustainably managing New Zealand's biodiversity. Of relevance, Goal Three is to 'halt the decline in New Zealand's Biodiversity'.

(d) Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land (non-statutory):

- i. In 2007 the Minister for Conservation and the Minister for the Environment issued a Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land - 'Protecting Our Places';
- ii. The Statement consists of four national priorities:
 - (1) To protect native vegetation associated with land environments, (defined by Land Environments of New Zealand at Level IV), that have 20 per cent or less remaining in native cover;
 - (2) To protect native vegetation associated with sand dunes and wetlands, ecosystem types that have become uncommon due to human activity;
 - (3) To protect native vegetation associated with 'originally rare' terrestrial ecosystem types not already covered by priorities 1 and 2; and
 - (4) To protect habitats of acutely and chronically threatened native species.
- iii. These matters and how they relate to the maintenance of indigenous biodiversity and identification of significant natural areas are discussed in the Council's 2009

(e) Draft Proposed National Policy Statement on Indigenous Biodiversity 2011 (non-statutory):

- i. The Draft Proposed National Policy Statement on Indigenous Biodiversity sets out the objective and policies about managing natural and physical resources to maintain indigenous biological diversity (biodiversity) under the RMA. It was notified for consultation in 2011. There have been no further advancements to date; and
- ii. The Draft Proposed National Policy Statement's accompanying s32 report cited a study undertaken⁴ that identified the Queenstown Lakes District as the second ranking territorial authority in the country (behind Central Otago District) with the largest extent of native cover not legally protected in the five threatened LENZ categories.

(f) Iwi Management Plans:

- i. When preparing or changing a district plan, Section 74(2A)(a) of the RMA states that Council's **must take into account** any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district;
- ii. There are two iwi management plans relevant to this process:
 - (1) The Cry of the People, Te Tangi a Taurira: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (**MNRMP 2008**); and
 - (2) Kāi Tahu ki Otago Natural Resource Management Plan 2005 (**KTKO NRMP 2005**)

³ Desktop Review of Potentially Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna in the Queenstown Lakes District, April 2009, Prepared by Davis Consulting Services limited for the Queenstown Lakes District Council.

⁴ Walker, S.; Price, R.; Rutledge, D. 2008: New Zealand's remaining indigenous cover: recent changes and biodiversity protection needs. Science for Conservation 284. Department of Conservation, Wellington. 82 p.

(g) **Operative Otago Regional Policy Statement 1998 (RPS):**

- i. Section 75(3) of the Act requires that a district plan prepared by a territorial authority **must give effect to** any operative Regional Policy Statement. The operative *Otago Regional Policy Statement 1998* is the relevant regional policy statement to be given effect to within the District Plan;
- ii. The operative RPS contains a number of objectives and policies of relevance to the Indigenous Vegetation and Biodiversity chapter. Of primary relevance are Objectives 10.4.1 and 10.4.3 (Biota) which seek to maintain and enhance the life supporting capacity and diversity of Otago's biota, and to maintain and enhance the natural character of areas with significant indigenous vegetation and significant habitats of indigenous fauna;
- iii. Objectives 5.4.1 to 5.4.4 (Land) are also relevant because they promote the sustainable management of Otago's land resource by:
 - (1) Maintaining and enhancing the primary productive capacity and life supporting capacity of land resources;
 - (2) Meeting the present and reasonably foreseeable needs of Otago's people and communities; and
 - (3) Avoid, remedy or mitigate degradation of Otago's natural and physical resources resulting from activities utilising the land resource.

(h) **Proposed Otago Regional Policy Statement 2015 (PRPS):**

- i. Section 74(2) of the RMA requires that a district plan prepared by a territorial authority **must have regard to** any proposed Regional Policy Statement.
- ii. Specifically, there are consistencies in the application of the Proposed RPS Schedule 5 'Criteria for the assessment of the significance of indigenous vegetation and habitat of indigenous fauna' and the policies in the Indigenous Vegetation Chapter that relate to determining the significance of indigenous vegetation clearance proposals; and
- iii. The PRPS was notified on 23 May 2015, the hearing of submissions was held in November 2015 and at the time of preparing this evidence the Hearing Panel were deliberating the submissions. A decision on the submissions has not been issued.

5.2. In the context of these statutory and non-statutory planning documents, the planning approach throughout the Indigenous Vegetation Chapter is to not interpret these provisions

through a single lens, but to reconcile the dichotomy that can arise between the maintenance of indigenous biodiversity, protection of identified significant natural areas and the efficient use of natural and physical resources (in terms of s7(b) of the RMA). The response through this review is to provide a balanced framework in the PDP to manage these resources appropriately. Furthermore, of no less importance is the need to ensure the provisions are presented in a manner that can be clearly interpreted to facilitate effective and efficient district plan administration.

6. BACKGROUND – OVERVIEW OF THE ISSUES IN THE ODP

6.1. The s32 (attached as **Appendix 3**) identified the following three key issues associated with the management of indigenous biodiversity in this District:

- i. The effective and efficient interpretation of the provisions, specifically the definitions and rules;
- ii. The maintenance of indigenous biodiversity; and
- iii. The completion of a project initiated when the ODP was made operative to identify and schedule the District's SNAs.

6.2. Having reviewed the submissions I consider these issues are still important. The first two relate to the efficiency and effectiveness of the ODP in terms of the Council being able to adequately perform its functions under the RMA. The third issue relates to protecting significant indigenous vegetation and significant habitats of indigenous fauna.

6.3. An overarching goal is to make the proposed Indigenous Vegetation Chapter easier to apply, particularly in terms of providing certainty as to establishing whether activities comprising indigenous vegetation clearance are permitted or not. In addition, to provide certainty and guidance on the potential effects on the environment for persons contemplating indigenous vegetation clearance and decision makers.

Informal Consultation

6.4. Consultation associated with the Indigenous Vegetation Chapter included the circulation of a draft chapter to known stakeholders and interested groups in July 2014. Feedback was sought with an emphasis on the changes to the rule that restricts the amount of indigenous vegetation that could be removed as a permitted activity.

6.5. Feedback was received from the following parties:

- i. The Department of Conservation;

- ii. Federated Farmers;
- iii. Royal Forest and Bird Protection Society of New Zealand Incorporated (**RFBPS**);
- iv. Galloway Cook Allan Lawyers (Wanaka and Dunedin staff who were involved in (*RFBPS v Innes* (2014) NZEnvC 72));
- v. The Otago Regional Council;
- vi. Patterson Pitts Group (Wanaka) on behalf of several Upper Clutha based farmers;
- vii. Mr Sam Kane, a farmer from Luggate; and
- viii. Te Ao Marama.

6.6. Of note, is the fact that RFBPS, Federated Farmers and Patterson Pitts Group (Wanaka), who have potentially divergent views on this matter, both suggested that the draft indigenous vegetation clearance rule, and associated draft standards, and the existing ODP definition and rule, should both be replaced with the rule/approach that is used in the Waitaki District Plan.⁵ The rules provide a quantitative basis to determine whether the indigenous vegetation is subject to the rules, based on the presence of indigenous vegetation and whether the presence has a coverage that means it should be included as being subject to the rules. This suggestion has influenced the proposed rules, as detailed in Issue 1 below.

6.7. The three key issues are summarised and briefly addressed in the following paragraphs:

Issue 1: Definitions and rules that can be understood and are practical to apply.

6.8. The Environment Court enforcement order proceedings⁶ associated with the discing of land containing dryland tussock and cushion plant communities at a property in South Hawea highlighted deficiencies with the ODPs definition of 'indigenous vegetation' and the rule (ODP Site Standard 5.3.5.1x) that controls the amount of indigenous vegetation that can be cleared as a permitted activity.

6.9. A complicating factor, which appears to be shared by other 'high country' territorial authorities located in drier, inland areas of the South Island,⁷ is that indigenous vegetation habitats include low-growing plants such as cushion fields and tussock grasslands. In other territorial authorities management of these plant communities is addressed by more general rules which rely on a simple definition of indigenous vegetation and control the permitted removal of indigenous vegetation based on the height of the vegetation.⁸ This approach cannot be used

⁵ Waitaki District Council District Plan. Operative 31 May 2010.

⁶ *Royal Forest and Bird Protection Society Incorporated v Innes* (2014) NZEnvC 72. RFBPS had applied for enforcement orders to prevent Innes clearing indigenous vegetation and discing, irrigating or over sowing any part of the subject land.

⁷ Waitaki District, Central Otago District, McKenzie District.

⁸ For example, the equivalent indigenous vegetation clearance rule in the Operative Hauraki Gulf Islands District Plan, identifies the pruning, removal or works within the drip line of indigenous vegetation over a height of 3.0 metres as a threshold for permitted activities. Auckland Council District Plan Hauraki Gulf Islands Section – Operative 2013. Rule 10c.5.1 Controls for Conservation and amenity.

in 'high country' territorial authorities as the indigenous vegetation is variable, being both high and low-growing.

- 6.10. In addition, tussock and cushion field communities could be present within areas used for pastoral farming, amidst deliberately sown, and naturalised exotic grasses, and weeds. It is recognised that the identification of these plant communities, and applying practical ways to ascertain the presence of this vegetation, can be complex. This is particularly the case in the context of applying parameters to determine whether indigenous vegetation located amidst other vegetation including exotic pasture grasses requires a resource consent to be cleared.
- 6.11. Another issue is determining what activities constitute the clearance of indigenous vegetation. It is accepted by both conservation groups, such as Forest and Bird and others that advocate for the ability to undertake primary production activities on private land, such as Federated Farmers, that the clearance of vegetation includes cutting, crushing, burning, spraying with herbicide, and cultivation.
- 6.12. It is also recognised that, in certain situations unique to districts that comprise dryland vegetation, irrigation can have a detrimental effect on some indigenous vegetation, such as cushion field communities as they have adapted to growing in dry conditions. It is Mr Davis' evidence for the Council that irrigation alters the ecological conditions of seasonally dry habitats and promotes the growth of taller, denser, and more rapidly growing species.⁹ Under irrigated conditions, these species out compete the stress-tolerant 'dryland' species, which are killed by being deprived of light and other resources, a process known as competitive exclusion.
- 6.13. To date, the majority of resource consent applications for clearance of indigenous vegetation have been for the removal of indigenous bracken fern and shrubland located on large 'dry' (not irrigated) pastoral farms¹⁰ and for general 'farm maintenance' activities including spraying and/or burning on large landholdings to promote pasture grass growth and enable access for grazing stock.
- 6.14. None of these consent applications appear to have highlighted issues with the interpretation and/or application of the ODP definitions and rule.
- 6.15. However, the Environment Court's decision on whether an interim enforcement order should be cancelled, released in March 2014, highlighted deficiencies in the ODP definition and rule (*RFBPS v Innes* (2014) NZEnvC 72)). At paragraph 21 of the decision, the Court noted:

9 Evidence of Mr Glenn Davis dated 6 April 2016 at section 11.

10 Including but not limited to RM090630 Hillend Station; RM090806 JBIL Ltd; RM090829 Robrosa Station, Cardrona Valley; RM100009 Minaret Station; RM100096 Makarora River Ranch; RM110431 Jardine at Remarkables Station; RM110822 Walter Peak Corporate Trustee), RM150057 Alpha Burn Station; RM140416 Lake Hawea Station Ltd.

[21] ... the rule owes its origins to compromise and poor regulatory process. Consequently, it is unacceptably fraught with complexity and uncertainty. In this context, we stop short of declaring it ultra vires. Firstly, that is because we have only had opportunity to apply the lens of Mr Innes' unfortunate circumstances to it. Secondly, in that context and with the help of Court-directed expert witness conferencing amongst the three ecology and botany experts, we have elicited a meaning as we later address. We have no jurisdiction to declare it void for unreasonableness. The Council most certainly has capacity to re-consider it on that basis, and we encourage it to do so with urgency.

6.16. At paragraphs 65-67 of the same decision the Court stated:

[65] We were informed of the genesis of Site Standard 5.3.5.1.x and the associated definition of "indigenous vegetation". That included changes that were made in response to a particular submitter, and further changes by consent orders. While this is not uncommon, in process terms, in this case it appears to have resulted in a provision which is woefully difficult to understand and apply.

[66] We considered whether or not the Site Standard is ultra vires. We determined it was not in the confined context of this case. It would not be appropriate, in any case, for the Court to make any determination of this kind in such confined circumstances, given the Site Standard's general application.

[67] We urge the Council to consider the Rule further in accordance with its functions.

6.17. The uncertainty surrounding the provisions is exacerbated because the RFBPS considered that the area cleared contained indigenous vegetation which was of national importance in terms of s6(c) of the RMA. A significant amount of evidence and consideration was required before the Environment Court to allow it to determine whether the areas cleared qualified as 'indigenous vegetation' as defined by the ODP and then whether that vegetation was subject to the rule. A disparity of this proportion should not arise from varying interpretations of the provisions of the ODP.

6.18. Section 31(1)(b)(iii) of the RMA states that the maintenance of indigenous biological diversity is a function of the Council. Where rules are considered necessary to manage this resource, it is fundamental that the rules are practical to apply and administer. The ODP's definition of 'indigenous vegetation', 'clearance of vegetation' and the Site Standard 5.3.5.1x are overly complex and uncertain.

- 6.19. A further complicating element is some subjective wording in the ODP's definition of 'indigenous vegetation'. It states (my emphasis added):

Means a plant community in which species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity.

- 6.20. This definition is clearly subjective in that only indigenous vegetation that is 'important' meets the definition and is subject to the ODP rules. In this sense, the definition has subjective qualifiers, and is open to value based interpretations.

Issue 2: The maintenance of indigenous biodiversity

- 6.21. Another issue associated with applying the ODP indigenous vegetation definition and rules is the amount of vegetation that can be cleared as a permitted activity, and ambiguity as to where in the District the rules apply.

