

**IN THE MATTER** of the Resource Management Act 1991  
**OF**

**AND**

**IN THE MATTER** of the Queenstown Lakes District  
**OF** Council Proposed District Plan.

**STATEMENT OF EVIDENCE OF GEOFFREY EDWARD DEAVOLL ON  
BEHALF OF THE DIRECTOR-GENERAL OF CONSERVATION**

**Planning**

**Submitter number 373/1080**

**21 April 2016**

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## INTRODUCTION

### *Experience and qualifications*

1. My full name is Geoffrey Edward Deavoll and I am a Resource Management Act Planner employed by the Department of Conservation (“**the Department**”), based in Christchurch.
2. I hold a Bachelor of Science degree in Geography from the University of Canterbury and have been practising as a resource management planner over the last seven years. From January 2009 I was employed as a Consents Planner with Canterbury Regional Council.
3. I have been employed as a Resource Management Act Planner with the Department since July 2013.
4. As a member of the Department’s Resource Management Act (“**RMA**”) planning team, my role includes providing planning evidence in support of the Department’s submissions on regional and district planning processes. These include the proposed Invercargill District Plan, the proposed Christchurch Replacement District Plan, and the proposed Otago Regional Policy Statement among others.

### *Code of conduct*

5. I have read the Environment Court’s Code of Conduct for Expert Witnesses and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

### *Scope of evidence*

6. Here I am providing planning evidence in relation to and in support of the Director-General of Conservation’s (“**Director-General**”) submission on various parts of the Proposed Queenstown Lakes District Plan. My evidence addresses the Director-Generals submission points and position as they relate to the following topics:
  - a) **Chapter 21 – Rural**
    - i. **Informal Airports – DOC operations**

**b) Chapter 33 – Indigenous Vegetation and Biodiversity**

- i. Biodiversity Offsetting**
- ii. Significant Natural Areas**
- iii. Permitted activities**
- iv. Non-complying activities**
- v. Section 32 Analysis**

**c) Chapter 34 – Wilding Exotic Trees**

7. In preparing this brief of evidence I have referred to or relied upon a number of documents including:

- a) The section 42 Officers report (“Officers report”)**
- b) The Otago Regional Policy Statement (“ORPS”)**
- c) The proposed Otago Regional Policy Statement (“pORPS”)**
- d) The Canterbury Regional Policy Statement (“CRPS”)**
- e) The evidence prepared for this hearing by Mr Rance and Dr Barea for the Director-General of Conservation**

**EXECUTIVE SUMMARY**

- 8. The Director-General’s submission addressed matters in Chapter 21, Chapter 33 and Chapter 34, which are all addressed within the Rural topics hearing (Hearing stream 2).
- 9. The submission on Chapter 21 Rural was focussed on the rule for control of informal airports located on Public Conservation Land or on Crown Pastoral Land. The submission was generally supportive of the rule but sought an exemption for operational activities of the Department.
- 10. The Officers report recommends a change to the rule that will address this submission point and I support this recommendation.
- 11. The Director-General sought a significant amount of changes to the structure and provisions of Chapter 33 Indigenous Biodiversity and Ecosystems. These changes are largely not accepted by the recommendations of the Officers report.

12. The changes sought are broadly to address four issues discussed within this evidence. These being; identifying and providing for the protection of Significant Natural Areas (“SNAs”); biodiversity offsetting; permitted activities and exemptions; and non-complying clearance of SNAs.
13. Regarding the identification and protection of SNAs, there has been a considerable advancement in the number of sites identified as SNAs in the PDP. It is though considered important that the PDP provides for the ongoing identification of SNAs through development proposals, and I consider it to be positive that the PDP provides for that to occur.
14. As a result of the Director-General’s submission regarding inclusion of biodiversity offsetting in the PDP some changes are recommended by the Officers report that I support. I consider though that there is potential for more detail to be provided within the policies to provide guidance on how biodiversity offsetting should be applied and also appropriate definition should be included for this purpose also.
15. The Director-Generals submission sought some amendments policies of Chapter 33 regarding enabling the use of biodiversity offsetting. The relief sought in the submission has largely been accepted by the Officers recommendations, with the exception of definitions of both biodiversity offsets and non net loss. I consider the inclusion of these definitions is required to provide clarity in the PDP over what both these concepts involve.
16. I have discussed a number of submission points around the permitted activities standards and exemptions provided for in the rules of Chapter 33. I am generally in agreement with the Officers recommendations on this aspect of the Chapter.
17. The submission has also sought that the clearance of vegetation considered to be significant in terms of section 6(c) of the RMA, be addressed through application of a non-complying activity rule. Separating significant indigenous vegetation out from clearance of indigenous vegetation of lesser value reflects both the policy direction provided by the PDP Chapter 33, and reflects the national importance of providing for the protection of significant indigenous vegetation under the RMA.
18. The Director-General submission is generally supportive of the provisions of Chapter 34 which places controls on the new planting of a number of tree species with wilding

potential. The Department of Conservation has a particular interest in controlling the spread of wilding trees within the Queenstown Lakes District. I support the Officers recommend amendments to this chapter including the proposed non-complying activity status for radiata pine plantings.

