

CASEBOOK

S0572 – NZSki Limited – Macdonald J – Legal Submissions.pdf

1.	Royal Forest and Bird Protection Society of New Zealand Inc. v Waitaki District Council	[2012] NZEnvC 252
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Royal Forest and Bird Protection Society of New Zealand Inc v Waitaki District Council

[2012] NZEnvC 252

Environment Court, Christchurch
(ENV-2010-CHC-244)

18-20 June;
21 November 2012

Commissioners Edmonds, Mills, Beaumont

Resource management — Plans and schemes — District — Change or variation — Waitaki District Plan provided an exemption to general indigenous vegetation clearance provisions for land that had been freeholded under the Crown Pastoral Land Act 1998 — Whether the exemption was appropriate policy to achieve the objectives of the Waitaki District Plan — Crown Pastoral Land Act 1998, s 24; Resource Management Act 1991, s 31(1)(b).

Resource management — Plans and schemes — District — Rules — Waitaki District Plan provided an exemption to general indigenous vegetation clearance provisions for land that had been freeholded under the Crown Pastoral Land Act 1998 — Whether the exemption was appropriate policy to achieve the objectives of the Waitaki District Plan — Crown Pastoral Land Act 1998, s 24; Resource Management Act 1991, s 31(1)(b).

This was a successful appeal by the Royal Forest and Bird Protection Society of New Zealand Inc against provisions of the Waitaki District Plan.

The issue was whether an exemption to general indigenous vegetation clearance restrictions that was granted to land freeholded under pt 2 of the Crown Pastoral Land Act 1998 was an appropriate policy and rule approach to achieve the relevant objectives of the plan.

Plan Change 8, notified in August 2005, introduced a new general indigenous clearance Rule 4.4.8 by which a resource consent was required for general indigenous clearance above specified thresholds. About one third of the land area of Waitaki District was either current or former pastoral lease land. The Council proposed to exempt any former pastoral lease land which had been transferred to the lessee as freehold title through tenure review under pt 2 of the Crown Pastoral Land Act 1998 from the District Plan's general indigenous vegetation clearance rule.

Royal Forest and Bird argued that the exemption failed to achieve plan Objective 16.9.2.1 relating to Waitaki District Council's functions under ss 31(1)(a) and 31(1)(b)(iii) of the Resource Management Act 1991 and its duties under s 6(c) of the Resource Management Act 1991 or purpose of the Act.

The Waitaki District Council's position was that the current rules and non-regulatory methods in the Plan, combined with the tenure review exemption, were the best way to achieve the Objective, the Council's functions, and the duties and purpose of the Act. The Council contended that tenure review under the Crown Pastoral Land Act 1988 was a statutory process that enabled the Crown to study a property and strike a balance between ecological sustainability, farming and public

use of that property. Further, this process was consistent with the purpose of the Resource Management Act 1991.

Held, (1) the matters to be considered in the proceedings relating to the plan change were those set out in *High Country Rosehip Orchards Ltd v Mackenzie District Council* (cited below). (para 11)

High Country Rosehip Orchards Ltd v Mackenzie District Council [2011] NZEnvC 387, considered

(2) The question to be decided was not whether the *process* of tenure review served a purpose consistent with the Resource Management Act 1991 (argued by the Federated Farmers of New Zealand, thereby justifying the exemption), but whether the *outcomes* of the tenure review process achieved the plan objective. (para 34)

(3) Empirical ecological evidence on the outcomes of past pastoral lease land reviews in the district were both admissible and highly probative. From such evidence it can be concluded that the tenure review of itself failed to achieve the plan objective. The exemption policy and general indigenous clearance rule exemption also failed to achieve the plan objective. (paras 36, 44, 53, 69)

(4) The tenure review exemption, taken with other methods in the round, did not control the effects of the use and development of land for the purpose of maintenance of indigenous biodiversity, as required by ss 31 and 6 of the Resource Management Act 1991. The maintenance of indigenous biological diversity included protection as one means of halting decline. (para 71)

(5) The tenure review exemption did not give effect to either the Operative Otago or Canterbury Regional Policy Statements and was not consistent with the *Proposed Canterbury Regional Policy Statement*. It did not allow the objectives and policies of the regional policy statements to be implemented on areas of land containing significant values already freeholded through tenure review, including 3,170 ha of identified Significant Inherent Values (SIVs), or to the future areas of freeholded land in the region, expected to treble in number. (para 76)

(6) The exemption made it more likely that goal three of the *New Zealand Biodiversity Strategy 2000* was not achieved and that the Minister for Conservation and Minister for Environment's *Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land* (2007) was not complied with. (para 79)

(7) There was a real risk of a threat to and loss of indigenous biodiversity with a policy and rule exempting land subject to tenure review from the general rule regime. The exemption was not the most appropriate policy, or method, to achieve Objective 16.9.2.1 in the District Plan. The costs of an exemption considerably outweighed the benefits, given the high risk of further loss of indigenous biodiversity, and that the rule should apply to land that has been through tenure review in the same way as it applies to other land. (paras 100, 101)

Cases referred to

High Country Rosehip Orchards Ltd v MacKenzie District Council [2011] NZEnvC 387

Long Bay-Okura Great Park Society Inc v North Shore City Council EnvC Auckland A78/08, 16 July 2008

Te Maru O Ngati Rangiwewehi v Bay of Plenty Regional Council [2008] NZRMA 395 (EnvC)

Appeal

This was a successful appeal by the Royal Forest and Bird Protection Society of New Zealand Inc against provisions of the Waitaki District Plan.

S Gepp for Royal Forest and Bird Protection Society of New Zealand Inc

M R Garbett for Waitaki District Council

P J Page for Federated Farmers of New Zealand

Cur adv vult

**COMMISSIONERS K A EDMONDS (PRESIDING), J R MILLS,
H M BEAUMONT**

Introduction

[1] The central question for this appeal is whether an exemption to general indigenous vegetation clearance provisions for land that has been freeholded under pt 2 of the Crown Pastoral Land Act 1998 is an appropriate policy and rule approach to achieve the relevant objectives of the Waitaki District Plan.