Amount of vegetation to be cleared as a permitted activity

- 6.22. ODP Site Standard 5.3.5.1x permits the removal of up to 5,000m² of indigenous vegetation. Because of the relatively large area and potential for unidentified SNAs to be removed as a permitted activity, it is questionable whether the removal of this relatively large amount of indigenous vegetation as a permitted activity best serves the purpose of the RMA, including the Council fulfilling its function under s31(1)(b)(iii), 'the maintenance of indigenous biological diversity'.
- 6.23. The importance of reviewing the appropriateness of the area of indigenous vegetation that can be cleared as a permitted activity is emphasised by the amount and areas of land in the District that include environments defined by Land Environments of New Zealand as Level IV (have 20% or less remaining in indigenous vegetation cover¹¹). A description of the Landcare Research Threatened Environment Classification is available through their website, the Indigenous Vegetation s32 I also refer to Section 8.1 to 8.6 and 9.4 of Mr Davis's evidence that describes the Landcare Research Threatened Environment Classification.

Where the rules apply

- 6.24. Currently there are three distinct groups of rules in the ODP pertaining to managing indigenous vegetation, Site Standards:

11 Refer to Landcare Research Threatened Environment Classification:
http://www.landcareresearch.co.nz/_data/assets/pdf_file/0007/21688/TECUserGuideV1_1.pdf

- (a) 5.3.5.1v Significant indigenous vegetation; scheduled in Appendix 5 of the ODP (which is attached to this evidence as **Appendix 5**) and identified on the ODP planning maps. The clearance of indigenous vegetation in these areas is limited to 100m² as a permitted activity.
 - (b) 5.3.5.1x Indigenous vegetation; permits up to 5,000m² of indigenous vegetation clearance providing certain qualifiers are met, including that it does not involve the removal of a threatened plant listed in Appendix 9 of the ODP; and
 - (c) 5.3.5.1xii Alpine environments; does not allow the removal of any indigenous vegetation as a permitted activity on land above 1,070 meters above sea level.
- 6.25. These rules are located within Section 5 of the ODP (Rural General Zone) and are not applicable to any other zone. There are however, substantial areas of land outside the operative Rural General Zone which contain indigenous vegetation. These include Rural Lifestyle and Rural Residential zoned land and within unformed roads in remote locations.
- 6.26. In addition, land currently zoned Gibbston Character Zone has been identified as containing potentially significant natural areas by the significant indigenous vegetation program under the ODP. Only indigenous vegetation in the Rural General Zone is subject to the rules and therefore this vegetation is not currently protected or maintained.
- 6.27. For these reasons I consider that the ODP rules do not meet the purpose of the RMA. I consider that it is appropriate to apply the indigenous vegetation rules on a district-wide basis and to reconsider the amount of indigenous vegetation that can be cleared as a permitted activity.

Issue 3: The identification and protection of Significant Natural Areas

- 6.28. The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, referred to collectively in this evidence and within the Indigenous Vegetation Chapter as Significant Natural Areas (**SNAs**), is a matter of national importance (s6(c) RMA). There are 17 SNAs scheduled in the ODP and identified on the ODP Planning Maps.
- 6.29. In its decision (ordering by consent) *RFBPS v Queenstown Lakes District Council*,¹² the Environment Court included a set of criteria for identifying additional indigenous vegetation and significant habitats of indigenous fauna be inserted into Appendix 5 of the ODP. The

¹² *Royal Forest and Bird Protection Society Inc v Queenstown Lakes District Council* EnvC C76/2001 Christchurch.

provisions set out a five-stage process¹³ that the Council has to follow to identify SNAs in the District (by virtue of its location in the ODP, this criteria applies to the identification of new SNAs *in the ODP*).

- 6.30. The Council undertook a desktop study of significant indigenous vegetation in the Queenstown Lakes District in 2008, which it completed in 2009.¹⁴ Since this time there have been discussions with landowners and managers, site assessments, feedback from landowners and finalisation of the sites recommended to be put forward for scheduling as SNAs. The completion of the project has coincided with the partial review of the ODP, and therefore notification of the additional SNAs has been included in Stage 1 of the PDP.
- 6.31. The study identified 77 SNAs. These have been notified as 113 separate sites/separate areas by virtue of not including land that does not qualify as a SNA, within the wider area. They are scheduled in Chapter 33.8.1 of the Indigenous Vegetation Chapter and identified on the PDP Planning Maps. I consider that the identification of these areas for scheduling in the PDP as SNAs fulfils the obligation to identify and schedule the vegetation set out in Appendix 5 of the ODP and is the most appropriate way to meet the purpose of the RMA.

The Proposed District Plan

- 6.32. The Indigenous Vegetation Chapter differs in the following ways to the ODP:
- (a) The definition of 'indigenous vegetation' has been amended so it is not values based;
 - (b) The definition of 'clearance of vegetation' has been amended to include the application of water, where it would result in certain types of indigenous vegetation being outcompeted and effectively cleared through a process referred to as competitive exclusion;
 - (c) 77 new SNAs are scheduled in the PDP;
 - (d) The District's threatened indigenous species have been updated and scheduled in 33.7 of the PDP;
 - (e) The objectives and policies have been redrafted to accord with the Strategic Direction Chapter (3) objectives and to ensure that the PDP will maintain the District's indigenous biodiversity, while recognising and reconciling two potentially divergent aspects:
 - i. The efficient use of land¹⁵ and overarching purpose of the RMA to promote the sustainable management of natural and physical resources; and

13 Refer to Appendix 5 of this Evidence and Appendix 5 of the ODP.

14 Desktop Review of Potentially Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna in the Queenstown Lakes District, April 2009, Prepared by Davis Consulting Services limited for the Queenstown Lakes District Council

15 In the context of s7(b) RMA.

- ii. That much of the District's low lands are the most highly modified and are favoured for land development, yet are identified as LENZ land environments that have 20% or less remaining in indigenous cover.
- (f) The chapter framework, specifically the rules and their associated interpretation and application redrafted so that they are certain and can be applied with confidence;
- (g) The objectives and policies are drafted so that they provide value in terms of balancing the protection of SNA's, and maintenance of indigenous biodiversity generally against development activities to persons contemplating indigenous vegetation clearance and decision makers. In particular by encouraging methods and practices to maintain indigenous biodiversity overall;
- (h) The ODP assessment matters have all been removed. Policies have been redrafted to apply as higher, overarching consideration and for more specific aspects associated with indigenous vegetation clearance;
- (i) The rules now apply District wide, noting the limitations in s74 of the RMA associated with applying 'blanket vegetation' rules within urban allotments as defined in the RMA;
- (j) The ODP permitted clearance of indigenous vegetation area of 5,000m² has generally been retained, but recognising that this is a relatively high permitted clearance allowance, the permitted clearance of indigenous vegetation has been lowered to 500m² in the following circumstances:
 - i. Greater than a height of 2.0m; and
 - ii. Within a land environment (defined by Land Environments of New Zealand at Level IV) that has 20% or less remaining indigenous cover;
- (k) In recognising smaller landholdings less than 10 hectares in area, applying the same rule framework but reducing the parameters as follows:
 - i. Permitted clearance of 500m², and further reduced to;
 - 50m² where the indigenous vegetation is greater than a height of 2.0m; and
 - 50m² within a land environment (defined by Land Environments of New Zealand at Level IV) that has 20% or less remaining indigenous cover; and
- (l) An exemption for the construction of walkways or trails up to 1.5m in width is provided, as long as it does not involve the clearance of any threatened plants or any tree greater than a height of 4.0m.

6.33. Based on these changes, overall I consider the Indigenous Vegetation Chapter is more conservative than the ODP rules. However, the policies also directly acknowledge, require consideration of and seek positive outcomes in terms of the tension between the Council fulfilling its function to maintain indigenous biodiversity, while meeting the overall sustainable management purpose of the RMA.

- 6.34. The interpretation and application of the provisions, specifically the definitions and rules associated with whether indigenous vegetation has a coverage that qualifies at being subject to the rules, has in my opinion been significantly improved.

7. ANALYSIS OF SUBMISSIONS

- 7.1. 45 submissions and 24 further submissions were received on the Indigenous Vegetation Chapter. 818 points of submission were categorised.
- 7.2. The RMA does not require a report prepared under s42A or for the Council decision to address each submission point but, instead, requires a summary of the issues raised in the submissions.
- 7.3. Some submissions contain more than one issue, and will be addressed where they are most relevant within this evidence.
- 7.4. I have set out my analysis of the provisions by issue and then by respective components of the Indigenous Vegetation Chapter, under the following headings:

Issue 1 – Submission 373 – Lou Sanson Director – General of the Department of Conservation (DoC);

Issue 2 – Definitions;

An analysis of the key issues identified by submitters is then provided for each objective and related policy. These are summarised below which also provides an overview of the structure:

Issue 3: Preamble:

- 33.1: Purpose – This statement relates to the purpose of the chapter and also provides future indicators for evaluating anticipated environmental results.

Issue 4: Objectives and policies

- 33.2.1: Objective – This objective and policy suite addresses the framework, provides general policy direction and policies that determine the significance of indigenous vegetation and are intended to be used to assist decision makers.
- 33.2.2: Objective – Significant Natural Areas.
- 33.2.3: Objective – Provides a framework to maintain indigenous biodiversity of land not identified as a SNA or within an Alpine Environment.
- 33.2.4: Objective – Addresses activities within alpine environments.

Issue 5: Rules

- 33.3: Other provisions and rules 33.3 – This section provides clarification and assistance with applying the rules, status of activities and exemptions.
- 33.4: Rules – provides the activity status for activities that do not comply with the standards.
- 33.5: Sets out standards for permitted activities.
- 33.6: Confirms whether any resource consents required would be processed on a notified basis.

Issue 6: Scheduled items

- 33.7: Provides an updated threatened plant list.
- 33.8: Is the schedule of SNA's.
- 33.9: The LENZ maps to assist with rules in in Part 33.4.

8. ISSUE 1 – SUBMISSION 373 – DEPARTMENT OF CONSERVATION (DOC)

- 8.1. I have considered Issue 1, the submission of DoC, as a separate issue due to the nature of the submission and relief sought. I wish to emphasise that specifically identifying this submitter in a separate issue discussion does not mean I have given the submitter more weight over the submissions of other submitters, advocacy groups or those of landowners affected by the provisions.
- 8.2. The submission of DoC has been highlighted as a specific issue because of the wide reaching amendments that are sought to the Indigenous Vegetation Chapter. I have responded to it separately to provide clarity and efficiency in the drafting of this evidence. The basis of the requested amendments appear to be focused on the request for a requirement that an appraisal be undertaken for all activities contemplating indigenous vegetation clearance, and to determine whether the area in question qualifies as significant indigenous vegetation or significant habitats of indigenous fauna.
- 8.3. The fundamental change is the relief sought to Rule 33.5.3 (Submission point 373.53) – where DoC seeks to include a new permitted activity standard that provides: *The site is not considered to be a Significant Natural Area when considered against the criteria in section 33.10.*
- 8.4. Section 33.10 is a new section requested by DoC that takes the criteria used to determine significance from under Objective 33.2.1.9.
- 8.5. The reason DoC seek this is to require an assessment using significance criteria to determine permitted activity status. This would ensure that SNAs that are not scheduled in the PDP would not be cleared as a permitted activity.

- 8.6. For the following reasons it is my recommendation that the relief sought be rejected:
- (a) DoC's approach would require a site by site assessment to determine whether the activity would constitute indigenous vegetation clearance to an SNA. This introduces subjectivity and value based appraisals to determine permitted activity status;
 - (b) This is at odds with the identified deficiencies of the ODP and efforts undertaken to draft rules that have certainty, can be enforced and are practical to apply;
 - (c) Determining whether the land in question is an SNA as a permitted activity standard would also introduce significant inefficiencies in terms of providing certainty as to whether clearance of indigenous vegetation is permitted or not; and
 - (d) It is acknowledged that DoC would prefer to have mechanisms in place to ensure no areas that qualify as an SNA are removed as a permitted activity. However, the Indigenous Vegetation Chapter has made significant advancements to reduce the permitted clearance of indigenous vegetation that could qualify as an SNA by setting the maximum area to be cleared at 500m² where:
 - i. The indigenous vegetation is greater than a height of 2.0m;
 - ii. Within a land environment (defined by Land Environments of New Zealand at Level IV) that has 20% or less remaining indigenous cover;
 - iii. On landholdings less than 10 hectares in area, reducing the permitted clearance criteria to 500m², and 50m² where the height and LENZ factors apply;
 - iv. Updating the Threatened Plant List; and
 - v. Completing a programme to identify SNAs that has added a further 77 SNAs to the schedule, compared to the ODP.
- 8.7. DoC also requests that substantial structural changes are made to the chapter to facilitate this change. It is my strong recommendation that these amendments are also rejected because they would introduce complexity and make administration of the Indigenous Vegetation Chapter cumbersome.
- 8.8. I consider that the structure of the Indigenous Vegetation Chapter is fit for purpose. It articulates what objectives and policies apply to what circumstance, provides detailed guidance on the application of the rules, and the standards as drafted are in my view legible.
- 8.9. In terms of anticipated environmental results, the Indigenous Vegetation Chapter is more conservative than the ODP, and therefore, makes significant advancements in terms of halting the incremental loss of biodiversity, which is an issue of concern to DoC.
- 8.10. For the reasons set out above, I recommend that the majority of DoC's submission is rejected.

- 8.11. As I have recommended to reject the majority of DoC's submission I will not specifically identify the relief sought by DoC against the majority of provisions, except where it relates to a particular provision within the context of the framework of the Indigenous Vegetation Chapter as notified. These will be addressed within the respective issues.
- 8.12. While also seeking substantial amendments, the submission of the Royal Forest and Bird Protection Society of New Zealand (Submitter 706 (**Forest and Bird**)), in comparison to DoC's submission, appears to accept the framework of the Indigenous Vegetation Chapter, including the location of Policy 33.2.1.9 to help determine whether the indigenous vegetation proposed to be cleared qualifies as significant. Another submitter, with often divergent views, is Submitter 600 (Federated Farmers (**Fed Farmers**)). This submitter, while requesting amendments, has also accepted the structure of the Indigenous Vegetation Chapter. The majority of Forest and Bird's and the Federated Farmers submissions can be logically considered through an analysis of each provision.