## **CHAPTER 21 – RURAL**

### **Informal Airports**

19. The PDP contains controls on the use of “informal airports” in the rural zone within the district. Table 6 within section 21.4 of Chapter 21 provides permitted activity standards for the operation of informal airports located on Public Conservation Land and on Crown Pastoral Land. This matter is discussed in detail as Issue 9 of the Officers report.
20. The first permitted activity standard provides for informal airports located on public conservation land provided that the operator is operating in accordance with a Concession issued pursuant to section 17 of the Conservation Act 1987.
21. Although it is not mentioned in the Director-Generals submission, I note that reference to section 17 is not correct. Section 17 discusses access to conservation areas. The correct reference would be section 17ZF which controls take-off or landing of aircraft within a conservation area.
22. The Director-Generals submission on this matter was in support of the proposed permitted activity standards but sought an amendment to include “operational activities of the Department of Conservation within permitted activity standard 21.5.25.3. This standard as proposed currently provides for emergency and fire fighting type activities as well as farming activities.
23. I acknowledge that section 4 of the RMA provides an exemption for the Crown from RMA controls for section 9(3) land use activities. This is on the condition that; the activities are consistent with a management strategy or management plan established under the Conservation Act; and the activity does not have significant adverse effects beyond the boundary of the land area.
24. Bearing this in mind it was not clear where activities carried out by the Department that did not meet the conditions of the section 4 exemption fit within the standards given that these operations would not be operating under a concession either. An associated concern

is that as many operations of the Department involving aircraft will require landing sites located in close proximity to roads or road ends for transport of materials, which may breach the 500 metre buffer from formed roads.

25. Given this I consider it is important to include operational activities of the Department within Crown lands to be a permitted activity. A change to address this submission point is recommended by the Officers report and I agree with the recommend approach. I note that the Officers report also recommends removing the condition providing for a setback of 500 metres from formed roads and replaces it with a setback from “any other zone”. This additional change considered, I still consider the amendment sought by the Director-General is required.

### **CHAPTER 33 - INDIGENOUS VEGETATION AND BIODIVERSITY**

26. The majority of the Director-General’s submission was focussed on this chapter of the PDP.
27. As well as the management for conservation purposes, of all land and natural resources held under the Conservation Act, the Department has the function to advocate the conservation of natural resources generally.
28. I acknowledge that the Director-General’s submission sought a significant amount of changes to the provisions of Chapter 33, including structural changes to accommodate other relief sought.
29. I consider that many of the changes to the policies sought by the submission were also an attempt to re-organise the policies into three distinct groups. The first group would be general to the councils function for maintaining the districts indigenous biodiversity. The second group would be specific to providing for the protection of significant indigenous vegetation and significant habitats of indigenous fauna. The third group of policies were those providing for or enabling non-regulatory methods to work towards the maintenance of indigenous biodiversity. I accept the Officers resistance to significant changes to the structure of the PDP at this late stage of the process but I do consider some of the suggested changes have merit and would improve the clarity of the Chapter.
30. The Director-Generals submission on this chapter can be divided up into the following key issues:

- a) **Identifying and providing for the protection of SNAs**
- b) **Biodiversity offsetting**
- c) **Permitted activities standards and exemptions**
- d) **Non-complying activity for clearance of SNAs**