The plan change

[2] Variation 3 notified in August 2005 became Plan Change 8 (PC8), with the District Plan being made operative in the meantime. Plan Change 8 introduced a new general indigenous vegetation clearance rule — Rule 4.4.8. In broad terms this rule requires resource consent for clearance of indigenous vegetation above specified thresholds.

[3] About one third of the land area of Waitaki District is either current or former Crown pastoral lease land. The Council proposes to exempt any former pastoral lease land which has been transferred to the lessee as freehold title through tenure review under pt 2 of the Crown Pastoral Land Act 1998 from the District Plan's general indigenous vegetation clearance rule (Rule 4.4.8).

[4] The exemption is expressed as one of the Rural policies under the issue *Nature Conservation Values*. Policy 16.9.3.6 under challenge in its entirety states:

Land freeholded under the tenure review process pursuant to Part 2 of the Crown Pastoral Land Act 1998 is exempt from the general indigenous vegetation clearance rule 4.4.8 contained in the District Plan, in recognition that the overall ecological values associated with the indigenous vegetation and associated habitats for fauna would have been adequately identified and protected.

[5] The rule exemption (with the opposed reference in italics) provides:

Exemption to Rule 4.4.8;

Rule 4.4.8 shall not apply to vegetation clearance for the purpose of maintenance of existing tracks, irrigation infrastructure, electricity transmission infrastructure, yards, fence lines or existing firebreaks, *or shall not apply to land that has been freeholded under* Part 2 of the Crown Pastoral Land Act 1998.

The positions of the parties

[6] Forest and Bird contended that the tenure review exemption does not achieve the Plan's relevant Objective (Objective 16.9.2.1), the Council's functions (under s 31(1)(a) and 31(1)(b)(iii)) and duties (in particular under s 6(c)) or the purpose of the Act. To achieve those outcomes Forest and Bird submitted the District Plan must recognise and protect nature conservation values at all elevations (not just above 900 m) and on all land (including ex-pastoral lease land).

[7] The Waitaki District Council's position is that the current rules and non-regulatory methods in the Plan, combined with the tenure review exemption, are the best way to achieve the Objective, the Council's functions and duties and purpose

of the Act. The Council contended that tenure review under the Crown Pastoral Land Act 1988 (CPLA) is a statutory process that enables the Crown to study a property and strike a balance between ecological sustainability, farming and public use of that property, is consistent with the purpose of the RMA. The Council submitted that an exemption is appropriate after weighing the potential gains from the tenure review process against the usefulness of a generally applicable rule and the other regulatory and non-regulatory methods in the Plan.

[8] Federated Farmers adopted, and elaborated on, the Council's legal submissions. Federated Farmers also contended that there are good management reasons why farmers may wish to clear native vegetation, the vegetation clearance rule is neither efficient nor effective, the costs outweigh the benefits and the risks do not justify the general rule requiring a resource consent in other rural areas to extend across land that has gone through the tenure review process.

[9] Both the Waitaki District Council and Federated Farmers also relied on the *Royal Forest and Bird Protection Society of New Zealand Inc v Central Otago District Council* EnvC Auckland A128/04, 23 September 2004, which upheld an exemption, although they accepted it is not determinative.

The matters to be considered

[10] As a preliminary point we note that the applicable version of the RMA is prior to the 2009 changes. Section 161 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 stated that if a plan change has been publicly notified before 1 October 2009 and has not proceeded to the stage at which no further appeal is possible, the plan change must be determined as if the amendments made by the 2009 Amendment Act had not been made. Because PC8 to the Waitaki District Plan was publicly notified prior to 1 October 2009, the statutory provisions referred to above are those that existed prior to amendments made (if any) by the 2009 Amendment Act.

[11] In *High Country Rosehip Orchards Ltd*¹ the Environment Court wrote:

Matters to be considered

[19] Because these proceedings are about a plan change we must first identify the legal matters in relation to which we must consider the evidence. In *Long Bay-Okura Great Park Society Incorporated v North South City Council*² the Environment Court listed a "relatively comprehensive summary of the mandatory requirements" for the RMA in its form before the Resource Management Amendment Act 2005. We now amend the list to reflect the changes made by the Resource Management Amendment Act 2005. The different legal standards to be applied are emphasised, and we have underlined the changes³ and additions since *Long Bay* (but before the 2009 amendments):

A. General requirements:

1. A district plan (change) should be designed to **accord with**⁴, and assist the territorial authority **to carry out** — its functions⁵ so as to achieve, the purpose of the Act⁶.

1 *High Country Rosehip Orchards Ltd* [2011] NZEnvC 387 at [18] and [19].

2 *Long Bay-Okura Great Park Society Inc v North Shore City Council* EnvC Auckland A78/08, 16 July 2008 at [34].

3 Except in A5 below where "not" was already underlined in *Long Bay*.

4 Section 74(1) of the Act.

5 As described in s 31 of the Act.

6 Sections 72 and 74(1) of the Act.

2. When preparing its district plan (change) the territorial authority **must give effect to** any national policy statement or New Zealand Coastal Policy Statement⁷.
 3. When preparing its district plan (change) the territorial authority shall:
 - (a) **have regard to** any proposed regional policy statement⁸;
 - (b) **give effect to** any operative regional policy statement⁹.
 4. In relation to regional plans:
 - (a) the district plan (change) must **not be inconsistent with** an operative regional plan for any matter specified in section 30(1) or a water conservation order¹⁰; and
 - (b) **must have regard to** any proposed regional plan on any matter of regional significance etc¹¹.
 5. When preparing its district plan (change) the territorial authority must also:
 - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations¹²; and to consistency with plans and proposed plans of adjacent territorial authorities¹³;
 - **take into account** any relevant planning document recognised by an iwi authority; and
 - *not* have regard to trade competition¹⁴.
 6. The district plan (change) must be prepared **in accordance with** any regulation¹⁵ (there are none at present) and any direction given by the Minister for the Environment¹⁶.
 7. The formal requirement that a district plan (change) *must*¹⁷ also state its objectives, policies and the rules (if any) and may¹⁸ state other matters.
- B. Objectives [the section 32 test for objectives]:
8. Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act¹⁹.
- C. Policies and methods (including rules) [the section 32 test for policies and rules]:

7 Section 75(3)(a) and (b) of the Act.

8 Section 74(2) of the Act.

9 Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

10 Section 75(4) of the Act [as substituted by s 46 Resource Management Amendment Act 2005].

11 Section 74(2)(a) of the Act.

12 Section 74(2)(b) of the Act.

13 Section 74(2)(b) of the Act.

14 Section 74(3) of the Act.

15 Section 74(1) of the Act.

16 Section 74(1) of the Act [added by s 45(1) Resource Management Amendment Act 2005].

17 Section 75(1) of the Act.

18 Section 75(2) of the Act.

19 Section 32(3)(a) of the Act.

9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies²⁰.
10. Each proposed policy or method (including each rule) is to be examined, **having regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives²¹ of the district plan:
 - (a) **taking into account:**
 - (i) the benefits and costs of the proposed policies and methods (including rules); and
 - (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods²²; and
 - (b) *if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances*²³.

D. Rules:

11. In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment²⁴.
12. *There are special provisions for rules about contaminated land*²⁵.
13. There must be no blanket rules about felling of trees²⁶ in any urban environment²⁷.

E. Other statutes:

14. Finally territorial authorities may be required to comply with other statutes.

F. (On Appeal):

15. *On appeal*²⁸ the Environment Court must **have regard to one additional matter** — the decision of the territorial authority²⁹.

Statutory considerations

[13] Part 2 contains the purpose and principles of the Act. Section 5 states the purpose of the Act being to promote the sustainable management of natural and physical resources. Sections 6 to 8 contain the principles of the Act. Section 6 lists matters of national importance to be recognised and provided for by all persons exercising functions and powers under the Act. Section 6(c) relates specifically to the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. Section 7 outlines certain matters to which persons exercising

20 Section 75(1)(b) and (c) of the Act (also s 76(1)).

21 Section 32(3)(a) of the Act.

22 Section 32(4) of the Act.

23 Section 32(3A) of the Act [added by s 13(3) Resource Management Amendment Act 2005].

24 Section 76(3) of the Act.

25 Section 76(5) of the RMA [as added by s 47 Resource Management Amendment Act 2005].

26 Section 76(4A) of the RMA as added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009. Strictly, there can be such rules but they will be revoked by s 76(4A) as from 1 January 2012.

27 Section 76(4B) of the RMA.

28 Under s 290 and cl 14 of the First Schedule to the Act.

29 Section 290A of the RMA as added by the Resource Management Amendment Act 2005.

functions and powers under the Act shall have particular regard to. Section 7(d) relating to the intrinsic values of ecosystems is particularly relevant; and other paras in s 7 also have some relevance in 7(b), (c), (f) and (g).

[14] Section 8 in pt 2 provides direction with respect to the Treaty of Waitangi and is not relevant to this proceeding.

National Policy Statement

[15] There is not, as yet, a *National Policy Statement for Biodiversity* under s 52 of the Act. A proposed *National Policy Statement on Indigenous Biodiversity* was published in January 2011 and submissions in response (closed) on 2 May 2011. Section 75(3)(a) requires that a district plan only requires us to “give effect to” any national policy statement not to a proposed national policy statement.

The two Regional Policy Statements

[16] There are two regional policy statements involved, for the Otago and Canterbury regions respectively, and both contain relevant provisions which we return to later.

The objectives and policies of the Waitaki District Plan

[17] The Waitaki District Plan contains the following Rural objectives, policies and implementation methods and related provisions of particular relevance to the case and dealing with:

16.9 Issue 8 — Nature Conservation Values

The remaining nature conservation values within the District are continuing to be modified and degraded by the effects of land use activities.

16.9.2 Objective

The maintenance of biological diversity, nature conservation values, and ecosystem functioning within the district by:

- The protection of areas assessed as having significant indigenous flora and significant habitats of indigenous fauna; and
- The maintenance of other indigenous flora and fauna associated with wetland, riparian areas, alpine areas and other areas that have other particular nature conservation values.

16.9.3 Policies

1. To manage the adverse effects of the use or development of land on significant indigenous vegetation or significant habitats of indigenous fauna so that the values of these areas are protected.
2. To manage the effects of land use activities so that they avoid, remedy or mitigate adverse effects on:
 - i. freshwater fish habitat, fish passage and aquatic ecosystems generally, and water quality and quantity and/or
 - ii. important ecological functions such as connectivity and hydrology.
3. To use the following criteria to identify areas with significant indigenous vegetation or significant habitats of indigenous fauna³⁰:
 - i. Representativeness ... ; or
 - ii. Rarity and Distinctiveness ... ; or
 - iii. Diversity and pattern ... ; or
 - iv. Ecological Context, Size and Shape ...
4. To recognise that indigenous vegetation communities and associated fauna, other than areas with significant indigenous vegetation or significant habitats of indigenous fauna, may have nature conservation values in:

30 These criteria were not in contention and are therefore not included in full.

- Maintaining connectivity between other indigenous vegetation and/or
- Providing important habitat for species reliant on patchwork of indigenous vegetation (e.g. birds, lizards) and to manage these areas so that the nature conservation values are maintained in those areas.

...

6. *Land freeholded under the tenure review process pursuant to Part 2 of the Crown Pastoral Land Act 1998 is exempt from the general indigenous vegetation clearance rule 4.4.8 contained in the District Plan, in recognition that the overall ecological values associated with the indigenous vegetation and associated habitats for fauna would have been adequately identified and protected.*

...