9. ISSUE 2: DEFINITIONS

- 9.1. Submissions on definitions that relate to the Indigenous Vegetation Chapter have been identified as a stand-alone issue. The definitions are critical in terms of the application of the rules and could restrict certain land uses.
- 9.2. There are two definitions in the PDP that are critical to the Indigenous Vegetation Chapter – 'Indigenous Vegetation' and 'Clearance of Vegetation' (includes Indigenous Vegetation):

Indigenous Vegetation	Means vegetation that occurs naturally in New Zealand, or arrived in New Zealand without human assistance.
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- 9.3. Forest and Bird seek the following amendments to the definition:

Means vegetation that occurs naturally in New Zealand, or arrived in New Zealand through natural processes without human ~~assistance~~ intervention.

- 9.4. I do not consider that the requested amendments would offer any value or clarity because human assistance has the same meaning as intervention in this context. The addition of 'through natural processes' offers no added value because if humans did not assist/intervene, then the only way is through natural processes. I recommend that the definition is retained as notified and the submission is rejected.
- 9.5. The other important definition is the clearance of vegetation:

<p>Clearance Of Vegetation (Includes Indigenous Vegetation)</p>	<p>Means the removal, trimming, felling, or modification of any vegetation and includes cutting, crushing, cultivation, spraying with herbicide or burning.</p> <p>Clearance of vegetation includes, the deliberate application of water where it would change the ecological conditions such that the resident indigenous plant(s) are killed by competitive exclusion. Includes dryland cushion field species.</p>
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9.6. As set out in the s32 the definition of 'Indigenous Vegetation' has been deliberately simplified to remove any value based interpretation.¹⁶ Changes to the definition of 'Clearance of Indigenous Vegetation' recognises that in certain situations, clearance would also constitute the application of water where it would change the ecological conditions and kill indigenous plants through being outcompeted by exotic plants that thrive from the application of water.

9.7. Forest and Bird support the definition of 'Clearance of Vegetation', but also seek the following amendments:

Means the removal, trimming, felling, or modification of any vegetation and includes cutting, crushing, cultivation, soil disturbance including direct drilling, spraying with herbicide or other substance, burning.

Clearance of vegetation includes the deliberate application of water or other substance, where it would change the ecological conditions such that the resident indigenous plant(s) are killed or threatened by competitive exclusion, or disease. Includes dry land cushion field species.

9.8. I recommend that the phrase 'soil disturbance including 'direct drilling' be included in the definition because direct drilling can crush native vegetation to a degree that constitutes the direct clearance of the indigenous vegetation (refer Mr Davis' evidence, paragraph 10.1. While the effects of direct drilling are addressed in the first part of the definition, adding a reference to direct drilling provides clarity.

9.9. I do not agree with Forest and Bird where they seek that the phrases 'other substance' and 'is threatened' are also included in the definition. Adding these qualifiers to the definition would introduce uncertainty and vagueness, where the intent is to provide certainty. I do not consider that 'threatening a plant' constitutes the actual clearance of it.

16 The ODP definition is: 'Means a plant community in which species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity'.

- 9.10. Furthermore, I also note that the parameters of the definition as notified use the word 'includes', therefore, the qualifiers identified are not absolute and the definition as notified is considered to achieve the intent of the amendments sought by Forest and Bird. Except for 'soil disturbances including direct drilling', I do not support the inclusion of these phrases.
- 9.11. Another matter raised by Forest and Bird is their submission on Rule 33.3.3 (Application of the indigenous vegetation rules), which sets out whether the coverage of indigenous vegetation qualifies against the rule. Forest and Bird seek that the rule includes reference to include both vascular and non-vascular plants. In my view, in the context of the PDP definition of 'indigenous vegetation' it would include both vascular and non-vascular plants simply because they are indigenous. If Forest and Bird are concerned that indigenous non-vascular plants such as mosses are missed out of this, then I do not see any problem adding this to the definition. It is my strong preference that any reference to 'vascular or non-vascular plants' should be included in the definition, rather than the rules. The rules provide the parameters associated with the clearance of indigenous vegetation, not whether a certain type of plant qualifies as indigenous vegetation. I recommend that the reference to both vascular and non-vascular plants is included in the definition. This matter is related to clarity because it does not 'add' any new qualifiers to the definition, it simply confirms that both vascular and non-vascular plant apply.
- 9.12. DoC seek that 'over sowing' is included in the definition of 'Clearance of Vegetation', because, in relation to the limb of the definition that includes the application of water, the over sowing of exotic species has the same effect of out competing indigenous species and leads to incremental loss. Further Submitter (1347) Lakes Land Care oppose the inclusion of over sowing.
- 9.13. I do not support the inclusion of 'over sowing' in the definition of 'clearance of vegetation' as the ecological effects of this activity are variable depending on where it occurs in the District. It is Mr Davis's evidence that much of the oversowing that occurs in the District is undertaken following the burning or spraying of predominantly bracken fern dominated vegetation.¹⁷ I agree with Mr Davis's view that it is not reasonable to include the application of seed in this context. Given the spatial context associated with this issue I support Mr Davis's view that it may be more appropriate to address this issue within the site standard. I refer to and rely upon Mr Davis's evidence in section 11.3.
- 9.14. Submitters 600 (Federated Farmers), JBIL (FS1091.24) and 315 (The Alpine Group) oppose the definition where it seeks to include irrigation. Submitter 400 (James Cooper) also opposes this but does not state any reasons why.

¹⁷ Evidence of Mr Glenn Davis dated 6 April 2016 at paragraph 11.3.

- 9.15. Federated Farmers state in their submission '*Federated Farmers agrees that irrigation may change the ecological balance by favouring those species not well adapted to dryland situations and by enabling more frequent/intensive grazing. This is not the same as vegetation clearance. Irrigation is an expected and reasonable practice in the rural area*'.
- 9.16. I consider that the submission is taking this matter out of context because it is not the ability to enable more intensive grazing that is at issue, it is that in some circumstances irrigation would result in clearance by allowing exotic plants to outcompete and kill indigenous vegetation.
- 9.17. Furthermore, it is important to emphasise the matter is not about what is reasonable practice in rural areas. For example, cultivation is a reasonable and expected practice (as well as irrigation), however where the land would involve the clearance of indigenous vegetation, then a resource consent could be required to determine if the practice is appropriate in terms of the impacts on indigenous vegetation. The matter is not so much about the type of land use or activity but whether in the circumstances it would constitute indigenous vegetation clearance. Irrigating indigenous vegetation would be beneficial to some species, however the definition is intentional and clear in that it would only apply where it would result in the clearance of certain types of indigenous vegetation, such as dryland cushion field plants that have evolved to adapt to dry conditions, as set out in Mr Davis's evidence in section 10.
- 9.18. Further to the Federated Farmers submission, the matter is not about intensification of land use, or not being able to irrigate when conditions require, it is to do with the clearance of indigenous vegetation. A scenario here is that land that had not been managed (e.g. referred to as 'poor pasture') and does not have a coverage of indigenous vegetation to qualify as being subject to the rule¹⁸ can be sprayed with herbicide, cultivated, sown in exotic grasses and irrigated to a state of improved pasture and maintained thereafter by irrigation (improved pasture). The matter is not about irrigation, it is whether irrigation would kill certain types of plants. There is evidence to support this as stated in Mr Davis's evidence and I recommend that matter is included in the definition of clearance of vegetation.
- 9.19. The Federated Farmers also cite a decision of the High Court relating to the review of the granting of a certificate of compliance.¹⁹ Fed Farmers state in their submission that '*in this case the Court concluded that irrigation didn't fall within vegetation clearance*'. Having reviewed this decision, I consider that this statement is incorrect and has been taken out of context. The Court found that irrigation does constitute modification, if not clearance. At paragraph 28 the Court stated:

18 Refer to Rules of the PDP Indigenous Vegetation Chapter.

19 *Royal Forest and Bird Protection Society of New Zealand v Waitaki District Council* (2012) NZHC (2096)

Both the Council and Forest and Bird provided expert ecological evidence regarding the effect of irrigation on indigenous vegetation. The ecologists agree that sustained irrigation will change the structure and composition of plant species, transform a naturally dry habitat into one in which indigenous vegetation cannot compete, and that over time the indigenous vegetation will be replaced by exotic species. Thus, irrigation affects the indigenous dry land vegetation through competition rather than by water directly killing the indigenous plants, although the loss of indigenous species is the eventual outcome.

- 9.20. The Federated Farmers submission has taken this ruling out of context because it was to do with applying the concept of whether irrigation constitutes indigenous vegetation clearance against the definition of clearance of vegetation in the context of the Waitaki District Plan.²⁰ The Court went on to state that 'irrigation' is treated as an activity in its own right in the Waitaki District Plan and if it were intended to be included in the definition the *draftsperson would have made specific reference to it...*²¹ The review of the ODP is the opportunity to modify definitions to ensure they are the most appropriate way to meet the purpose of the RMA. In conclusion, it is my opinion that the Federated Farmers submission does not provide any basis to exclude the application of water from the definition. The submission requesting that irrigation is excluded from the definition of irrigation is rejected.
- 9.21. DoC seek that new definitions are provided for 'biodiversity offsetting' and 'no net loss' because the phrase is used in the relief sought by DoC and will provide clarification in how biodiversity offsetting is to be used to address adverse effects of development activities.
- 9.22. Further submissions from Forest and Bird support this, while FS 1287 (New Zealand Tungsten Mining Limited), oppose the requested definition because applying such a definition would constrain the evolution or further advancements of the practice.
- 9.23. While I consider it is generally beneficial to include definitions to provide certainty, in this case I agree with FS 1287 that the definitions not be included in the PDP. This is because proposals seeking to utilise biodiversity offsets will be relatively rare. They are also likely to involve a high level of detail and scrutiny that would be canvassed through the most advanced and best practice methods associated with biodiversity off setting, and applied in a decision making context. Therefore, it would be cumbersome if a definition provided in the PDP is outdated by advancements.
- 9.24. To emphasise this, I refer to the 'Guidance on good practice biodiversity offsetting in New Zealand – August 2014'²² produced by DoC. The 'purpose' statement reads:

20 Waitaki District Plan Operative 31 May 2010.

21 At paragraph 35(vii) of the decision.

22 Guidance on Good Practice Biodiversity Offsetting in New Zealand, August 2014.

In preparing the Guidance it is recognised that the use of biodiversity offsetting as a policy and consenting tool is new and evolving; particularly under the Resource Management Act 1991, and that it is not possible to predict the challenges and lessons that each new offsetting proposal will bring. Use of the term 'good practice' throughout this document is therefore indicative of our current (2014) understanding of biodiversity offsetting as broadly applicable to most situations. As practices develop and case law becomes more refined, users of this Guidance will need to take that into account.

- 9.25. While the commentary above relates to what constitutes 'good practice' I also consider it relevant as it accepts that understanding and practice will evolve.
- 9.26. I refer to Part 10.6 of Mr Davis's evidence where he considers the inclusion of 'Biodiversity Offset' and 'no net loss' would be helpful because biodiversity offsetting is not well understood. I also acknowledge that I recommend the inclusion of the phrase 'no net loss' to be added to Policy 33.2.1.8, however I do not support the addition of these definitions, not because I do not agree with the phrase, or the concept, but as set out in Paragraph 9.23 above, it would be disappointing if the practice and application of this matter was advanced and the definition was considered redundant. This could frustrate the application of biodiversity offsetting concept in terms of best practice.
- 9.27. Another reason for my reticence to accept these as definitions is because that while this concept is topical, I am not aware of it being applied within this District and I understand it is not used very often because usually proposals first seek to avoid, remedy or mitigate adverse effects. In the case these options are not available the concept of biodiversity would be contemplated.
- 9.28. For these reasons I recommend that DoC's submission to include definitions of 'biodiversity offset' and 'no net loss' is rejected.
- 9.29. Forest and Bird also seek that the definition of 'Nature Conservation Values' is retained, and that a new definition of 'Margin' is added, being the same as the definition in the Canterbury Regional Policy Statement. The requested definition is:

Land immediately adjacent to the bed of a river, wetland, lake or estuary which is likely to be affected by a high water table, flooding, fluvial erosion, or sediment deposition, and often contains distinctive vegetation. The size of the margin will vary according to local site factors but may extend to the limits demarcated by natural river terraces and constructed stop banks.

9.30. The relevant rule (33.5.4) in this chapter refers to 'water body'. Other rules in the Rural Zone²³ that specify a setback of buildings from water bodies rely on the definitions of 'water body' and 'bed' as provided in s2 of the RMA. I therefore do not support the suggested definition of 'margin' because it refers to an estuary, of which there are none in this District, and a subjective qualifier being 'often contains distinctive vegetation'.

9.31. Related to this matter is the relevant rule (33.5.4) which states:

Clearance is more than 20m from a water body.

9.32. I consider that the parameters as to what constitutes the edge of a water body for the purposes of this rule would be improved by adding the following; *Clearance is more than 20m from the bed of a water body*. A definition of bed is not required in the PDP because the definition in s2 of the RMA is adequate. In this respect, I consider that Forest and Bird's submission is accepted in part. This matter is related to clarity.

10. ISSUE 3: PURPOSE – 33.1

10.1. The purpose statement in the Indigenous Vegetation Chapter sets out the Council's function to maintain indigenous biodiversity and to provide for the protection of SNAs. The purpose statement also sets out the framework of the rules against the types of land uses (farming and ski activity development) that typically require resource consent to clear indigenous vegetation.

10.2. Federated Farmers support the purpose statement, in particular the part that references the use of land and reasonable expectations providing activities maintain or enhance indigenous biodiversity.