### **Identifying and providing for the protection of SNAs**

31. The Officers report discusses this as “Issue 3” from paragraph 6.28 (page 13). I consider that proposed Chapter 33 is a considerable improvement on the ODP in providing for the identification and protection of SNAs. The identification of SNAs in the District Plan provides certainty for land owners and the community that those areas will be managed appropriately and provided protection as required under section 6(c) of the RMA.
32. The Director-Generals submission generally supported the schedule of SNA’s in the PDP. As Mr Rance has discussed in his evidence, any changes recommended to the individual SNA’s in response to changes sought through submissions, should be based on ecological assessment and the values present, not be because changing the overlay would make it easier to develop the area.
33. Firstly the PDP has identified and scheduled a significant number of SNAs within the district. This is a significant improvement on ODP which identified only a small number of SNAs most of which were located on land managed by the Department.
34. I also consider it important that the district plan recognises that while the list of scheduled SNAs is reasonably comprehensive, it is unlikely for a number of reasons to have captured all indigenous vegetation across the district that meets one of the criteria for determination of SNAs. Mr Rance’s evidence provides examples of areas that in his opinion are likely to meet a number of the significance criteria, but are not captured currently in the schedule of SNA’s in the PDP.
35. Given this I consider it to be important that Policy 33.2.1.1 provides for further identification of SNAs through development proposals using the significance criteria detailed in Policy 33.2.1.9.

36. As discussed in more detail below, the Director-Generals submission on Chapter 33 sought that no clearance of SNA's be permitted in the rules, and that clearance of SNA's be subject to a non-complying activity status.
37. In both these cases, where an area is proposed for development that is not otherwise listed as an SNA within the PDP, some form of ecological assessment would be required to determine if the area met the criteria for an SNA.
38. The Officers report does not recommend accepting either of these suggested changes. Given this, for application of the permitted activities as proposed in the PDP, only the scheduled SNA's in the PDP can be relied upon to determine the area permitted to be cleared e.g. 50m<sup>2</sup> within scheduled SNA's.
39. The conditions in Table 2 of Chapter 33, that the permitted clearance shall not include clearance of any listed threatened plant, gives some comfort that some unidentified SNAs will not be cleared as a permitted activity. This is because the presence of threatened species will trigger the rarity criteria contained within proposed Policy 33.2.1.9 (Policy 33.2.1.10 of the revised chapter) and will require discretionary consent.

### **Biodiversity offsetting**

40. The Director-Generals submission on Chapter 33 sought greater recognition in the policies, of biodiversity offsetting as a tool for addressing residual adverse effects. The submission also sought to introduce specific reference to the concept of no net loss that is linked to the use of biodiversity offsetting within the district.
41. This also included seeking specific reference to this issue in the Purpose statement at the head of the chapter and appropriate definitions for both 'biodiversity offsetting' and 'no net loss'
42. Dr Barea, in his evidence, gives an overview of the principles of biodiversity offsetting and how these have developed under programs internationally and within New Zealand. His evidence also clarifies a number of relevant points such as the difference between compensation and offsetting, the meaning of non net loss, and importantly where the application of biodiversity offsets fits within the mitigation hierarchy under the RMA.
43. With regard to the mitigation hierarchy, while I consider the statement in paragraph four of the Purpose section of the chapter as well as the wording of Policy 33.2.1.8 including

the Officers recommended changes do show where biodiversity offsetting fits within the mitigation hierarchy, it may be served better by including the following new policy within the Policy framework:

*Manage the effects of activities on significant indigenous vegetation or indigenous fauna by:*

- a) *avoiding as far as practicable and, where total avoidance is not practicable, minimising adverse effects*
- b) *requiring remediation where adverse effects cannot be avoided*
- c) *requiring mitigation where adverse effects on the areas identified above cannot be avoided or remediated*
- d) *requiring any residual adverse effects on significant indigenous vegetation or indigenous fauna to be offset through protection, restoration and enhancement actions that achieve no net loss and preferably a net gain in indigenous biodiversity values having particular regard to;*
  - i. *limits to biodiversity offsetting due the affected biodiversity being irreplaceable or vulnerable;*
  - ii. *the ability of a proposed offset to demonstrate it can achieve no net loss or preferably a net gain;*
  - iii. *Schedule xx on Biodiversity Offsets (refer to Dr Barea evidence for schedule xx)*
- e) *enabling any residual adverse effects on other indigenous vegetation or indigenous fauna to be offset through protection, restoration and enhancement actions that achieve no net loss and preferably a net gain in indigenous biodiversity values having particular regard to;*
  - i. *the ability of a proposed offset to demonstrate it can achieve no net loss or preferably a net gain;*
  - ii. *Schedule xx on Biodiversity Offsets*

44. The Director-Generals submission sought the inclusion of the definitions of both “biodiversity offsets” and “no net loss” is included in the PDP as they relate to the inclusion of these into the policies.

45. I note that the definitions sought in the submission are also recommended by Dr Barea in his evidence, and considered to be consistent with both the international and national guidance on biodiversity offsetting.

46. The Officers report rejects both definitions being included in the PDP as they consider the definition may change in the future and may be problematic. Dr Barea discusses this concern briefly in his evidence.