9. When considering resource consents that come before the Council, to ensure that regard is given to any adverse effects of the activity on the natural character of the District's environment and on remaining indigenous vegetation and habitat; and that opportunities are taken to promote the retention of indigenous vegetation and habitat.

[18] There are several implementation methods which we return to, but a focus of the case is the following explanation and reasons for the exemption for the tenure review:

The general indigenous vegetation clearance rule, however, does not apply to land that has been freeholded under the Crown Pastoral Land Act 1998. Land subject to this process has undergone site-specific investigations in order to identify and protect those significant inherent values on that land. This exemption is introduced-for the following reasons:

- a. *That in the longer term the protection of significant inherent values, which includes areas of "significant indigenous vegetation and significant habitat of indigenous fauna" is promoted through the transfer of ownership to the Crown, or through the use of restrictive covenants. These mechanisms can potentially better protect areas by, for example, excluding or controlling existing grazing regimes.*
- b. *That when taking a broad and solutions-based approach, the areas of the indigenous vegetation and associated habitat and landscapes will be adequately protected.*
- c. *That the Government has purposively introduced the tenure review process as a long term approach to sustain high country.*
- d. *That it would remove duplication of process in terms of cost and time to landowners.*

[19] The Waitaki District Plan rules include Site Development Standards (Rule 4.4) and Critical Zone Standards (Rule 4.5) that apply to *permitted, controlled* or *restricted discretionary activities*. *Permitted activities* require no resource consent.

[20] Relevant District Plan rules are:

4.4 Site Development Standards

4.4.7 Environmentally and Ecologically Sensitive Areas

1. *No buildings for an activity* shall be allowed in the following areas:
 - a) Within areas of significant indigenous vegetation and habitat of significant indigenous fauna identified on the Planning Maps and listed in Appendix C.
 - b) Within 20m of any lake, river, stream or wetland or within any wetland.
 - c) Above 900m in altitude.
2. *No earthworks*, other than for the maintenance of existing tracks, irrigation infrastructure, yards, fencelines or roads including the State Highway, shall occur in the following areas:

- a) Within areas of significant indigenous vegetation and habitat of significant indigenous fauna and geopreservation sites identified on the Planning Maps and listed in Appendix C.
 - b) Within 20m of any lake, river, stream or wetland or within any wetland. This rule does not apply to work in the bed of any lake, river or stream but Regional Council consent may be required.
 - c) Above 900m in altitude.
 - d) On slopes with an angle greater than 20 degrees (measured as an average slope angle over any 100m length of slope).
 - e) An area of Otago skink habitat or Grand skink habitat as shown on Appendix J.
3. There shall be *no indigenous vegetation clearance*³¹, other than for the maintenance of existing tracks, irrigation infrastructure, electricity transmission infrastructure, yards or fence lines, in the following areas:
- a) Areas of significant indigenous vegetation and habitat of significant indigenous fauna identified on the Planning Maps and listed in Appendix C.
 - b) Within 20m of any lake, river, stream or wetland or within any wetland.
 - c) Within 100m (inland) of the mean high water springs at the coast.
 - d) About 900m in altitude.
 - e) An area of Otago skink habitat or Grand skink habitat as shown on Appendix J.

4.4.8 General Indigenous Bush [sic] Vegetation Clearance

1. On any site there shall be no clearance of indigenous bush.
2. On any site there shall, over any five year continuous period, be no clearance of:
 - a) more than 5000 square metres of indigenous vegetation generally, except where the vegetation clearance is carried out within, and for the purposes of, maintaining an area of improved pasture; or
 - b) more than 1000 square metres or more of tall tussock grassland communities of the genus *Chionochloa* except where the vegetation clearance is carried out for the purposes of maintaining improved pasture; or
 - c) more than 500 square metres of generally closed canopy matagouri (*Discaria toumatou*) dominated indigenous shrubland that has a canopy height of greater than 1.5 metres and is associated with river margins, fans, ridges and bluffs; or;
 - d) more than 500 square metres of diverse indigenous shrubland, where “diverse” means three or more shrub species and includes at least one of the following species:
 - *Sophora Prostrate*;
 - Porcupine scrub (*Melicytus alpines*);
 - Turpentine scrub (*Dracophyllum longifolium*; *Dracophyllum uniflorum*);
 - Tauhinu (*Ozothamnus leptophyllus*);
 - *Coprosma sp.*;

31 *Indigenous vegetation* is defined as:

a plant community in which species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity. For these purposes, coverage by indigenous species or number of indigenous species shall exceed 30% of the total area or total number of species present, where structural dominance is not attained. Where structural dominance occurs (that is indigenous species are in the tallest stratum and are visually conspicuous) coverage by indigenous species shall exceed 20% of the total area.

- Hebe sp.;
 - Carmichaelia sp.;
 - Olearia sp.;
 - Mountain Wineberry (*Aristotelia fruticosa*);
 - Corokia Cotoneaster.
3. On any site there shall be no clearance of:
- a) any indigenous coastal duneland, saltmarsh or herbfield vegetation; or
 - b) any coastal shrubland containing *Hebe elliptica*, *Carmichaelia* sp. or *Coprosma* sp.; or
 - c) any indigenous inland saline vegetation or;
 - d) any indigenous vegetation associated with limestone outcrops; or
 - e) any indigenous shrubland containing:
 - Bog Pine (*Halocarpus bidwillii*);
 - Celery Pine (*Phyllocladus alpinus*);
 - Halls' Totara (*Podocarpus hallii*);
 - Mountain Totara (*Podocarpus nivalis*); or
 - any individual specimen of the above over one metre in height; or
 - f) any indigenous turf communities associated with tarns, glacial moraines or river margins.
4. There shall be no exotic tree planting into an area of indigenous bush, shrubland or tall tussock grassland (*Chionochloa* sp.) that exceeds the thresholds contained in 4.4.8(1)-(3).