10.3. Forest and Bird and Submitter 339 (Evan Alty) are also generally supportive but seek refinements, one of which includes the addition of wetlands in the first paragraph. While wetlands primarily come under the ambit of the Otago Regional Council, whom have a schedule of significant wetlands in its Water Plan,²⁴ the indigenous vegetation on the margin of waterbodies and ephemeral waterbodies also come under the ambit of the Council's function. I therefore consider that it is appropriate to include the reference to wetlands in the purpose statement.

²³ Rule 21.5.4 – Setback of buildings from water bodies, Rule 21.5.7 – Dairy Farming.

²⁴ Otago Regional Council Regional Plan: Water; Schedule 9: Schedule of identified regionally significant wetlands and wetland management areas.

- 10.4. Forest and Bird also state that they seek amendments to the third paragraph to introduce and clarify parameters associated with biodiversity offsetting, noting specifically that *offsetting should not be applied to justify impacts on vulnerable and irreplaceable biodiversity values or biodiversity values cannot be offset.*
- 10.5. The text version provided in Forest and Bird's submission with underline and strikethrough annotations is not based on the notified Indigenous Vegetation Chapter. Therefore I am not able to directly reconcile the exact relief sought. However, having reviewed their comments identified above, I consider the text in the purpose statement relating to biodiversity offsets to be appropriate. Forest and Bird's submission to amend the Purpose statement is rejected.
- 10.6. DoC seek changes to the purpose statement to remove the reference to efficient use of land and phrasing associated with biodiversity offsetting. Having considered the submission by DoC, I recommend amendments to the part of the purpose statement so that it is more specific to the mitigation hierarchy associated with biodiversity offsetting principles.²⁵ A s32AA evaluation is undertaken in **Appendix 4.**
- 10.7. Submitter 755 (Don Robertson) considers the chapter should be changed to 'Indigenous Biodiversity' because indigenous vegetation is biodiversity. I accept this reasoning but because the rules are focused on the removal of vegetation, and there are not any rules to protect animals or their habitats within exotic vegetation, except where identified through an SNA, the main driver is vegetation. While I accept the point, I do not recommend changing the title of the chapter.
- 10.8. Overall, I consider that the purpose statement is appropriate in terms of setting out the need for and mechanics of the Indigenous Vegetation Chapter, and the identification of parameters such as biodiversity offsets and the use of Land Environments of New Zealand (**LENZ**) LENZ Threatened Environment Classification the latter provides an effective surrogate of where indigenous vegetation is likely to have important biodiversity values. I recommend that the Purpose Statement is retained, except for the addition of 'wetlands', to ensure clarity, as identified above.

11. ISSUE 4 – OBJECTIVES AND POLICIES

Objective 33.2.1: Protect, maintain and enhance Indigenous Biodiversity

- 11.1. This objective provides the overarching aspiration for the Council to fulfil its functions to maintain indigenous biodiversity and protect SNAs. Forest and Bird support the objective

²⁵ Guidance on Good Practice Biodiversity Offsetting in New Zealand. Department of Conservation, August 2014. See in particular 'Box 2: BBOP and RMA terminology and the mitigation hierarchy' p. 19.

without any requested modification. Submitter 806 (Queenstown Park Limited (**QPL**)) states in their submission that the '*objective is too broad and applies to all indigenous biodiversity. It should promote and encourage the maintenance and enhancement of indigenous biodiversity through enabling comprehensive land management that on balance achieves positive environmental outcomes*'.

- 11.2. The objective seeks to protect SNAs in terms of s6(c) of the RMA and 'maintain' 'indigenous biodiversity' in terms of s31 and, s7(d) of the RMA. The objective is considered important at establishing the management for the QLDC to fulfil its functions as required by the RMA. QPL do not suggest any amendments to the Objective. I also consider that 'enabling comprehensive land management that on balance achieves positive environmental outcomes' is not appropriate, especially when QPL have not provided detail on what end result the comprehensive land management is that should aspire to. I consider that the Objective is appropriate and should be retained as notified.
- 11.3. QPL also request that a new policy is added under this objective, which is: *To recognise that activities that by necessity result in indigenous vegetation clearance can result in long term sustainable management benefits.*
- 11.4. I consider that the policies of the Indigenous Vegetation Chapter already contemplate this matter in a more direct and balanced manner²⁶ and this policy would not offer any added value. I recommend rejection of this submission.
- 11.5. I recommend that the objective is retained however minor grammatical amendments are recommended to ensure the statement reads as a policy. This matter is related to clarity.
- 11.6. Policies 33.2.1.1 to 33.2.1.3 establish a framework to manage SNAs, and threatened plants and other indigenous vegetation not identified as an SNA or a threatened plant. Federated Farmers are supportive of the policies. Forest and Bird request that the words 'protect, maintain or enhance' are added to all the policies. It is my recommendation to reject this request and retain the policies as notified because the intent of the policies are to provide a framework to identify and schedule SNAs, and to identify and manage SNAs threatened plants and indigenous vegetation not already identified on the planning maps. The respective objectives and policies through the chapter provide for the protection, maintenance or enhancement of the respective resource. The submission is rejected and I recommend the policies are retained as notified.
- 11.7. Policy 33.2.1.4 provides:

26 Refer to Policies 33.2.1.5, 33.2.1.6, 33.2.1.7, 33.2.1.8.

Recognise and take into account the values of tangata whenua and kaitiakitanga.

11.8. The policy is supported by Forest and Bird. QPL seek that the policy is deleted because there is already a separate section providing for the values of tangata whenua, presumably in Chapter 5 of the PDP. Submitters 817 (Te Ao Marama Inc) and 810 (KTKO Ltd) have not submitted specifically on this policy. I consider that it is important that tangata whenua values are provided for specifically. I recommend that QPL's submission is rejected and the policy is retained as notified.

11.9. Policy 33.2.1.5 provides:

'Recognise anticipated activities in rural areas such as farming and the efficient use of land and resources while having regard to the maintenance, protection or enhancement of indigenous biodiversity values.'

11.10. The policy is intended to assist decision makers by acknowledging that land use activities are contemplated within areas where indigenous vegetation will be present, particularly on land held in private ownership that is used for productive purposes. Forest and Bird submit that the policy does not meet RMA requirements and seek the following amendments:

Recognise anticipated activities in rural areas such as farming and the efficient use of land and resources ~~while having regard to~~ however these must be undertaken in a way that protects the significant indigenous vegetation and habitats of indigenous fauna and maintains and enhances indigenous biodiversity. ~~the maintenance, protection or enhancement of indigenous biodiversity values.~~

11.11. Submitter 701 (Paul Kane) requests that the words 'where possible' are added to the end of the sentence. I do not support this relief because it would weaken the protection components of the policy, in particular where the policy needs to accord with s6(c) and s31 and 7(d) of the RMA.

11.12. Submitter 806 (Transpower New Zealand) seeks that regionally significant infrastructure is included as an anticipated activity alongside farming. I do not support the specific inclusion of regionally significant infrastructure in this context. The identification of farming is not absolute and I do not consider it would prejudice other activities that could be reasonably contemplated. I recommend that this submission is rejected.

11.13. Having considered the submissions I consider that the policy could be improved so to more directly manage the adverse effects of indigenous vegetation clearance. A revised policy and s32AA evaluation is provided in **Appendix 4**.

11.14. Policy 33.2.1.6 provides:

Encourage the long-term protection of indigenous vegetation and in particular Significant Natural Areas by encouraging land owners to consider non-regulatory methods such as open space covenants administered under the Queen Elizabeth II National Trust Act.

11.15. The policy recognises and encourages consideration that there are methods outside the RMA and district plans to identify and protect biodiversity. QPL, Federated Farmers and DoC support the policy as notified. Forest and Bird support the intent of the policy but seek amendments to include other options, seeking that the '*Reserves Act, Conservation Act and other protective mechanisms*' are added.

11.16. DoC also seeks that a range of other mechanisms or instruments are added. I note that while the policy identifies QE II covenants this is because it is one of the more recognised methods and often associated with tenure review processes. There is also a rule that has been carried through from the ODP that exempts land in a QE II covenant from being scheduled as an SNA.²⁷ In addition, the policy is not written to be absolute and apply only to the QE II process. Any person contemplating a legal instrument restricting private land for conservation would be likely to go through a process of consideration and evaluation of options as to which instrument suited. It is my preference that the policy is retained as notified.

11.17. Submitter 339 (Evan Alty) raises concerns with the non-regulatory methods such as open space covenants under the Queen Elizabeth II National Trust Act and considers these to be flawed, stating that only covenants under the Reserves Act provide security and certainty that the RMA requires. I do not agree with Mr Alty because my understanding of the QE II process is that it is robust and effective. Without any additional evidence I am not in a position to accept the relief sought. The submission is rejected.

11.18. Policy 33.2.1.7 provides:

Activities involving the clearance of indigenous vegetation are undertaken in a manner to ensure the District's indigenous biodiversity values are protected, maintained or enhanced.

27 Rule 33.3.4.1 PDP

11.19. QPL submit that while the intent of the policy is not opposed, it is not clear how it would be implemented. QPL seek amendments identifying how biodiversity values could be maintained, however do not offer any specific relief. I consider that the current policy is appropriate because it will be considered by proponents and decision makers in conjunction with the other policies in the Indigenous Vegetation Chapter and Objectives 3.2.4.1 and 3.2.4.2 of the Strategic Direction Chapter. In particular, the matters in Policy 21.2.1.9 that assist with the determination of significance. Achieving the policy will depend on the merits of each particular proposal. I recommend that QPL's submission is rejected.

11.20. Forest and Bird request that the word 'values' is deleted because it is ambiguous and does not reflect the wording in section 31 of the RMA. The inclusion of the word 'values' does not, in my view, result in the policy being at odds with the function of the Council to maintain indigenous biodiversity. I therefore consider that the policy is appropriate and should be retained as notified.

11.21. Policy 33.2.1.8 provides:

Where the adverse effects of an activity on indigenous biodiversity cannot be avoided, remedied or mitigated, consideration will be given to whether there has been any compensation or biodiversity offset proposed and the extent to which any offset will result in a net indigenous biodiversity gain.

11.22. The policy as notified is intended to allow for the contemplation of using environmental compensation or the concept of biodiversity offsets. Upon further reflection, the intention of identifying environmental compensation could be misconstrued as other forms of compensation that might not result in the maintenance of indigenous biodiversity. For example, financial compensation, instead of the enhancement or protection of indigenous vegetation elsewhere on the development site. I consider that the types of activities where 'environmental compensation' would be contemplated are addressed as part of s5 of the RMA as to whether an activity would 'remedy' adverse effects on the environment, as part of 'avoiding, remedying or mitigating adverse effects'.

11.23. Forest and Bird seek amendments to Policy 33.2.1.8 to ensure compensation is not confused with biodiversity offsets. While I was satisfied that 'biodiversity offsets' and 'environmental compensation' were distinct in terms of the drafting of the policy, I no longer consider the phrase 'compensation' to be appropriate in this context. Therefore, I have amended the policy as set out in **Appendix 1**. A s32AA evaluation is attached at **Appendix 4**.

11.24. Forest and Bird also seek that the mitigation hierarchy utilised for biodiversity offsetting is included. I am not comfortable with the relief sought because it appears to remove all

references to biodiversity offsetting and identifies quite detailed parameters without context. More importantly, as discussed in Issue 2 (Definitions), the practice and thought on what constitutes good practice in 'biodiversity offsetting' is likely to change and it would be cumbersome if the policy were outdated, but must still be considered over more relevant and applicable documents and practices, because it is the statutory provision.

11.25. By comparison, DoC seek that the policy is retained in a similar 'higher level' phrase but amendments are made to include the 'no net loss' goals of biodiversity offsetting. The policy as notified included the second limb of the goal 'net biodiversity gain'.

11.26. Part 4.4.1 of the Guidance on good practice biodiversity offsetting in New Zealand identifies the concept of 'no net loss, and preferably, a net gain' as follows:

No net loss, in essence, refers to the point at which biodiversity gains from targeted biodiversity management activities match the losses of biodiversity due to the impacts of a specific development project, so that there is no net reduction in the type, amount and condition (quality) of biodiversity. A net gain means that biodiversity gains exceed a specific set of losses associated with a development.

11.27. I consider that the Policy would benefit from adding the complete phrase. The reason for including only the 'net gain' component was to identify the ideal outcome. Upon further consideration I consider that the policy would benefit from also referring to 'no net loss'. I consider that adding this component will improve the policy without resulting in the policy being too specific and risk becoming cumbersome through advances in the application and practice in biodiversity offsetting.

11.28. Submitter 805 (Transpower) opposes the policy and does not support the identification of biodiversity offsets to the extent they become a requirement and considers that offsets should sit outside of the District Plan. I note that the policy does not compel proponents to undertake biodiversity offsets. However depending on the scale of the impacts of a proposal on indigenous biodiversity it could be in the interests of the proponent to consider compensation or biodiversity offsets. I also consider that the policy is broad enough that it will not be usurped by advances in practice. I recommend that Transpower's submission is rejected.

11.29. Overall, I recommend that Forest and Bird's submission and DoC's submission are accepted in part. The changes will improve clarity and the distinction between compensation and biodiversity offsetting. These changes are shown in **Appendix 1**.

11.30. Forest and Bird seek the following new policy is added within Objective 33.2.2 for SNAs.²⁸

Significant adverse effects of the use and development on habitats of indigenous birds in wetlands, beds of rivers and lakes and their margins for breeding, roosting, feeding and migration are avoided and other effects are avoided, remedied or mitigated.

11.31. I do not consider this policy to be appropriately located under the Objective for SNAs. The habitats of these animals could be in places that comprise exotic vegetation, therefore, despite the intent of the policy the rules to implement the policy would not exist. However I do accept that there should be a policy protecting the habitats of indigenous fauna. I consider that the location for such a policy is under the first objective (33.2.1) that addresses both identified SNA areas and other areas. Generally, the actual rules that would 'trigger' consideration of habitats of indigenous animals would be in the case of an identified SNA, such as a bird roosting area, or Rule 33.5.4 relating to the clearance of indigenous vegetation within the 20m of the bed of a waterbody (as recommended to be amended above).