47. I consider the concern raised by the Officers report regarding the definitions is not entirely justified and given the advice of Dr Barea, I consider it would provide more certainty for what is intended by these terms than if they were absent from the PDP.
48. I note that Dr Barea has also recommended a definition of “compensation” should the panel not agree with the recommended deletion of compensation from the proposed Policy 33.2.1.8. I consider this will be helpful in making the distinction between the concepts of compensation and biodiversity-offsetting.
49. Overall I consider it to be positive that biodiversity offsetting is referred to appropriately within the Policies of the PDP, but I also consider that there is potential for further detail on the appropriate use of biodiversity offsetting to be provided in the PDP in the form of the new policy and appendix detailed above and in the evidence of Dr Barea.

#### **Permitted activities standards and exemptions**

50. In part the structure of the permitted activity rules and standards are discussed above in relation to identification and protection of SNA’s. A more detailed discussion of the permitted activities in relation to the Director-Generals submission follows.
51. As discussed above the submission sought that there be no permitted clearance of SNA’s, whether they be SNA’s currently identified in the PDP, or identified through a site specific assessment of the vegetation against the significance criteria in Policy 33.2.1.9, as provided for in Policy 33.2.1.1. This has not been accepted in the Officers report, and is discussed as ‘Issue 1’ from page 17 of that report.
52. Part of the reason for not accepting this relief is that the requiring of an assessment of the site would reduce efficiency in applying the permitted rules and reduce certainty for determining where the rules apply.
53. I note that permitted standard 33.5.6, that the clearance not be of any plant listed in section 33.7 as a threatened plant, will possibly require some form of ecological assessment to ensure that the clearance of a limited area of vegetation will not breach that standard. This is as the presence of many of the threatened plants listed will not be immediately identifiable to landowners or contractors. I support this standard being included in the Plan, if the relief sought to not permit clearance of significant indigenous vegetation is rejected.

54. Not accepting the relief sought is therefore accepting that there may be incremental and cumulative loss of significant indigenous vegetation under the proposed permitted activity rules and standards, which is contrary to section 6(c) of the RMA.
55. Although no specific relief was sought in the Director-Generals submission, it was discussed in the submission that there is an unintended consequence of permitted activity standard 33.5.5 in Table 2. The standard *“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”*.
56. As the permitted activity under 33.4.1 in Table 1 states *“The clearance of indigenous vegetation complying with all the standards in Table 2 shall be a permitted activity.”* (my emphasis). If the vegetation clearance is not for the purpose of clearing wind thrown or dead trees, then the activity cannot comply with all of the standards of Table 2 and cannot be a permitted activity. I do not believe this is the intention of this rule.
57. I consider this can be remedied by removing this standard (33.5.5) and adding it to the exemptions listed under 33.3.4.

#### **Non-complying activity for clearance of SNAs**

58. The Director-Generals submission sought that the clearance of indigenous vegetation from within an SNA be considered as a non-complying activity. This is to include those SNA's that are currently identified in the PDP, or any other SNA that is identified through an ecological assessment of the site using the criteria included under Policy 33.2.1.9.
59. This matter is discussed and recommended to be rejected in the Officers report from paragraph 12.37 (page 49).
60. It is my understanding that an application for resource consent for the clearance of indigenous vegetation will generally require an ecological assessment commensurate to the scale and significance of the area of vegetation to be cleared. Given this I do not consider it to be any more onerous on a landowner/ developer to assess the significance of the subject site to contract an ecologist to assess the significance of the vegetation against the criteria included in the PDP. This is likely to be required information as directed by Schedule 4 of the RMA.

61. In my opinion the policy direction as proposed (including the recommendations within the Officers report) regarding SNAs supports clearance of these areas being considered via a non-complying activity status.
62. Particularly Objective 33.2.2:  
*“The Protection and Enhancement of Significant Natural Areas”*
63. Policy 33.2.2.1:  
*“Avoid the clearance of indigenous vegetation within Significant Natural Areas, including those that meet the criteria in Policy 33.2.1.10 that would reduce indigenous biodiversity”*
64. Policy 33.2.2.2:  
*“Allow the clearance of indigenous vegetation within Significant Natural Areas only in exceptional circumstances and ensure that the clearance is undertaken in a manner that retains the values of the area”*
65. In my opinion these policies signal that clearance of SNAs or indigenous vegetation that meets the significance criteria in the PDP is not appropriate in all but the exceptional circumstances and that the effects of the activity should be given robust consideration that the non-complying activity provides.
66. The Director-Generals submission discussed proposed Policy 33.2.1.9, which includes the criteria used to determine significance of indigenous vegetation as referred to in Policy 33.2.1.1. The submission sought that the criteria be removed and placed in an Appendix to Chapter 33. As Policy 33.2.1.9 is drafted it anticipates the criteria to be used somehow to assess the effects of indigenous vegetation clearance activities.
67. This matter is discussed in the Officers report from paragraph 11.35 (page 32). I have no concern for the use of the criteria for further identification of SNA’s as provided for in Policy 33.2.1.1. I am uncertain how the criteria can be used for the purpose described in Policy 33.2.1.9.
68. The Officers report comments on this issue referencing the method under Policy 9.3.1 of the Canterbury Regional Policy Statement 2012 (“**CRPS**”), and the report produced by Wildlands Consultants undertaken for the Canterbury Regional Council that supports the