Definitions

1. For the purposes of Rule 4.4.8, shrubland is characterised by:
 - a. A generally closed canopy (although there will be open patches within the shrubland);
 - b. A difficulty avoiding either standing on, or touching, the shrubs when walking through the majority of the area; and
 - c. An area that does not include scattered individual outlier plants.
2. For the purposes of Rule 4.4.8, tall tussock grassland is characterised by a density of tussock plants in which it would be difficult to avoid either standing on or touching the tussocks when walking through the majority of the area.
3. For the purposes of Rule 4.4.8, improved pasture means an area of pasture when species composition and growth has clearly been modified and enhanced for livestock grazing by cultivation with or without associated burning, or by topdressing and over-sowing with or without associated burning, or by direct drilling, and where exotic improved pasture species dominate (ie. where either the coverage of indigenous species or the number of species present, as estimated on a per hectare basis, does not exceed 30%). Improved pasture includes species such as ryegrass and clovers but excludes sweet vernal and browntop.

Exemption to Rule 4.4.8

Rule 4.4.8 shall not apply to vegetation clearance for the purpose of maintenance of existing tracks, irrigation infrastructure, electricity transmission infrastructure, yards, fence lines or existing firebreaks, *or shall not apply to land that has been freeholded under Part 2 of the Crown Pastoral Land Act 1998.*

Exemption to Rules 4.4.7 and 4.4.8

Rules 4.4.7 and 4.4.8 shall not apply to activities that are provided for under any one of the following mechanisms:

- a. Section 76 Reserves Act 1977 Declaration;
- b. Section 77 Reserves Act 1977 Resources Covenant;
- c. Section 27 Conservation Act 1987 Management Agreement;
- d. Queen Elizabeth II National Trust Act 1977.

Provided that such above mechanisms:

- a. Protect the nature conservation values of an area that is subject to the rules;
- b. Remain current for the duration of the activity;
- c. Have not been breached; and
- d. Have been lodged with the Council.

What are the relevant Plan objective(s)?

[21] The planning witnesses — Mr Richard J Sutherland for the Council, Ms Anna M Cameron for Forest and Bird and Mr W David Whitney for Federated Farmers — agreed during expert conferencing³² that the relevant objective is Objective 16.9.2. (as above):

The maintenance of biological diversity, nature conservation values, and ecosystem functioning within the district by:

- The protection of areas assessed as having significant indigenous flora and significant habitats of indigenous fauna; and
- The maintenance of other indigenous flora and fauna associated with wetland, riparian areas, alpine areas and other areas that have other particular nature conservation values.

[22] We accept the evidence of Dr Susan Walker, an ecologist giving evidence for Forest and Bird, that maintaining biological diversity requires maintaining nature conservation values and ecosystem functioning and that from an ecological perspective these matters have a strong relationship.

[23] Mr Sutherland considered another objective and supporting policies that appear under the heading *Issue 3 — Sustaining the Soil Resource of the High Country* to be relevant.

16.4.1 Objective 3 — Sustaining the Life-supporting Capacity of the Soils of the High Country reads:

Rural high country land uses are managed in such a way that a robust, diverse and intact vegetation cover is maintained to assist in sustaining the life supporting capacity of the soil.

Policy 16.4.2.2 contains:

To encourage and assist in continued research for means of achieving sustainable land management practices in the District's uplands.

Policy 16.4.2.4 reads:

To ensure that District Plan controls do not inhibit a range of land use, management and subdivision options that may be necessary to sustain the land and soil resources.

[24] Importantly an Implementation Method (14.4.3.1) for achieving policy is: the provision of rules which enable a range of land uses in the rural areas, subject to other objectives and policies.

[25] We concur with the Joint Statement of Planning Experts that Objective 16.9.2.1 is the relevant objective to consider. Indeed we hold that Objective 16.4.1 and related policies are not in conflict with Objective 16.9.2.1; rather they lend support to sustaining land and soil resources by maintaining vegetation cover.

³² Joint Statement of Planning Experts (undated).

Does tenure review as a method or incentive achieve the relevant objective?

What is tenure review?

[26] Because the policy in issue refers to land “freeholded under tenure review ...” we need to explain briefly what that is.

[27] Ms Susan E Maturin, an Otago Southland Field Officer with Forest and Bird and Mr Graeme J Franklin, a witness for Federated Farmers and a project manager specialising in tenure review processes, gave evidence on the process. Both have considerable experience of tenure review.

[28] Tenure review is a statutory process carried out by the Commissioner of Crown Lands, administered by Land Information New Zealand. During tenure review the leaseholders and the Crown buy out each other’s interest in the land, with valuations taking into consideration restrictions on the freehold title such as covenants and easements. DOC advises LINZ about significant inherent values (SIVs), which include ecological values, and what land should be protected. The Commissioner is the Crown’s decision-maker. Tenure review, including commencing and continuing with a review, occurs by consent.

[29] Through this process the Crown and the lessee reach an agreement (or not) over areas the Crown wishes to permanently retain or manage or require protective mechanisms, with the rest of the land then available for freehold ownership. The process in pt 2 (ss 24 to 82) of the CPLA has a number of steps which involve:

- Preliminary proposal;
- Preliminary proposal notified for public submission;
- Commissioner may put a substantive proposal to the leaseholder who has three months to accept or reject it.

Land that is to be disposed of may be made subject to protective mechanisms including easements or covenants under the Reserves Act 1977, Conservation Act 1987, Walking Access Act 2008, Queen Elizabeth the Second National Trust Act 1977 or Historic Places Act 1993, or a sustainable management covenant under the CPLA³³. Land Information New Zealand (LINZ) administers the CPLA process drawing on the advice of the Department of Conservation at various stages in the process.