11.32. Therefore I support the inclusion of a policy but consider it should be located under Objective 33.2.1, not because the habitats of indigenous animals are not necessarily significant but because the rules could also be located within the 'general' clearance rules in Table 2. I also consider that the policy could be amended and made broader to apply to all indigenous animals and not just birds. This would meet the submission of Don Robertson (755) who seeks that more reference is made to animals and in particular aquatic biodiversity. I recommend Rule 33.5.8 is also modified to make this distinctions..

11.33. An evaluation is undertaken in accordance with s32AA and attached at **Appendix 4**.

11.34. Policy 33.2.1.9 (renumbered 33.2.1.10 in **Appendix 1**) adopts a range of criteria typically utilised to determine the significance of indigenous vegetation. The criteria has been utilised as policies to assist with decision making associated with proposals for the clearance of indigenous vegetation.

11.35. As part of the wide sweeping relief sought by DoC, they submit that applying these through policies would be an out of context use of the criteria. I do not agree, I consider that the criteria provides added value to decision making, particularly in the context of leaving open the potential for identifying additional areas of significance not already shown on the planning maps through the consenting process.

28 See submission point 706.84.

11.36. The Otago RPS does not contain any prescriptive methods to identify the significance of indigenous vegetation. Schedule 5 of the PRPS: 'Criteria for the assessment of the significance of indigenous vegetation and habitat of indigenous fauna' contains significance criteria very similar to that in Policy 33.2.1.9.

11.37. Although not in the jurisdiction of the QLDC, the Canterbury Regional Policy Statement 2013 includes policy that uses the significant criteria to assist to determine significance and the methods that direct territorial authorities to include appropriate rules *that manage the clearance of indigenous vegetation, so as to provide for the case-by-case assessment of whether an area of indigenous vegetation that is subject to the rule comprises a significant area of indigenous vegetation and/ or a significant habitat of indigenous fauna that warrants protection.*²⁹

11.38. A supporting study by Wildlands Consultants³⁰ undertaken for the Canterbury Regional Council states that the significance criteria have a two-fold purpose:

- *To enable local authorities and stakeholders to use consistent criteria for determination of areas of significant indigenous vegetation or significant habitats of indigenous fauna; and/or*
- *To enable evaluative assessments to be made where studies have not been undertaken, in situations where there is a new proposal for subdivision, use or development (triggering a requirement for either a resource consent or a plan change).*

11.39. Based on the above I consider that the use of ecological significance criteria in the Indigenous Vegetation Chapter is appropriate and helpful. It can be applied in the context of assessing nature and scale of applications for resource consent. I reject the submission from DoC where they state that the use of the criteria for these purposes is out of context.

11.40. Policy 33.2.1.9 (as notified) essentially uses criteria to determine the significance of indigenous vegetation as a surrogate for assessment matters. Forest and Bird support this, while requesting amendments to some of the criteria. Te Ao Marama have stated in their submission that a stronger link should be made between Chapter 5 and Chapter 33: Indigenous Vegetation and Biodiversity. In particular, the clearance criteria in 33.2.1.9, and taonga species and related habitat, and nohoanga. Te Ao Marama have not suggested any specific amendments and without these I consider that the notified Policy 33.2.1.9 is adequate.

²⁹ Canterbury Regional Policy Statement 2013. Chapter 9. Policy 9.3.1(1) and Method (3).

³⁰ Guidelines for the application of ecological significance criteria for indigenous vegetation and habitats of indigenous fauna in the Canterbury region. Wildlands Consultants Ltd. Contract Report No. 2289i. June 2013.

11.41. Submitter 701 (Paul Kane) requests that under part (e) Context, the following is added:

'has significance based on the indigenous coverage of the area'.

11.42. Mr Kane seeks the relief because the policy:

...does not take into account the reason for the ecological context. Where there is little biodiversity or indigenous vegetation on a site it may be due to the fact that the site is now predominantly residential, rural or that the indigenous vegetation which may once have been present is no longer present due to the activities that have been occurring historically at the site. For example, it is highly likely that a farm that has been farmed for the past 150 years was once a site of indigenous biodiversity but there is now a limited percentage of indigenous vegetation due to the fact that farming activity and a change of vegetation have resulted in limited indigenous biodiversity remaining. It is necessary for the ecological context to have regard to these types of matters and not only the matters referred to in the bullet points currently.

11.43. I refer to Mr Davis's evidence in section 10.1 which does not support the requested relief.

11.44. Forest and Bird seek that amendments are made to better describe representative, and add reference to pattern under (c) – diversity. Forest and Bird also seek that 'or' is inserted between each of the criteria because only one of the criteria are required for a site to be significant. Further submission FS1091 (Jeremy Bell Investments) seeks that the amendments not be allowed. In their view *'the requirement for only one criteria to be satisfied for the site to be considered significant will significantly increase the number of areas that are considered significant. This will afford protection to areas that are, in fact, not significant'*.

11.45. I rely on the evidence of Mr Davis in response this submission point, as set out in Section 7 where he doesn't support changes to better describe the *representativeness* criteria, but does support the inclusion of 'pattern', 'indigenous taxa' and 'ecological changes over gradients' as they provide specific examples of the range of *diversity* that may be present at varying scales. The inclusion of 'or' between criteria is accepted, and these changes are included in the Revised Chapter.

11.46. Forest and Bird request the following new policy under Objective 33.2.1:

Facilitate and support restoration of degraded natural ecosystems and indigenous habitats using ~~where possible~~ indigenous species that naturally occur and/or previously occurred in the area.

11.47. I am unsure what exact iteration to consider because the submission is annotated with strike through text, despite it being a requested new policy. In any case, the intent is clear that the policy seeks to encourage the opportunity to restore degraded natural ecosystems. In a regulatory context this policy would be most useful as a compensatory measure and is for the most part already provided for in Policy 33.2.1.8 that contemplates biodiversity offsetting. Although I support the intent of the policy I do not consider the policy is necessary and the submission is rejected.

Objective 33.2.2 Protect and enhance Significant Natural Areas

11.48. The objective and policies are tailored for SNA areas that have been identified and scheduled in the PDP.

11.49. Forest and Bird seek that reference is made to rare or threatened species. I do not support this inclusion, not because rare or threatened species and their protection are not potentially significant, but because this objective is also specifically for activities identified on the planning maps as an SNA. Including threatened plants in the objective could predetermine that they are significant, noting that the clearance of indigenous vegetation comprising threatened plants should be subject to an assessment to determine significance.

11.50. DoC seek the following relief:

~~Protect and enhance Significant Natural Areas. Areas of significant indigenous biodiversity are recognised and protected from development activities in the Queenstown Lakes District as a matter of national importance.~~

11.51. I do not support this amendment because it offers no added value. This point is inherent because SNAs qualify as significant in terms of s6(c) of the RMA, Matters of National Importance. The PDP can only have jurisdiction within the District, and adding 'development activities' in my view offers no added value to the overarching aspirational intent of the objective statement. I recommend that the submission is rejected.

11.52. QPL request that the word 'encourage' is added to the start of the Objective. I do not support this because the Objective is a regulatory policy that compels the protection, maintenance or enhancement. The word encourage would not result in an outcome or goal and would not assist as a part of an objective. Encouragement is not necessary and I recommend that the submission is rejected.

11.53. Overall, I recommend that the objective is retained however minor grammatical amendments are recommended. This matter is related to clarity.

11.54. Policy 33.2.2.1 provides:

Avoid the clearance of indigenous vegetation within Significant Natural Areas that would reduce indigenous biodiversity values.

11.55. Forest and Bird seek that the phrase '*including those that meet the criteria in Policy 33.2.1.9*³¹ is added. I support this amendment because it clarifies the application of the criteria in Policy 33.2.1.9 and assists with plan administration. The change is related to clarity and is shown in **Appendix 1**.

11.56. Policy 33.2.2.2 is:

Allow the clearance of indigenous vegetation within Significant Natural Areas only in exceptional circumstances and in circumstances where these activities will have a low impact or offer compensation commensurate to the nature and scale of the clearance.

11.57. Submitter 635 (Aurora Energy Ltd) supports the policy. Forest and Bird oppose this policy on the basis that the policy should address the effects of the activity rather than permit an activity. Forest and Bird's suggested amendments require that significant adverse effects are avoided, and where this cannot be achieved, biodiversity offsetting criteria are suggested.

11.58. Similarly, DoC's submission on this policy requests amendments to require that the impact of any clearance equates to a '*minor adverse effect on the ecological functioning and the values that contribute to the significance of the area*'. I do not support this amendment because the phrase 'minor adverse effect' is related to certain tests associated with whether a resource consent should be notified, or for non-complying activities.

11.59. While not supporting the requested amendments in whole, I consider that changes to the policy are appropriate that go some way to meeting the relief sought by Forest and Bird. I recommend the following amendments to the policy and provide an evaluation in accordance with s32AA in **Appendix 4**.

Allow the clearance of indigenous vegetation within Significant Natural Areas only in exceptional circumstances and ensure that clearance is undertaken in a manner that retains the values of the area in circumstances where these activities will have a low impact or offer compensation commensurate to the nature and scale of the clearance.

31 As referenced in the notified PDP.

11.60. On the basis of the above and the recommended amendment to the policy, the submissions of DoC and Forest and Bird are accepted in part.

11.61. Policy 33.2.2.3 is:

Recognise that the majority of Significant Natural Areas are located within land used for farming activity and provide for small scale, low impact indigenous vegetation removal, stock grazing, the construction of fences and small scale farm tracks, and the maintenance of existing fences and tracks.

11.62. The intent of the policy is to acknowledge that many of the SNAs are located within working farms and cover expansive areas. I consider it is reasonable to allow the continuation of established farming activities provided the activities and any changes in intensity maintain the values of the SNA. The policy includes activities that are reasonably expected to occur within these areas. The policy informs the lower order rule framework and also helps inform why there is a permitted clearance and exemptions for specific activities.

11.63. The policy is supported by Federated Farmers, Submitters 791 (Tim Burdon) and 794 (Lakes Land Care). Forest and Bird seek that amendments are made to include *'existing uses...and to maintain roads and structure excluding their expansion, providing the biodiversity values are safeguarded'*.

11.64. I do not consider the suggested text offers any benefits, in addition, the requested phrase *'providing the biodiversity values are safeguarded'* is not necessary because the preceding two policies ensure biodiversity values are safeguarded. I recommend that the submission of Forest and Bird is rejected and the policy is retained as notified.

11.65. QPL seek that policies are added under this objective that recognise for public access in SNA areas and to assist landowners in the management of SNAs. Rule 33.3.4 allows the construction of walkways or trails up to 1.5m and therefore, I consider that this provision is in place without the need for a bespoke policy. Submitter QPL has not provided any further evidence as to what their expectations are relating to assisting landowners in the management of SNAs. On this basis I recommend that the submission is rejected.

Objective 33.2.3 Ensure the efficient use of land, including ski-field development, farming activities and infrastructure improvements, do not reduce the District's indigenous biodiversity values

11.66. The intent of the objective and the related suite of policies 33.2.3.1 to 33.2.3.7 seek to maintain indigenous biodiversity, including indigenous vegetation within margins of

waterbodies not identified as an SNA, or within the alpine environment. The policies are a mix of both high level and finer detail to offer assistance to those contemplating clearance of indigenous vegetation and decision makers to ensure the activity meets the purpose of the RMA.

11.67. With regard to Objective 33.2.3, Forest and Bird submits that there is an ambiguity in the wording in that it only refers to the efficient use of land, making the point that 'non-efficient uses are excluded'. DoC also takes issue with this phrase and seeks relief through a new objective that refers to 'unproductive land'. The phrase 'efficient use of land' is associated with s7(b) 'Other Matters' of the RMA that states:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to —

...

(b) the efficient use and development of natural and physical resources:

11.68. The intent of 'the efficient use and development' is to reconcile land use and development activities with the function of the Council to maintain indigenous biodiversity. I accept that as drafted, the plain reading and context of 'efficient use of land' could be misinterpreted. Forest and Bird have suggested the words 'management and development' of land as an amendment.

11.69. QPL appear to have accepted the intent behind the phrase 'efficient use of land' but recommend a new policy to '*reduce the level of prescription and recognise a balance between the efficient use of land that may result in some adverse effects*'. QPL seek that the word 'significantly' is included as a qualifier. I do not support this change because even though the policy identifies activities that are often the result of clearance proposals, the list is not absolute. In addition, I do not support the use of the word 'significant' in this context because it would weaken the ability to apply a broad judgement to proposals and that the objective is to facilitate the Council to maintain indigenous biodiversity.

11.70. Acknowledging the relatively wide degree of interpretation by these submitters, I recommend that the objective is rewritten to be simpler. A recommended objective is provided below with an evaluation in terms of s32AA and attached as **Appendix 4**.