similar ecological significance criteria contained within the CRPS. These are considered to provide justification for the proposed use of the significance criteria in Policy 33.2.1.9.

69. Firstly, the method referenced from the CRPS when read in conjunction with the explanation that follows it, makes it clear that the CRPS anticipates District Councils in the Canterbury region will undertake a study of the indigenous vegetation and habitats of the district and indentify SNAs. But the method also anticipates rules in district plans will provide for a case-by-case assessment of whether an area proposed for clearance comprises an area of significant indigenous vegetation or significant habitat of indigenous fauna and therefore warrants protection.
70. Secondly and the passages referenced from the Wildlands document referenced mirrors the above approach in that local authorities use the criteria to undertake SNA studies of the district, or where the studies have not been undertaken, to enable the significance of an area subject to a development proposal to be determined using the criteria and protection provided if the area is in fact significant.
71. Given this I consider the example referenced in the Officers report do not support the intention of Policy 33.2.1.9 in using the significance criteria to assess and determine the adverse effects of a proposed clearance of indigenous vegetation.
72. I consider it is appropriate to determine the significance of the subject area of vegetation using the criteria, which will determine which rules of the PDP apply to the proposed activity.

### **Section 32 Analysis**

73. I agree with the assessment of the provisions of Chapter 33 against the relevant statutory documents that is contained in the ‘Statutory Context’ section of the Section 32 Evaluation Report (“s32 Evaluation”) included as Appendix 3 to the section 42A Officers Report, particularly the discussion of the relevant objectives and policies of the ORPS and the pORPS.
74. I consider that given the submissions of the Director-General on the provisions of Chapter 33, being generally supportive of the approach to maintaining indigenous biodiversity of the district and providing for the identification and protection of significant

indigenous vegetation, further analysis of the efficiency and effectiveness of the provisions is not required.

75. I consider that seeking a non-complying status for clearance of significant indigenous vegetation will not be more onerous on landowners in terms of the information required to be submitted with resource consent applications for the activity. It will limit the ability for indigenous vegetation to be cleared in some circumstances but I consider that that situation is anticipated by the provisions of the PDP.
76. I consider this approach to be the most effective method available to the Council to carry out its function under section 31 of the RMA.

### **CHAPTER 34 – WILDING EXOTIC TREES**

77. The PDP, Chapter 34, proposes controls on new plantings of specified tree species with wilding potential, which has the objective of protecting landscape, biodiversity and soil resources from new wilding tree incursions in the district.
78. The Director-Generals submission supported the provisions of Chapter 34 in general, but sought minor amendments to the list of tree species. This support is as the Department of Conservation is heavily involved in the management, containment and eradication of wilding trees in the Queenstown Lakes district. The Department as a manager of a significant area of land for conservation purposes within the district would support any provisions in the PDP that would limit the possibility of new wilding tree incursions being created.
79. I consider the prohibited activity status for the species listed in the PDP is appropriate, and reflects the importance the wider community places on controlling the spread of wilding trees. The current operations to control existing areas of wilding trees comes at a considerable cost of time and resources to the Department, Councils and the wider community, as well as the increasing financial costs involved in control operations.
80. I do though agree with the recommendation to remove radiata pine from the prohibited list and instead include planting of that species within a separate non-complying activity rule. This will allow for the planting of this species providing the adverse effects of doing so are determined to be minor.

81. My understanding is that radiata pine is of less of a concern as a wilding species in the Queenstown Lakes district, and given this there will likely be situations where it's planting is appropriate and the effects of the planting can be avoided or mitigated.

**Geoff Deavoll**

A handwritten signature in blue ink, appearing to read "G. Deavoll", enclosed in a thin black rectangular border.

**21 April 2016**