[30] The objects of tenure review are set out in s 24 of the Crown Pastoral Land Act 1998 (CPLA). These are:

Objects of Part 2

The objects of this Part are—

- (a) To—
 - (i) Promote the management of reviewable land in a way that is ecologically sustainable;
 - (ii) Subject to subparagraph (i), enable reviewable land capable of economic use to be freed from the management constraints (direct and indirect) resulting from its tenure under reviewable instrument; and
- (b) To enable the protection of the significant inherent values of reviewable land—
 - (i) By the creation of protective mechanisms; or (preferably)
 - (ii) By the restoration of the land concerned to full Crown ownership and control; and
- (c) Subject to paragraphs (a) and (b), to make easier—
 - (i) The securing of public access to and enjoyment of reviewable land; and
 - (ii) The freehold disposal of reviewable land.

33 Sections 2, 40 and 97(1), CPLA.

[31] The Act contains a statutory tenure review process whereby leaseholders can gain ownership of Crown-owned pastoral lease land. Those holding pastoral leases in perpetuity can voluntarily enter the tenure review process.

[32] The approach to tenure review has differed over the years. In carrying out tenure reviews and administering pastoral leases, the Commissioner must fulfill statutory obligations under the CPLA and the Land Act 1948, but can also have regard to government policy and strategic direction.³⁴ We had evidence from Ms Maturin that there had been a change to the 2003 Objectives, which had been in place when the Environment Court *Central Otago District Council* case was decided. At that time an Objective was to “ensure that conservation outcomes for the high country are consistent with the New Zealand Biodiversity Strategy”. In 2007 the 2003 Objectives had been amended with the inclusion of a reference to the National Priorities for protection in “Protecting Our Places”³⁵. In July 2009³⁶ the 2003 Objectives had been rescinded and replaced with new objectives and policies. Ms Maturin referred to a LINZ Report which states that the 2009 Objectives are aimed at “promoting more frequent use of covenants and reductions in land transferred to the conservation estate”³⁷. Dr Lloyd also gave evidence of changes to criteria to identify SIVs in line with changes in Government Policy.

[33] We had evidence from Mr Richard J Aubrey the managing director of Dalrachney Station, Mr Ian H Anderson who leases Ben Ledi Station and Mr David J L Douglas who owns Dome Hill Station. All gave evidence that they had been involved with tenure review, seeking greater certainty on and control over the activities that could be undertaken on the land and a concern about what they considered to be “double dipping”.

[34] The Council and Federated Farmers submitted that the **process** of tenure review in and of itself serves a purpose that is consistent with the RMA and therefore justifies the exemption. We find that the key question to address is whether the **outcomes** of the tenure review process achieve the Plan objective.

[35] We do not accept the argument from Federated Farmers and the Council, and particularly Mr Whitney, that there is the same tension in the CPLA as occurs with decision-making on resource consent applications under the RMA and there is no reason to consider that there would be any difference in result. We did not have any evidence that this could, or indeed would be, the case given the different purposes of the two Acts. We also note that there is a right of appeal on the merits to the Environment Court in relation to a resource consent application sought under the RMA, a different process from that available under the CPLA.

[36] What is clear is that the process of detailed site specific assessment adds to the knowledge of the ecological values of particular properties. That knowledge would of course inform the landowner and the consent process, if we find against the exemption.

34 Cabinet Minute of Decision CAB Min (09) 26/7C at [3].

35 Cabinet Business Committee Minute of Decision CBC (07) 23/19.

36 Cabinet Minute of Decision CAB Min (09) 26/7C.

37 LINZ Report, 21 May 2010: Strategic Direction for Crown pastoral land — update on policy work programme.

Do the outcomes of tenure review achieve the objective?

The Ecological Evidence on the Outcomes

We had evidence from Dr Walker for Forest and Bird and Dr Kelvin Lloyd for the Council, ecologists, on the outcomes of tenure review. Both had prepared a joint statement agreeing that³⁸:

1. Pastoral lease tenure review outcomes in Waitaki District have not always resulted in protection of significant indigenous vegetation and significant habitats of indigenous fauna.
2. Other areas of indigenous vegetation and habitat also occur on Waitaki District freeholded after tenure review. These areas of indigenous vegetation and habitat help to maintain ecological processes such as connectivity and provision of habitats for indigenous flora and fauna.
3. Overall, tenure review outcomes to date within Waitaki District have not resulted in adequate protection of the ecological values associated with indigenous vegetation and habitats of indigenous fauna.
4. The ecological values that have been most poorly protected in tenure review are those at lower elevations. These types of indigenous vegetation and associated habitats of indigenous fauna are important for the maintenance of biological diversity in the District, because they:
 - a. have undergone the greatest loss in the past;
 - b. are often relatively rare within the Waitaki District;
 - c. are important for maintaining connectivity and species habitat in the landscape because of the extent of past loss;
 - d. currently have little protection within Waitaki District or elsewhere;
 - e. include vegetation types that are being cleared and modified most rapidly within Waitaki District (for example indigenous vegetation on outwash plains and other accessible landforms).
5. Examples of indigenous vegetation on land freeholded under tenure review would meet the criteria of the proposed vegetation clearance provisions in rule 4.4.8 of the proposed Waitaki District Plan.
6. The criteria in the proposed vegetation clearance rule 4.4.8 are appropriate for identifying areas of indigenous vegetation (including tall tussock grassland) that are important for maintaining indigenous biodiversity on land freeholded during the tenure review process. The criteria may not identify all important ecological values, for example important habitats of indigenous fauna, threatened species, or ecological context factors.
7. Our primary data will be analyses of pastoral lease tenure review outcomes within and outside Waitaki District, based on maps of values and land designations, and written descriptions of ecological communities and values on pastoral leases. We may also refer to results of our own site investigations of particular properties, national land cover and land environment datasets and the threatened environment classification, and national threatened species classification lists for relevant biota. Dr Walker may also refer to spatial data on indigenous vegetation conversion for intensive land use since 1990.

[37] Dr Walker produced a table to show the following results for land in the Waitaki District to date:

38 Joint Statement 7 June 2011. A later Joint Statement 9 May 2012 dealt with the differences between the evidence of Dr Lloyd and Dr Walker.