11.71. The policies as notified in the PDP under Objective 33.2.3 are as follows:

- 33.2.3.1 *Provide standards controlling the clearance of indigenous vegetation within 20 meters of water bodies, and ensure that proposals for clearance do not create erosion, or reduce natural character and indigenous biodiversity values.*
- 33.2.3.2 *Where the permanent removal of indigenous vegetation is proposed, encourage the retention or establishment of the same indigenous vegetation community elsewhere on the site.*
- 33.2.3.3 *Encourage the retention of indigenous vegetation in locations that have potential for regeneration, or provide stability, particularly where productive values are low, or in riparian areas or gullies.*
- 33.2.3.4 *When considering the effects of proposals for the clearance of indigenous vegetation, have particular regard to whether threatened species are present, or the area to be cleared is within a land environment (defined by the Land Environments of New Zealand at Level IV) identified as having less than 20% indigenous vegetation remaining; and,*
- 33.2.3.5 *Where indigenous vegetation clearance is proposed within an environment identified as having less than 20% indigenous vegetation remaining (defined by the Land Environments of New Zealand at Level IV), have regard to the threatened environment status, the nature and scale of the clearance, potential for recovery or the merit of any indigenous biodiversity offsets.*
- 33.2.3.6 *Ensure indigenous vegetation removal does not adversely affect the natural character of the margins of water ways.*
- 33.2.3.7 *Have regard to any areas in the vicinity of the indigenous vegetation proposed to be cleared, that constitute the same habitat or species which are protected by covenants or other formal protection mechanisms.*

11.72. Forest and Bird seek that Policies 33.2.3.2 and 33.2.3.5 are removed because they should be assessment matters. I note that the Indigenous Vegetation Chapter does not have assessment matters, and the policies in the Indigenous Vegetation Chapter are also intended to be used to guide decision making. It is not a requirement to have assessment matters and the drafting of both higher order and fine grained policies is deliberate.

- 11.73. Forest and Bird also seek relief associated with identifying opportunities to undertake biodiversity offsetting in Policy 33.2.3.5 and Policy 33.2.3.7. In light of the preceding discussions on biodiversity offsets and other submissions I accept that Policy 33.2.3.2 could be better phrased so that it is clearer that it is not intended to be an offsetting provision, and the latter part of Policy 33.2.3.5 should also be rephrased as it is not necessary to require consideration of biodiversity offsetting. Policy 33.2.1.8, located under Objective 33.2.1 is considered to adequately address biodiversity offsetting.
- 11.74. For the reasons identified above I am reluctant to delete the policies and locate them within a separate section for assessment matters, however I do accept that what is sought from the policies can be clearer.
- 11.75. Forest and Bird oppose some of the policies on the basis that they would not maintain indigenous biodiversity and contribute to the incremental loss, in particular, Policy 33.2.3.6 (as identified in the notified PDP) which contemplates whether the vegetation proposed to be cleared is present in the vicinity and protected. I consider that it is important to provide decision makers with the ability to consider whether the indigenous vegetation proposed to be cleared is present and protected in the same environment. In my view, a policy recognising this matter and evoking its consideration for decision makers does not mean that it will justify the clearance of indigenous vegetation. Each case will need to depend on the quality and coverage of the indigenous vegetation and any mitigation or redeeming elements.
- 11.76. While I accept that this policy is not a preservation based policy it does provide the ability to apply a balanced perspective associated with the maintenance of indigenous biodiversity, particularly against the inclusion of Policies 33.2.3.4 and 33.2.3.5 that require consideration of whether the land environment is chronically or acutely threatened, having less than 20% indigenous vegetation remaining, because as set out in Mr Davis's evidence the TEC provides a District wide perspective of the importance of indigenous vegetation remaining.³²
- 11.77. Forest and Bird seek that the phrase 'avoid the effects on' replaces 'have particular regard to' in Policies 33.2.3.4 and 33.2.3.5. While Submitters 590 (Sam Kane) and Federated Farmers seek that the threatened land environment classification only applies in urban zones, the majority of indigenous vegetation is located in the Rural Zones and it would not in my view be appropriate to exclude the use of the threatened environment classification from Rural Zones.
- 11.78. Therefore, I recommend that the respective submissions of Mr Kane and Federated Farmers on this matter are rejected.

32 Evidence of Mr Glenn Davis dated 6 April 2016 at paragraph XX.

11.79. Submitter 784 (Jeremy Bell Investments Ltd (**JBIL**)) submits that the LENZ Threatened Environments Classification (**TEC**) is not an appropriate tool to be relied on. Land in this category should be identified as possessing significant indigenous vegetation and the historical and current land uses should be taken into account. For the reasons set out in the s32 report, the background section of this report and Mr Davis's evidence, the use of the TEC to have regard to the incremental loss of biodiversity in terms of the policy and related rules in Part 33.5 is considered appropriate. While it is acknowledged that the TEC is a 'macro' scale model, this does not prejudice historical or current uses. The matter at issue is the retention of biodiversity and the TEC is an appropriate indicator of the likely values of any indigenous vegetation within these areas. JBIL's submission is rejected and I recommend that the TEC is retained.

11.80. Submitters 791 (Tim Burdon) and 794 (Lakes Land Care) submit that the use of the TEC maps creates uncertainty. I consider that this classification system creates certainty as to where indigenous vegetation could have potential to be significant because it is located within a chronically or acutely threatened land environment. While the maps produced and attached as Schedule 33.9 are at a relatively large scale, the PDP states at provision 33.9 that the Council's Webmap is available to illustrate these at a greater scale. I recommend that these submissions are rejected.

11.81. Therefore, I recommend amendments to the policies under Objective 33.2.3 that seek to maintain indigenous biodiversity, not identified as an SNA or within the Alpine Environment. An evaluation in terms of s32AA of the RMA is provided under each change to the policy in **Appendix 4**.

11.82. Under Objective 33.2.3, Submitter 572 (NZ Ski Ltd) requests that a policy is added to facilitate exemptions so that indigenous vegetation clearance for Ski Area Activities that have approval within Public Conservation Land, administered by DoC do not require resource consent. The following policy is requested:

Provide for continued terrain development and enhancement within the Districts identified Ski Area Sub-Zones whilst ensuring regard is given to the re-establishment and/or rehabilitation of indigenous vegetation communities where practicable.

11.83. A further policy is requested under the objective for Alpine Environments by NZ Ski Ltd (Objective 33.2.4).

Acknowledge the expertise and assessment of indigenous biodiversity values undertaken by the Department of Conservation for vegetation clearance proposals in Ski Area SubZones located on Public Conservation Land.

11.84. The merits of these policies are directly related as to whether it is recommended to accept the relief for an exemption and this is discussed below.

Objective 33.2.4 Protect the indigenous biodiversity and landscape values of alpine environments from the effects of vegetation clearance and exotic tree and shrub planting

11.85. The objective is a departure from the other parts of the Indigenous Vegetation Chapter where it identifies the landscape as a resource to protect in alpine environments, and also identifies that the planting of exotic species requires management within these areas. The intent of the objective, policies and corresponding rules generally continue the prevailing regime of the ODP within the alpine environments.

11.86. There is general support for this objective to be retained as notified from both Forest and Bird and DoC.

11.87. QPL seek that the objective is amended to recognise the importance of providing access to the Remarkables alpine recreation area (although have not appeared to define this area in any way) and the social and economic benefits from enabling low impact activities within the alpine environment. In addition, QPL seek a new policy echoing the intent to recognise the importance of public access to the Remarkables alpine recreation area.

11.88. QPL have not explained in their submission whether this area relates to the existing location of recreation activities in the Remarkables area, the Ski Area Sub Zone, or if it relates to the requested new special zone 'Queenstown Park Special Zone'. The latter request for a new special zone will be deferred until such time as the hearing on rezonings/mapping. In any case, I do not find the requested amendments of any benefit because the submitter has not explained why this 'alpine recreation area' deserves bespoke referencing compared to the other alpine areas in the District such as Cardrona, Treble Cone or Coronet Peak, all of which are identified as Ski Area Sub Zones.

11.89. The relief sought by QPL is not supported and I recommend the submission is rejected. I recommend the Objective is retained as notified.

11.90. Minor grammatical changes are recommended, these are associated with clarity.

11.91. Policy 33.2.4.1 is:

Recognise that alpine environments contribute to the distinct indigenous biodiversity and landscape qualities of the District and are vulnerable to change from vegetation clearance or establishment of exotic plants.

11.92. Submitter 339 (Evan Alty) and Forest and Bird request that the words 'should be protected from change' replace 'vulnerable'. I do not support the phrase 'should be protected', I consider that recognising that these areas are vulnerable from a visual and biodiversity perspective is appropriate. A further submission from Queenstown Airport Corporation (FS 1340) opposes the submission citing it contains ambiguous drafting and I accept their submission. I recommend modifying the policy so it states '..are vulnerable to change and require protection...'.

11.93. I accept the Forest and Bird submission in part and recommend changes to the policy are made so that it is more of a statement that achieves the objective. These are set out as follows with an evaluation of the changes in accordance with s32AA of the RMA.

11.94. Policy 33.2.4.2 is:

Protect the alpine environment from degradation due to planting and spread of exotic species.

11.95. Forest and Bird and DoC support the policy, as do Submitters 791 (Tim Burdon) and 794 (Lakes Land Care). I recommend the policy is retained as notified.

12. ISSUE 5: RULES

Part 33.3 Clarification, Application of the Rules and Exemptions

12.1. This component of the Indigenous Vegetation Chapter provides guidance on whether specific items or areas apply, how to apply the rules, and whether any land uses are exempt. While on the face of it the section seems prescriptive the detail is deliberate in response to the deficiencies identified with ODP provisions. In addition, it is also considered better practice to include these parameters, where possible, within this part of the chapter, rather than scattered throughout the plan in definitions. As identified in the background section of this evidence and the s32 it is preferred to keep qualifying statements within this chapter, rather than the definition. For this reason the references to structural dominance are located in the Indigenous Vegetation Chapter, rather than the respective definitions.

Rule 33.3.2 - Clarification

- 12.2. Forest and Bird support the clarification, in particular where it specifies that the rules apply to both formed and unformed roads. QPL oppose this and seek that it is deleted because 'rules cannot apply to roads that are not shown or zoned because of uncertainty'. I consider that the rules can apply because even if a road is not formed it is legally defined. In addition, I consider that there is no uncertainty as to the application of the rules as they simply apply throughout the District where a road is legally defined. The RMA does not prescribe that the area where a rule applies must be shown on a planning map through the use of a zone. It is my view that this provision be retained. Where indigenous vegetation is present within roads I consider it should be subject to the rules to assist with the Council's function to maintain indigenous biodiversity. The submission of QPL is rejected.
- 12.3. JBIL submit that references to the Land Environments of New Zealand should be deleted, as part of their submission opposing the use of these. For the reasons set out in this evidence at the discussion about Objective 33.2.3. I recommend that this request is rejected.
- 12.4. Submitter 805 (Transpower) seek a provision be added, which states that Outstanding Natural Landscapes (**ONLs**) and SNAs are not considered to be 'natural areas' for the purposes of the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (NESETA).
- 12.5. Their reasoning for this is because Transpower need to be able to trim and prune trees because they can cause fire hazards.
- 12.6. The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009³³ (NSETA) provide that *Trimming, felling, or removing any tree or vegetation, in relation to an existing transmission line, is a permitted activity.*³⁴ However, any tree or vegetation must not be trimmed, felled, or removed if it is in a *natural area*.³⁵
- 12.7. Clause 3 provides the interpretation of *natural area* which is:
- natural area means an area that is protected by a rule because it has outstanding natural features or landscapes, significant indigenous vegetation, or significant habitats of indigenous fauna*
- 12.8. I consider that the meaning of 'natural area' has the same intent of a SNA in the PDP. I therefore do not support the clarification requested. In addition, if the intent of the submission is for activities under the NETSA to be exempt from the rules in the PDP then I do not support

33 <http://www.legislation.govt.nz/regulation/public/2009/0397/latest/DLM2626036.html>. Downloaded 23 February 2016.

34 Clause 30(1) of the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009.

35 Clause 30(2)(b) of the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009.

this because it appears as though SNAs in the PDP do qualify as a natural area under NETSA. Without further evidence from the Submitter I recommend the relief sought be rejected.

12.9. Overall, I recommend that Part 33.3.2 is retained as notified.

Rule 33.3.3 – Application of the indigenous vegetation rules

12.10. The application of the indigenous vegetation rules is critical to ascertain whether an area has the coverage of indigenous species present to be included in the standards associated with the permitted clearance.

12.11. Forest and Bird and Fed Farmers support these provisions, while JBIL's further submission states '*further consideration be given to the manner in which indigenous vegetation is assessed. Particularly in terms of whether 'structural dominance' is achieved*'. I consider that the parameters that set out whether or not structural dominance is achieved are clear. JBIL has not suggested any alternative and I consider that the methods proposed are the most appropriate way to meet the purpose of the RMA.

12.12. QPL oppose 33.3.3 because in their view '*triggering clearance rules when the indigenous vegetation only makes up 20% is too restrictive*'. I refer to and rely on Mr Davis's evidence that 20% is an appropriate threshold.³⁶ It is my recommendation that these parameters are retained and I recommend the submission is rejected.

12.13. Provision 33.3.3.4 is :

Structural dominance means indigenous species that are in the tallest stratum.

12.14. Forest and Bird seek an amendment to the provision 'because it needs to be clearer' by making the following amendments:

Structural dominance ~~means~~ is attained when indigenous species that are in the tallest stratum and are visually conspicuous, and coverage by indigenous species exceeds 20% of the total area.

12.15. I do not support the inclusion of 'visually conspicuous' because it is introducing subjectivity. Also, provisions 33.3.3.2 and 33.3.3.3 set out respectively that a 20% threshold applies where structural dominance is attained. I recommend that the submission is rejected.

³⁶ Evidence of Mr Glenn Davis dated 6 April 2016 at paragraph 6.11.

12.16. I recommend that Part 33.3.3 - Application of the indigenous vegetation rules is retained as notified.

Rule 33.3.4 - Exemptions

12.17. Provision 33.3.4.1 is:

Any area identified in the District Plan maps and scheduled as a Significant Natural Area that is, or becomes protected by a covenant under the Queen Elizabeth II National Trust Act, shall be removed from the schedule and be exempt from rules in Table 3.

12.18. Forest and Bird seek that this is deleted because in their view a QEII or other covenants may not have conditions that ensure that the policies and objectives of the District Plan are met. While this point is correct, QE II covenants are generally seen as more protective than district plan rules because they contemplate none, or very little clearance of indigenous vegetation. They also regularly have conditions relating to the nature and intensity of stock grazing. By comparison, the SNA rule in Table 3 does not restrict a land use or intensity but relies on the definition of clearance to ensure the intensity is changed such that grazing would constitute clearance (for example, through crushing).

