

Memorandum

Date: 20 May 2016
To: Commissioner Nugent
From: Alice Balme, QLDC
Re: Advice regarding section 6(a) of the Resource Management Act 1991

1. You have sought advice as to the meaning of the word “preservation” in section 6(a) of the Resource Management Act 1991 (‘RMA’) and whether that is different from “protect” used in Policy 21.2.12.5 in the Proposed District Plan.

2. Section 6(a) of the RMA provides:

6 Matters of national importance

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 recognise and provide for the following matters of national importance:

- (a) **The preservation of** the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the **protection** of them from inappropriate subdivision, use and development...

[Emphasis added]

3. Policy 21.2.12.5 in the Proposed District Plan states:

Protect, maintain or enhance the natural character and nature conservation values of lakes, rivers and their margins, with particular regard to places with nesting and spawning areas, the intrinsic value of ecosystem services and areas of indigenous fauna habitat and recreational values.

[Emphasis added]

4. However, some useful guidance can be obtained from the Oxford Dictionary and other relevant legislation and statutory documents.

“Preservation” and “Protection”

5. Section 6(a) of the RMA uses both the terms ‘preservation’ and ‘protection’.

6. Neither term is defined in the RMA. However, the draft 1992 NZCPS contained a definition of “preservation”. This definition was not included in the operative NZCPS. However, it is useful because it defines preservation in the context of the RMA:

Preservation is given meaning by its use in Sections 6 of and 58 of the Resource Management Act 1991. Preservation normally inhibits changes which would detract from the natural character of the coastal environment. This does not preclude use which has no adverse effects. Where the natural character of the coastal environment requires preservation, the avoidance of adverse effects becomes important.

7. The draft 1992 NZCPS also contained a definition of “protection”:

‘Protection’ is given its meaning by its use in Sections 6 and 58 of the Resource Management Act 1991. ‘Protection’ is used in the context of the adverse effects of inappropriate subdivision, use, and development. Protection can be achieved by avoiding, remedying or mitigating such effects.

8. While the two terms have similar meanings in the context of section 6(a) of the RMA, it would appear that preservation is a more rigid requirement than protection. Preservation in this context suggests that something is to be kept in its original or existing state and should therefore not be degraded. It is an absolute term. Whereas, because protection is qualified by reference to the concept of the appropriateness of development, it is not absolute.
9. The Ministry for the Environment set out in its report to the Select Committee on Supplementary Order Paper 22 that preservation is a stricter requirement than protection:

In its natural meaning “preservation” is a stricter requirement than “protection”. Preservation means no change, whereas protection involves a value judgement as to the degree of protection necessary and how it can be afforded.

10. However, when “protection” is used in its ordinary context, without reference to section 6’s concept of appropriateness, its meaning and effect is for all intents and purposes the same as “preservation”.
11. The Oxford Dictionary defines the word “protect” as “to keep safe, defend, guard etc” and “protection” as “the act or an instance of protecting”.
12. The Oxford Dictionary defines the word “preserve” as “to keep safe or free from harm, decay, etc” or “to maintain (a thing) in its existing state”. “Preservation” is defined as “the act of preserving or the process of being preserved”.
13. When the ordinary meaning of the two terms is applied, without the qualifier in section 6(a) of “inappropriate development”, they can be used to achieve the same result. The words “preservation” and “protection” could ordinarily be used interchangeably when referring to environmental values.

District Plan

14. The purpose of the preparation, implementation and administration of a district plan is to assist the Council to carry out its functions in order to achieve the purpose of the RMA.¹
15. The purpose of the RMA, as set out in section 5 is to promote the sustainable management of natural and physical resources. The matters set out in section 6 must be recognised and provided for by the Council in carrying out its functions and achieving the purpose of the RMA.
16. The District Plan must therefore recognise and provide for the preservation of the natural character of lakes and rivers and protection of those lakes and rivers from inappropriate subdivision, use and development. However, it should be noted that preservation and

¹ RMA, s72.

protection of the environment is an element of sustainable management of natural and physical resources.²

17. Section 6(a) includes both of these elements:

- a) First, preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins; and
- b) Secondly, protection of them, meaning protection of the coastal environment (including the coastal marine area), wetlands lakes and rivers and their margins.

18. However, section 6 does not give primacy to preservation or protection; it simply means that provision must be made for preservation and protection as part of the concept of sustainable management.³

19. The issue for the Hearing panel is whether Policy 21.2.12.5 is appropriate in terms of the Council recognising and providing for the matters set out in section 6(a) in its District Plan and achieving the purpose of the RMA.

20. By seeking to “protect, maintain and enhance” natural character in Policy 21.2.12.5, the District Plan has recognised and provided for the matters in section 6(a). That is because to “protect, maintain and enhance” is akin to “preservation”.

AHB.

² *Environmental Defence Society Incorporated v The New Zealand King Salmon Company* [2014] NZSC 38 at [148].

³ *Ibid* at [149]