Threatened Environment Category	Area identified ecological SIVs (ha)	Percentage Protected (Crown + Freehold covenant)
<10 per cent remaining	0	
10-20 per cent remaining	620	38.6
20-30 per cent remaining	3,830	45.6
>30 per cent remaining, <10 per cent protected	7,390	35.4
>30 per cent remaining, 10-20 per cent protected	12,520	66.8
>30 per cent remaining, >20 per cent protected	18,160	90.3

[38] Dr Walker went on to say that overall the pattern of outcomes has been remarkably stable and predictable over time, both across the high country generally and within the Waitaki District. Most areas supporting indigenous fauna and flora above 900 m are protected in tenure review and most of those below 900 m are not. In summary, she said:

- The likelihood of clearance of indigenous vegetation for agriculture between 1990 and 2008 was greater below 900 m;
- When considering all of the SIVs below 900 m, just over half (51.2 per cent) of ecological SIVs were protected either as public conservation land or covenanted freehold;
- 3,170 ha of identified ecological SIVs on land below 900 m (just under half) were given no protection under tenure review.
- That area can be expected to approximately treble once all leases complete tenure review.

[39] Dr Walker said that areas identified as ecological SIVs in tenure review likely represent only a fraction of the indigenous vegetation and fauna habitats that are significant, would meet Rule 4.4.8 criteria, fit the Plan's definition of "indigenous vegetation generally" and contribute to the maintenance of indigenous biodiversity, especially below 900 m. Dr Lloyd also gave evidence that the ecological SIV criteria and the criteria in the Plan for identifying significant indigenous vegetation and fauna habitats differ and that the Plan criteria would bring in additional areas.

The challenge to Dr Walker's evidence

[40] Mr Page for Federated Farmers submitted that Dr Walker's evidence cannot be accepted because it is derived in part from Department of Conservation data and is hearsay.

[41] Forest and Bird responded that Dr Walker's evidence is the product of her own research and analysis, albeit partly based on data from other technical sources. The parts of Dr Walker's evidence derived from external sources are provided to demonstrate outcomes such as:

- The portion of ecological SIVs identified by DOC which are protected through tenure review;
- Protection outcomes for land in the various Threatened Environments categories;
- Protection outcomes at different elevations.

Further Forest and Bird submitted the evidence is not presented as proof that a particular area of indigenous vegetation exists on a particular freehold property.

[42] Forest and Bird submitted that if Federated Farmers wished to seek an order ruling Dr Walker's evidence inadmissible, then it should have made a formal application to that effect well before the hearing. Forest and Bird could then have responded in a number of ways to ensure that the evidence was admissible. Furthermore, the interests of justice tell against the Court entertaining Mr Page's submission where it was not made as a formal application and was raised after Forest and Bird had closed its case. Even if parts of Dr Walker's evidence are technically hearsay (which Forest and Bird denied), Forest and Bird submitted that it is admissible in any event.

[43] Section 276 of the RMA provides that the Environment Court may receive anything in evidence that it considers appropriate to receive. The admissibility of evidence in the Environment Court was considered in *Te Maru O Ngati Rangī Wewehi v Bay of Plenty District Council*.³⁹ The Court held that:

[23] The text of section 269 and 276 make it clear that the Environment Court has a very wide discretion, (the word "may" is used to convey this) as to how it regulates its proceedings, that is without procedural formality, provided it is consistent with fairness and efficiency (section 269(2)), and what evidence it receives (section 276(1)(a)); noting in particular that it is not bound by the rules of law as to evidence (section 276(2)).

and

[40] [Sections 17 and 18 of the Evidence Act 2006] must be read in the context of the provisions of the Resource Management Act to which I have already referred. The Evidence Act should guide the Court to the starting point of a consideration to a challenge relating to the admissibility of evidence. The Environment Court should only depart from the prescriptions of the Evidence Act in a principled manner. This involves a careful consideration of such matters as its **relevance**, the **probative value** of the evidence and its **reliability**. These factors are all matters that also bear on the weight that should be given to the evidence. Because of the statutory directions contained in section 276 of the Resource Management Act, **the threshold for admissibility is much lower than** for Courts exercising civil and criminal jurisdiction. (emphasis added)

[44] The challenged evidence is the only empirical evidence that the Court has received as to the outcomes of tenure review in terms of the protection of ecological SIVs, in circumstances where the Council and Federated Farmers are claiming that protection of ecological SIVs through tenure review is a method or incentive which achieves the relevant District Plan objective. It is highly reliable as it was prepared by specialists, for a purpose separate to the proceeding and by a non-party to the proceeding. We find the challenged evidence to be of high probative value and admissible.

[45] Finally, Forest and Bird submitted that DOC's GIS shapefiles from which Dr Walker obtained her data were provided to the Council's ecologist, Dr Lloyd and also relied on by him. These shapefiles would also have been shared with Federated Farmers if it had engaged an ecologist witness (or if it had requested the files for any of its other witnesses to consider.).

[46] We accept the arguments made by Ms Gepp for Forest and Bird. Furthermore, we note that in a *Joint Statement of Ecological Experts* dated 9 May 2012 Dr Lloyd and Dr Walker agreed that⁴⁰:

The discrepancy between the estimated area of SIVs in Dr Lloyd's evidence and that in Dr Walker's evidence is likely to be primarily caused by errors in the analysis performed for Dr Lloyd by Wildland Consultants.

39 [2008] NZRMA 395 (EnvC).

40 Paragraphs [1], [6], [9].

The correct method to estimate the area of unprotected SIVs is to perform a Geographic Information System (GIS⁴¹) overlay of “shapefiles” of SIVs and land protected. This GIS-overlay method was used by Dr Walker based on authoritative data sourced from the Department of Conservation.

...

Dr Lloyd accepts that the figures calculated by Dr Walker are likely to be robust.

Is tenure review similar to other exemptions?