12.19. Importantly, there is the potential through a resource consent, plan change or notice of requirement to obtain permission to remove indigenous vegetation whereas instruments such as QE II covenants do not contemplate any clearance.

12.20. For these reasons I reject this submission and recommend the provision is retained as notified.

12.21. Exemption 33.3.4.2 is:

Indigenous vegetation clearance for the operation and maintenance of existing and in service/operational roads, tracks, drains, utilities, structures and/or fence lines, but excludes their expansion.

12.22. Forest and Bird request that the reference to drains is removed because the clearance of drains can result in further drainage of wetlands, and increased sedimentation of waterways.

12.23. Fed Farmers and Submitters 635 (Aurora Energy Ltd) and 805 (Transpower) support the exemption.

12.24. The exemption as notified in the PDP contains the qualifier 'but excludes their expansion'. I consider therefore that the exemption would not be likely to exacerbate the further drainage of wetlands. I consider that the exemption should be retained as notified.

12.25. Submitter Paul Kane (701) and JBIL (784) seek the following relief:

For the avoidance of doubt, existing irrigated land can continue to be irrigated. This land is excluded from the indigenous vegetation clearance rules

12.26. In my view this exemption would create significant uncertainty because the indigenous vegetation provisions are only concerned where irrigation would result in the clearance of indigenous vegetation. Land that is irrigated and also contains indigenous vegetation that has a coverage that is less than 20% or 30% depending on the circumstances set out in the application of the rules (33.3.3), means it will not qualify in terms of the application of the rules. Therefore, the exemption is pointless because the activity would be permitted. If the indigenous vegetation coverage does qualify, then I do not support the exemption because it could potentially be used as a method to clear indigenous vegetation, where a resource consent would otherwise be required. In addition, the submitters have not qualified what is meant by 'existing', and I also question whether land that has an indigenous vegetation coverage that qualifies in terms of the application of the rules would be irrigated.

12.27. Exemption 33.3.4.3 is:

Indigenous vegetation clearance for the construction of walkways or trails up to 1.5 metres in width provided that it does not involve the clearance of any threatened plants listed in section 33.7 or any tree greater than a height of 4 metres.

12.28. Forest and Bird, Evan Alty and Christine Ryan (290) support this exemption. I recommend the provision is retained as notified and that this submission is accepted.

Other Exemptions requested

12.29. JBIL seek a new exemption that exempts new farm areas that are to be irrigated from the clearance of indigenous vegetation provisions. JBIL ascertain that the PDP rules that include clearance limits associated with irrigation and 500m² are arbitrarily low. I do not agree and consider that 500m² is an appropriate area within land environments that are likely to contain indigenous vegetation that is important in terms of the maintenance of indigenous biodiversity. For the reasons set out throughout this evidence, the s32 and Mr Davis's evidence this submission is rejected because it would not fulfil the Council's function to maintain indigenous biodiversity.

12.30. QPL requests a further exemption for the clearance of indigenous vegetation required for the purposes of constructing a gondola between Remarkables Park, Queenstown Park and the Remarkables ski field. There is no evidence to support this exemption and I recommend it is rejected.

12.31. NZ Ski Ltd seek that the clearance of indigenous vegetation within the Coronet and Remarkables Ski Area Sub Zones is exempt when the land is located within Public Conservation Land managed and administered by the Department of Conservation. This would reduce the duplication of submitting applications for this activity under both the Resource Management Act 1991 and the Conservation Act 1987.

12.32. Conversely the Further submission by DoC (FS1080) states:

The Departments preference is for vegetation clearance, where it occurs on public conservation lands, to be subject to controls under the Resource Management Act including appropriate protection under section 6(c). Conservation Act approvals do not duplicate the District Council's responsibilities under section 31(b) of the Resource Management Act.

12.33. Submitters 610 (Soho Ski Area Limited and Blackmans Creek No. 1 LP (**Soho Ski**)) and 610 (Treble Cone Investments) submit that because these Ski Activity Areas are located within Crown pastoral Lease and Recreation Permit areas, and are subject to approvals from DoC regarding their activities, that there is unnecessary duplication in the rule and seek the following exemption and a related permitted activity rule:

Indigenous vegetation clearance undertaken on land managed under the Conservation Act in accordance with a Conservation Management Strategy or Concession; Under the Land Act, in accordance with a Recreation Permit; or the Reserve Act in accordance with a Reserve Management Strategy.

12.34. Cardrona Alpine Resort Ltd seek that indigenous vegetation clearance is permitted within the Ski Area Sub Zones.

12.35. I consider that the relief sought by the ski operators should be rejected because, irrespective of the status of land allowing the relief would not result in the QLDC fulfilling its functions under section 31 of the RMA.

Rule 33.4 – Table 1 Activity Status

12.36. The rule framework is structured in four tables as follows:

- a. Table 1 sets out the status of activities that do not comply with the permitted standards in Tables 2-4;
 - b. Table 2 sets out the permitted clearance for indigenous vegetation that is not identified in Schedule 33.8 as an SNA or within an alpine environment;
 - c. Table 3 sets out the permitted standards for clearance and earthworks within an SNA identified in Schedule 33.8; and
 - d. Table 4 sets out the permitted standards within the alpine environment.
- 12.37. Submitters DoC and Forest and Bird support Rule 33.4.1 be retained as discretionary but seek that rules 33.4.2 and 33.4.3, which set the activity status for SNA's and alpine environments, be non-complying.
- 12.38. Fed Farmers support the discretionary status for Rules 33.4.1 to 33.4.3.
- 12.39. A discretionary activity status has been proposed for all activities to enable the Council to consider all relevant matters associated with the proposed activity. A preference has been made to use the discretionary status over a restricted discretionary status, for instance, to ensure that the 'matters of discretion' required to be prescribed do not fall short of any relevant issues that arise. Further, despite the importance of protecting indigenous biodiversity, a non-complying activity status has not been allocated to any activities because the management, and potential removal is contemplated in the policy framework. However, I acknowledge the policies for SNAs are more conservative than for other areas.
- 12.40. I do not consider a non-complying activity status for resource consents for SNAs or threatened plants would add value in terms of protecting the resource. A fundamental difference between non-complying and discretionary activities is that non-complying activities need to be considered against s104D of the RMA, before an often broader assessment can be undertaken under s104(1). I consider that a non-complying activity status could frustrate the assessment of applications for indigenous vegetation clearance by constraining the scope to consider other statutory and non-statutory documents. This matter is also related to the application of biodiversity offsetting, and best practice biodiversity offsetting, which is likely to evolve from the definition suggested by DoC (see discussion under Issue 1 above).
- 12.41. It is therefore my preference that the discretionary activity status is retained because it affords the ability to take a wider scope of the impacts and redeeming elements (if any) associated with the clearance of indigenous vegetation.
- 12.42. For the reasons set out above I recommend that Table 1 and Rules 33.4.1 to 33.4.3 is retained as notified.

Rule 33.5 Standards for Permitted Activities:

Table 2 Clearance of indigenous vegetation not located within a SNA and not in the Alpine Environment

12.43. The permitted standards are (as modified by the recommended changes set out above):

Table 2	Clearance of indigenous vegetation not located within a Significant Natural Area or within Alpine Environments:
33.5.1	Clearance is less than 5000m ² in area of any site and, 500m ² in area of any site less than 10ha, in any continuous period of 5 years.
33.5.2	Where indigenous vegetation is greater than 2.0 metres in height, clearance is less than 500m ² in area of any site and, and 50m ² in area of any site less than 10ha, in any continuous period of 5 years.
33.5.3	Within a land environment (defined by the Land Environments of New Zealand at Level IV) that has 20 percent or less remaining in indigenous cover, clearance is less than 500m ² in area of any site and, 50m ² in area of any site less than 10ha, in any continuous period of 5 years (refer to section 33.9).
33.5.4	Clearance is more than 20m from <u>the bed of</u> a water body.
33.5.5	Is for the clearance of indigenous trees that have been windthrown and/or are dead standing as a result of natural causes and have become dangerous to life or property.
33.5.6	Is not the clearance of a plant identified as a threatened species listed in section 33.7.

12.44. As discussed in the background section of this evidence, the s32 attached at Appendix 3 and within Mr Davis's evidence, the reason for these rules are:

- a. The permitted limit of 5000m² set in the ODP has been retained, but in recognition that this is a reasonably large area to clear as a permitted activity additional standards are provided for. These are:
 - i. A standard that recognises that indigenous vegetation over 2.0 metres in height could have potential for biodiversity values and would include regenerating shrub and forest by introducing a lower threshold for permitted removal:
 - Permitted clearance of 500m² generally, and
 - Permitted removal of 50m² on sites less than 10ha in area.
 - ii. A standard recognising indigenous vegetation cover within acutely and chronically threatened land environments (as defined by Land Environments of

New Zealand Level IV) by reducing the permitted clearance limit to 500m² and to 50m² on sites less than 10ha.

- 12.45. Several submitters including 784 (JBIL) and Federated Farmers through their submissions on Policies 33.2.3.4 and 33.2.3.5 oppose the use of the LENZ Threatened Environment Classification as a trigger point for requiring a resource consent at 500m² or 50m² on sites less than 10ha in area. I consider that this is appropriate because it provides an accurate and useful indicator of where indigenous vegetation that is present within these land environments could be more susceptible to the impacts of clearance. Indigenous vegetation within chronically and acutely threatened land environments has a higher potential of being significant.
- 12.46. While Federated Farmers do not support the use of LENZ Threatened Environment Classification as a regulatory tool, they do support the remainder of the standards in Table 2, while noting that these standards accepted by Federated Farmers hinder land use.
- 12.47. In addition, I consider that utilising the LENZ are easy to apply and can be done so with certainty, using the maps in Schedule 33.9 as a reference. By comparison, Forest and Bird seek that the permitted clearance limit is 500m², or 1000m² for tall tussock, with no permitted clearance for an identified range of plants and habitats. I find that these requested standards add complexity and uncertainty. While I acknowledge the intent of Forest and Bird, that seek to ensure protection of plants and habitats, these are relatively uncommon and as set out in Mr Davis's evidence, these plants and habitats are likely to have been identified in the Council's SNA programme.
- 12.48. Having considered the submissions it is my recommendation that Table 2 is retained as notified. I consider that the standards are balanced, provide certainty, are measurable and enforceable. The standards adequately fulfil the Council's function to maintain indigenous biodiversity. By comparison, the rule framework proposed by Forest and Bird would in my view result in cumbersome provisions to administer. I also consider that not allowing any permitted removal is unfair and unreasonable and would create onerous landowner liability and Council enforcement obligations.

Rule 33.5 Standards for Permitted Activities:

Table 3 Activities within Significant Natural Areas

12.49. Table 3 (as notified) is:

Table 3	Activities within Significant Natural Areas identified in Schedule 33.8 and on the District Plan maps:
33.5.7	Earthworks shall: 33.5.7.1 be less than 50m ² in any one hectare in any continuous period of 5 years; 33.5.7.2 not be undertaken on slopes with an angle greater than 20°.
33.5.8	The clearance of indigenous vegetation shall not exceed 50m ² in area in any continuous period of 5 years.
33.5.9	Does not involve exotic tree or shrub planting.

12.50. Forest and Bird submit that there should not be any earthworks or clearance of indigenous vegetation undertaken within an SNA. I consider that the permitted parameters are very conservative and would not compromise the values of the SNAs. I recommend that this submission is rejected.

12.51. Forest and Bird seek the following amendments to Rule 33.5.9:

Does not involve exotic tree or shrub planting, or establishment of pasture or crop.

12.52. Federated Farmers (FS 1132) oppose this on the basis that the standards should provide for pasture and crop establishment. Federated Farmers primary submission (600) seeks that parameters are included to specify the area of exotic planting. This also raises the issue of whether establishing a pasture or crop would constitute indigenous vegetation clearance. I do not consider it appropriate to deliberately establish pasture or crops within an SNA, even if it did not directly constitute the clearance of indigenous vegetation, as I do not consider this practice to be in the interests of the SNAs in light of the Council's role to have regard to their protection under s6(c) of the RMA. In addition, having this phrase here but not within Table 1 could create a false expectation that this is permitted in other areas and the rule would be used as a surrogate for the definition.

12.53. Therefore, it is my recommendation that the request by Forest and Bird is accepted in part, however I do not wish to see the relief/reasons expressed by Federated Farmers accepted. I consider that the phrase should be amended to simply refer to the planting of exotic plants.

12.54. While the phrase would use the word 'planting' twice I do not support the word 'establishment' because this could happen via naturalising of non-indigenous vegetation. I prefer the use of the word 'planting' because it indicates a deliberate intent. I recommend therefore that Forest and Bird's submission is accepted in part and the submission of Federated Farmers is rejected.

12.55. The recommended revised wording is identified below:

Table 3	Activities within Significant Natural Areas identified in Schedule 33.8 and on the District Plan maps:
33.5.7	Earthworks shall: 33.5.7.1 be less than 50m ² in any one hectare in any continuous period of 5 years; 33.5.7.2 not be undertaken on slopes with an angle greater than 20°.
33.5.8	The clearance of indigenous* vegetation shall not exceed 50m ² in area in any continuous period of 5 years. <u>*With the exception of specified indigenous animal habitat within exotic vegetation.</u>
33.5.9	Does not involve <u>the planting of any exotic species</u> tree or shrub planting .

Rule 33.5 Standards for Permitted Activities:

Table 4 Activities within the Alpine Environment

12.56. This standard is the same as in the ODP, as follows:

Table 4	Activities within Alpine Environments – land 1070 metres above sea level:
33.5.10	Does not involve the clearance of indigenous vegetation, the planting of shelterbelts, or any exotic tree or shrub planting.
	Clarification: For the purpose of the clearance of indigenous vegetation by way of burning, the altitude limit of 1070 metres shall mean the average maximum altitude of any land to be burnt, averaged over north and south facing slopes

12.57. Forest and Bird request that Rule 33.5.10 is amended to simply refer to the planting of exotic species and not 'planting of shelterbelts' or 'shrub planting'. I recommend that this submission

is accepted because any exotic planting in these sensitive mountainous environments could have potential for adverse effects on indigenous biodiversity and landscape.

