

**BEFORE THE QUEENSTOWN LAKES DISTRICT
COUNCIL**

IN THE MATTER of the Resource Management Act
1991

AND in the matter of the Queenstown Lakes Proposed
District Plan, Submissions and Further Submissions on
Chapter 21 Rural and Chapter 33 Indigenous Vegetation
and Biodiversity

BY NZ SKI LIMITED

Submitter

SUBMISSIONS OF COUNSEL FOR NZ SKI LIMITED

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INTRODUCTION

1. NZ Ski Limited (“NZ Ski”) filed a submission on the Proposed District Plan (“PDP”) (number S0572). NZ Ski requested that the clearance of indigenous vegetation within Ski Area Sub Zones be exempt from indigenous vegetation clearance rules, provided such exemption only applies to Public Conservation Land administered by the Department of Conservation (“DOC”).
2. Mr Dent fully explains the background to NZ Ski’s position in his Statement of Evidence¹. By way of a summary:
 - (a) NZ Ski’s operations necessitate regular earthworks activities, and the associated clearance of indigenous vegetation;
 - (b) As the Remarkables and Coronet Peak Ski Areas are located within Public Conservation Land managed and administered by DOC, NZ Ski is bound to comply with DOC’s requirements with respect to the clearance of indigenous vegetation (as contained in the Conservation Act 1987);
 - (c) The level of assessment undertaken by DOC in considering applications to clear indigenous vegetation is the same as that which would be undertaken by Queenstown Lakes District Council (“Council”) in respect of a resource consent application under the Resource Management Act 1991 (“the Act”); and
 - (d) NZ Ski wishes to reduce the duplication of submitting applications to remove indigenous vegetation under both the Conservation Act 1987 and the Act.

DOC POSITION

3. DOC lodged a further submission (number FS1080) stating it preferred vegetation clearance on Public Conservation Land to be the subject of controls under the Act.

¹ S0571-Totally TL-T02-Dent S-Evidence, Pages 22 to 25

4. In advance of this hearing, NZ Ski and DOC entered into discussions which culminated in DOC agreeing to withdraw its further submission, but only to the extent that it no longer opposes an exemption for vegetation clearance in Ski Area subzones on Public Conservation Land².

COUNCIL POSITION

5. I note that the Council's position is that the relief sought by NZ Ski could be supported in respect of land that is a Conservation Area (as defined in the Conservation Act 1987), managed by DOC and has the relevant approval.³
6. This position is reinforced by Mr Barr in his Summary of Evidence:⁴

"I also note that the Department of Conservation have withdrawn their further submission opposing NZ Ski's submission that exempts clearance activities within the Ski Area Sub Zones on land administered by DoC. On this basis an exemption could be supported providing it does not create unintended consequence associated with clearance on other land."

STATUTORY FRAMEWORK

7. The provisions of the Act relevant to NZ Ski's submission are sections 6(c) and 31(1)(b)(iii). These provisions set out Council's duties and functions with respect to the maintenance of indigenous biological diversity.
8. Section 6(c) provides as follows:

"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:

² Memorandum of Partial Withdrawal of Further Submission was lodged with the District Plan Hearings Administrator on 20 April 2016

³ Legal Submissions for Queenstown Lakes District Council dated 2 May 2016, Paragraph 7.5

⁴ S0001-QLDC-T02-BarrC-Summary of Evidence Chapter 33, Paragraph 7

...

(c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*"

9. Section 31(1)(b)(iii) provides as follows:

"(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

...

(b) *the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—*

...

(iii) *the maintenance of indigenous biological diversity:*"

ISSUES FOR CONSIDERATION

Case law

10. Similar exemptions were considered by the Environment Court in *Royal Forest and Bird Protection Society Inc and others v Central Otago District Council*⁵ and *Royal Forest and Bird Protection Society of New Zealand Inc v Waitaki District Council*.⁶
11. The Environment Court in the *Central Otago* case upheld an exemption on grounds that the tenure review process sufficiently addressed section 6(c) matters, and that pastoral leaseholders would be less willing to enter into the tenure review process should freeholded land then be subject to protection controls under the Act (thereby losing the opportunity for the environmental benefits associated with the tenure review process).

⁵ A128/2004

⁶ [2012] NZEnvC 252, (2012) 17 ELRNZ 559

12. The Environment Court in *Waitaki* distinguished *Central Otago District Council* and held that it had very limited relevance, given it concerned a different district, under different legislative provisions and policy setting, and different evidence before the Court.⁷
13. In *Waitaki*, blanket permitted activity status for indigenous vegetation clearance on land freeholded through the tenure review process (under the Crown Pastoral Land Act 1998) was proposed. The Environment Court held that such an exemption would not promote the purpose of the Act, and directed that the exemption be deleted from *Waitaki District Plan*.
14. The Environment Court was particularly concerned that the level of assessment of indigenous vegetation matters undertaken during the tenure review process was not as rigorous as that which would be undertaken in a resource consent application process under the Act. In fact, there was evidence before the Court that pastoral lease tenure review outcomes had not always resulted in protection of SNAs, particularly those at lower elevations.
15. *Waitaki* can be distinguished from the exemption sought by NZ Ski;
 - (a) The effects of indigenous vegetation clearance will be controlled through the DOC concession process;
 - (b) The DOC assessment process is equally as rigorous as an assessment undertaken by Council under the Act and the outcomes of the process will result in the protection of s6(c) matters;
 - (c) DOC does not oppose the relief sought by NZ Ski.
16. The Council will still meet its functions under sections 6(c) and 31(1)(b)(iii) of the Act with respect to the control of the maintenance of indigenous biological diversity;
 - (a) NZ Ski's proposal will not result in blanket permitted activity status; and

⁷ Pages, 17 and 18, Paragraphs 49 to 51

(b) applications made to DOC will be subject to the same rigorous assessment as would have been undertaken by Council in respect of a resource consent application.

17. In my submission, “Control” in the context of s31(1)(b) means that the Council can specify the methods to control the effects. In my submission it does not mean the Council needs to be “in control” of the process itself.

Proposed Rule 33.3.4.4

18. In response to a request made by the Panel, Council Officers drafted the following wording for a rule permitting the clearance of indigenous vegetation on land within the Ski Area Sub Zones that is managed by DOC:⁸

33.3.4.4 Indigenous vegetation clearance within the Ski Area Sub Zones on land administered under the Conservation Act 1987 is exempt from Rules 33.4.1 and 33.4.3 where the relevant approval has been obtained from the Department of Conservation, providing that:

(a) The indigenous vegetation clearance does not exceed the approval by the Department of Conservation;

(b) Prior to the clearance of the indigenous vegetation, persons shall provide to the Council the relevant application and the approval from the Department of Conservation; and

(c) The Council is satisfied that the application information submitted to the Department of Conservation adequately identified the indigenous vegetation to be cleared and the effects of the clearance.

⁸ Memorandum of Counsel on behalf of Queenstown Lakes District Council Providing Requested Further Information dated 16 May 2016, Paragraph 3 and Schedule 1.

19. Mr Dent comments on this rule in his executive summary. I agree with the concerns he raises – specifically parts (b) and (c).

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25 May 2016