- 12.58. A further submission of JBIL opposes this and notes that shelter belts are required to enable protection for rural activities. I do not agree, noting that the qualifying elevation is 1070 meters above sea level and that these areas are visually vulnerable to change. The biodiversity is vulnerable, particularly to the establishment of species with wilding potential. The submission of JBIL is rejected.
- 12.59. JBIL submits that the elevation where indigenous vegetation is cleared is irrelevant and the policy (rule) should be deleted. I do not agree. It is accepted that these areas have vulnerable biodiversity and the separate rule specifies for the alpine environments that no clearance or planting of exotic species is permitted. The submission is rejected.
- 12.60. Submitter 817 (TAMI) requests to amend the alpine limit from 1,070m to 800m. TAMI state that this change is in line with the change in biodiversity at 800m, significant increased risk of erosion and sedimentation, and Landcare Research's Land Use classifications.
- 12.61. I rely on the evidence of Mr Davis at paragraph 7.16 and recommend that this submission is rejected.

13. ISSUE 6: SCHEDULED ITEMS

Provision 33.7 Threatened Plant List

- 13.1. The use of a threatened plant list is supported by Forest and Bird, however they seek the following amendment: *'Threatened plants include other plants that occur naturally within the District and are listed in the current New Zealand Threat Classification as either Threatened or At Risk'*. I do not consider it the appropriate planning approach in these circumstances to impose a rule based on information that is held outside of the District Plan. At the very least, the material would need to be incorporated by reference which would require the Council initiating a variation so it could be incorporated correctly through notification. Further, the list of plants would then remain as at the time of incorporation of reference – a plan change would be required for this material to be updated. Therefore, I am not supportive of the relief sought because it seeks to add unspecified threatened plants that are not within the schedule in 33.8.
- 13.2. DoC support the list and state that consideration should be given to inclusion of the following species:

- *Nationally Critical Dysphania pusila (locally extinct?) Cardamine (b) CHR3129947; tarn) Cardamine (c) CHR511706; Pisa Range) Chaerophyllum colensoi var. delicatula Crassula peduncularis (locally extinct?) Epilobium pictum*
- *Nationally Endangered Centipeda minima ssp. minima Euchiton ensifer Ranunculus brevis Trithuria inconspicua*
- *Nationally Vulnerable Carex cirrhosa Carex rubicunda Daucus glochidiatus Geranium retrorsum Gratiola concinna Mazus novaezeelandiae Myosotus glauca Ranunculus ternatifolius*

13.3. I refer to and rely on Mr Davis's evidence where he supports 'this amendment as it provides greater detail to the list of threatened plant species for the District' (Section 9 of Mr Davis' evidence). On this basis I recommend including these species in the list.

13.4. Submitter James Cooper (400) states that the list is incorrect and needs to be updated, but has not provided an updated list for consideration.

13.5. Submitter JBIJ submits that the list should be deleted or the locations of the relevant plants specifically identified. It is not considered efficient or necessary to do so, s76(4)(d) of the RMA states that a rule may be specific or general in its application. In this context the resource is best managed through a generic rule. The submission is rejected.

33.8 Schedule of SNAs

13.6. The submissions on SNA's are considered individually. I rely on the evidence of Mr Davis and refer to his recommendation on the submissions.

13.7. Forest and Bird and DoC support the schedule of SNA's.

13.8. Submitter 115 (Florence Micoud). I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.2 of his evidence. On this basis I recommend rejecting this submission.

13.9. Submitter 163 and 198 Vaughn Woodfield and Kate Woodfield. I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.3 of his evidence. On this basis I recommend rejecting this submission.

13.10. Submitter 383 (QLDC). Modify SNA F21A, F21B_1 and F21B_3 to the areas identified as 'exclusion areas' on the approved plans of RM090630. Remove SNA F21C_1 and 2.

13.11. QLDC in its corporate submission seek to reduce the SNAs identified on Hillend Station. The landowner provided limited feedback on the site assessments throughout the consultation and

site assessment process, and after notification, the QLDC was made aware that some of the SNAs identified within Hillend Station have resource consent to be cleared (RM090630). Neither myself or any of the ecological contractors involved in the SNA assessment program were involved in this resource consent application. Unfortunately we were not aware of the live resource consent to clear indigenous vegetation on this land.

- 13.12. The land is actively farmed and the resource consent does not expire until 2029. Therefore it is reasonable to expect this resource consent to be implemented and I recommend that it is not fair or reasonable to schedule these areas as an SNA.
- 13.13. In addition, subdivision consent RM120131 associated with the establishment of residential building platforms and subdivision at Hillend Station, has been completed and involves a vegetation management plan that includes 'passive revegetation areas' within areas also identified as an SNA. Therefore, I recommend that SNA F21C_1 and 2 should be removed and SNA's F21A, F21B_1 and F21B_3 should be reduced to the exclusion areas identified on the approved plan of RM090630, attached as Appendix 6.
- 13.14. Submitter 439 (Lake McKay Station). I rely on the evidence of Mr Davis in response to this submission point, as set out in sections 8.6 and 8.7 of his evidence. On this basis I recommend rejecting this submission.
- 13.15. Submitter 791 (Tim Burdon) remove where landowner is not in agreement. I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.9 of his evidence. On this basis I recommend rejecting this submission.
- 13.16. Submitter 806 QPL. I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.10 to 8.12 of his evidence. On this basis I recommend rejecting this submission.
- 13.17. Submitter 390 Run 505 Ltd. I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.13 of his evidence. On this basis I recommend rejecting this submission.
- 13.18. Submitter 531 (Crosshill Farms Ltd). I rely on the evidence of Mr Davis in response to this submission point, as set out in sections 8.14 to 8.16 his evidence. On this basis I recommend rejecting this submission.
- 13.19. Submitter 590 Sam Kane. I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.17 to 8.19 of his evidence. On this basis I recommend rejecting this submission.

- 13.20. Submitter 260 Roger Gardner. I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.20 of his evidence. On this basis I recommend rejecting this submission.
- 13.21. Submitter 315 Alpine Group. I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.21 to 8.31 of his evidence. On this basis I recommend rejecting this submission.
- 13.22. Submitter 502 Allenby Farms. I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.32 of his evidence. On this basis I accept that the southern boundary of the SNA E18C should be extended but reject the extension sought by the submitter to the northern boundary of the SNA.
- 13.23. Submitter 384 Glen Dene. I rely on the evidence of Mr Davis in response to this submission point, as set out in sections 8.33 to 8.35 of his evidence. On this basis I recommend rejecting this submission.
- 13.24. Submitter 323 Jed Frost and Adam Smith. I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.36 of his evidence. On this basis I recommend rejecting this submission.
- 13.25. Submitter 829 Isabella Anderson. I rely on the evidence of Mr Davis in response to this submission point, as set out in section 8.37 and 8.38 of his evidence. On this basis I recommend rejecting this submission.

Provision 33.9 Threatened Environment Classification Maps

- 13.26. The LENZ Threatened Environment Classification Maps have been included as a schedule to assist the administration of Rule 33.5.3. It is acknowledged that they are produced at a relatively large scale, however as noted in the rule, the Council's Webmap illustrates these maps at a greater magnification.
- 13.27. Several submitters oppose the maps.³⁷ For the reasons set out above, when I consider the submissions on the use of the LENZ criteria in the policy and rules, it is my recommendation that these maps are retained. Mr Davis also provide an explanation as to these maps, and addresses their appropriateness and inclusion in the chapter.

37 Submitters 590 (Sam Kane), Paul Kane (701), 784 (JBIL), 791 (Tim Burdon), 794 (Lakes Land care).

Assessment Matters

- 13.28. As discussed in Paragraphs 15 and 11.72 there are not any assessment matters in the indigenous vegetation chapter. The drafting of both higher order and fine grained policies is deliberate to assist decision making. Forest and Bird request that assessment matters are included and those suggested by Forest and Bird appear to be those in the ODP. I consider that the assessment matters do not offer added value over and above the suite of policies that will guide proponents and decision making associated with proposals to clear indigenous vegetation. I do not consider there are any aspects in the ODP assessment matters that offer added value over the recommended revised policies, attached as **Appendix 1**.
- 13.29. Many of the aspects in the ODP assessment matters are arbitrary, such as whether a favourable ecological assessment has been provided. In addition, I consider the matter at issue is the maintenance of indigenous biodiversity, therefore, how the clearance of indigenous vegetation occurs is irrelevant as the vegetation is still killed. I therefore recommend that there are no assessment matters in the chapter because the policies fulfil this purpose.

14. CONCLUSION

- 14.1. On the basis of my analysis within this evidence, I recommend that the changes within the Revised Chapter in **Appendix 1** are accepted.
- 14.2. The changes will improve the clarity and administration of the PDP; contribute towards achieving the objectives of the PDP and Strategic Direction goals in an effective and efficient manner. The changes will also give effect to the purpose and principles of the RMA.



Craig Barr
Senior Planner
7 April 2016

Appendix 1. Recommended Revised Chapter

Appendix 2. List of Submitters and Recommended Decisions

Appendix 3. Section 32 Report

Appendix 4. Section 32AA assessment

Appendix 5. The 5 step process set out by the Environment Court to identify SNAs (Appendix 5 of the ODP)

Stage 1 – Initial Identification

Initial identification of significant areas will involve:

- (a) Review of existing environmental databases and information on the Districts biodiversity to identify potentially significant sites.
- (b) Identification of information and data gaps on the district's biodiversity and those parts of the district where potentially significant sites may exist but which have not yet been studied or assessed.

Stage 2 – Consultation Process

Before commencing an assessment under Stage 3 the Council will:

- (a) Initiate personal consultation with the affected landowner and occupier.
- (b) Consult with the Department of Conservation and other interested parties regarding suitable ecological experts.
- (c) Arrange in conjunction with the landowner and occupier for a professional ecological assessment of the site to be carried out.
- (d) Discuss with the landowner and occupier, the Department of Conservation and other interested parties the scope and nature of the brief used to undertake the assessment and the sharing of information.

Stage 3 – Assessment

Stage 3 involves the determination of whether a site is significant in terms of section 6(c) of the RMA, utilising criteria detailed below.

Stage 2 – Consultation Process Continued

Having completed an assessment under Stage 3 the Council will:

- (a) Discuss the results of any assessment with the landowner and occupier and where necessary, appropriate methods of management or protection.
- (b) Make the outcomes of any ecological assessment part of the public record.

Stage 4 – Final Consideration³⁸

Before deciding whether or not to adopt any area identified in Stage 3 as being significant into the District Plan the Council will have regard to the following matters:

- (a) existing land use and the degree of modification associated with the site

³⁸ Refer to Environment Court decision C76/2001, attachment 3.

- (b) the economic effect on the landowner including development costs and lost potential (If these are relevant under section 7(b) of the Act)
- (c) consideration of non regulatory and regulatory methods which ensure the identified values and their needs are recognised and protected
- (d) presence and level of animal pests and weeds
- (e) resources required to implement effective protection
- (f) whether or not identified values are under threat
- (g) the extent to which values are or are not protected elsewhere

Stage 5 – Adoption into the District Plan

This process will include a Plan Change to the District Plan. The completion of the project has coincided with the review of the District Plan.

Determining Significance

For stage 3, to determine whether an area is significant in terms of Section 6(c) of the RMA, the following criteria were used to determine ecological significance:

(i)	<p>Rarity & Distinctiveness</p> <p>Whether the area supports or is important for:</p> <ul style="list-style-type: none"> • an indigenous species, habitat or community of species which is rare or threatened within the Ecological District or is threatened nationally, • indigenous species at their distribution limit, • endemic species, • indigenous fauna for some part of their life cycle (e.g. breeding, feeding, moulting, roosting), whether on a regular or infrequent basis, • migratory indigenous fauna. 	OR
(ii)	<p>Representativeness</p> <p>Whether the area contains one of the best examples of an indigenous vegetation type, habitat or ecological process which is typical of its Ecological District.</p>	OR
(iii)	<p>Diversity and Pattern</p> <p>The degree of diversity exhibited by an area in terms of vegetation and habitat types, ecotones and sequences along ecological gradients,</p>	OR
(iv)	<p>The Ecological Context of the Area</p> <p>The relationship of the area with its surroundings in terms of maintaining or enhancing connectivity due to its location and connections to a neighbouring area, or as part of a network of areas of fauna habitat, or as part of a corridor or stepping stone for movement/migration of species between or to areas of important habitat, or;</p> <p>The role the area plays in buffering the ecological values of an adjacent area or site of significant ecological value, or;</p>	OR

	<p>Its size and shape in providing for predominantly intact habitats (with evidence of healthy ecosystem functioning) thereby providing for seasonal or "core" habitat for threatened species.</p>	
	<p>National Priorities for protecting rare and threatened native biodiversity</p> <p>In addition to the above, the following have been identified as National Priorities for protecting rare and threatened native biodiversity on private land (MfE & DOC 2007) and in the Draft proposed National Policy Statement on Indigenous Biodiversity and have therefore been considered as criteria for significance:</p> <p>National Priority 1: To protect indigenous vegetation associated with LENZ land environments that have 20 % or less remaining in indigenous cover;</p> <p>National Priority 2: To protect indigenous vegetation associated with sand dunes and wetlands; ecosystem types that have become uncommon due to human activity;</p> <p>National Priority 3: To protect indigenous vegetation associated with "originally rare" terrestrial ecosystem types not already covered by priorities 1 and 2;</p> <p>National Priority 4: To protect habitats of acutely and chronically threatened indigenous species.</p>	

**APPENDIX 6: Appendix 6: Plan of recommended reduced areas
SNA F21 at Hillend Station.**