[47] Rule 4.4.8 (and 4.4.7) contains a number of exemptions (not under challenge) where the Council has considered there are already statutory mechanisms in place to manage indigenous vegetation clearance. Other exemptions to the rules (4.4.7 and 4.4.8) do not apply to activities that are provided for under any one of the following mechanisms:

- a. Section 76 Reserves Act 1977 Declaration;
- b. Section 77 Reserves Act 1977 Resources Covenant;
- c. Section 27 Conservation Act 1987 Management Agreement;
- d. Queen Elizabeth II National Trust Act 1977.

Provided that such above mechanisms:

- a. Protect the nature conservation values of an area that is subject to the rules.
- b. Remain current for the duration of the activity.
- c. Have not been breached.
- d. Have been lodged with the Council.

[48] The Council and Federated Farmers also submitted that tenure review is a statutory process equally as reliable as covenants under the other exempted statutory methods to manage indigenous vegetation clearance.

[49] We consider there is a major difference between the two. Tenure review involves a process with uncertain outcomes and is in quite a different category to the known level of protection under the Reserves, Conservation and Queen Elizabeth II National Trust Acts.

Is the exemption an incentive to tenure review?

[50] The proposition was advanced that the exemption would be an incentive to tenure review and that would result in greater (or the appropriate) protection of the ecological values of vegetation than would occur under the RMA.

[51] As to whether an exemption would be an incentive, or the removal of the exemption an impediment, we had no evidence that there is going to be any less entry to or completion of tenure review depending on whether the exemption stays or goes. To the contrary we had evidence from Ms Maturin that Central Otago which does have an exemption has no lower or higher rate of entry into tenure review than other districts.

[52] Mr Whitney also put a great deal of store on the benefits of the knowledge about the properties concerned resulting from the tenure review process. However, he conceded that there are only six properties left in the district for which there are no published conservation resources reports, with completed reports for 34.

[53] We have already found that the outcomes of tenure review to date have not achieved the objective. We cannot second guess what the outcomes of a consent process for the clearance of indigenous vegetation under the RMA may be, but these will require consideration of all the relevant matters under s 104 and including the purpose and principles of the Act.

41 A system designed to capture, store, manipulate, analyse, manage, and present all types of geographical data.

Do the other rules and methods, when taken together with the tenure review exemption, achieve the objective?

[54] The Council and Federated Farmers submitted that the other rules and methods taken together achieve Objective 16.9.2.1, a position Forest and Bird did not agree with.

[55] In addition to the general indigenous clearance rule, the Plan contains other methods aimed at achieving Objective 16.9.2.1:

- Rule 4.4.7 requirements
- The use of incentives
- The ecological survey
- The biodiversity co-ordinator role.

Does Rule 4.4.7.3 achieve the objective?

[56] Rule 4.4.7.3 requires resource consent for indigenous vegetation clearance (other than for the maintenance of existing tracks, irrigation infrastructure, yards or fence lines) in the following areas:

- a. Areas of significant indigenous vegetation and habitat of significant indigenous fauna identified on the planning maps and listed in Appendix C.
- b. Within 20 metres of any lake, river, stream or wetland or within any wetland.
- c. Within 100 metres (inland) of the mean high water springs at the coast.
- d. Above 900 metres in altitude.
- e. Within an area of Otago skink habitat or grand skink habitat as shown in Appendix J.

There is no tenure review exemption.

[57] The Council and Federated Farmers submitted that these rules had an important role in, or made an important contribution to, achieving the Objective.

[58] However, Drs Walker and Lloyd had identified the scarcity of indigenous vegetation with ecological values on land below 900 m in altitude. Dr Lloyd gave evidence that he was aware there were areas of significant indigenous vegetation and habitat of significant indigenous fauna (meeting the Plan criteria) not in Appendix C. Dr Walker also said that a buffer of 20 m was not adequate for some wetlands and raised other deficiencies.

[59] It is clear from the evidence that Appendix C is far from a comprehensive list of the district's significant sites. Even Mr Whitney conceded that this was probably the case.

[60] We also mention here that we do not accept the submissions made by the Council that a narrow approach should be taken to the Objective and paras (a) and (e) interpreted to be solely, or for that matter even primarily, directed at protecting values under s 6(c) of the RMA.

The use of incentives

[61] Policy 16.9.3.8 is:

To promote long-term sustainable protection of areas that have significant indigenous vegetation and significant habitats of indigenous fauna by encouraging landowners to investigate management options which maintain or enhance these sites and by supporting farmers and local community groups in private or valley conservation initiatives.

[62] Mr Sutherland and Mr Whitney gave evidence that there are a range of non-regulatory methods referred to in the Plan that could assist with achieving the objective and policies in addition to the existing rules. Mr Sutherland accepted under

cross-examination that tenure review itself would not achieve the objective but he said that it would with the Plan's other methods. Both witnesses relied heavily on the ecological study or survey and the use of incentives referred to in the Plan.

[63] Mr Sutherland gave evidence that at this stage the Council has not set aside resources to enable the use of incentives (referred to in Implementation Method 3), and in any case the method could only be used once the ecological survey or stocktake of the ecological environment is obtained.

The ecological survey

[64] The Plan contains the following provision:

Ecological Study

16.9.4.7 The Council will undertake further assessment of nature conservation values across the district, and will incorporate all appropriate additional areas identified as being sites of significant nature conservation value and geo preservation sites into the plan by way of variation or plan change. This work will begin during or before 2007.

[65] Mr Sutherland gave evidence that the Council commenced the Ecological Survey, a District-wide survey of individual properties identifying ecological sites to classify them in terms of significance, with the intention that at the end of the survey the Council and stakeholders would consider a range of methods that could be put in place to protect the identified ecological values. We were told that the Council had committed \$100,000 and allocated a further \$200,000 to the Ecological Survey. There was also evidence that little progress had been made with the survey.

[66] Mr Sutherland accepted that the survey itself could not actually achieve the Plan's objectives without further action. He also said that a decision had not been made Council at this stage as to whether sites would be included in Appendix C. This was at odds with the implementation method, as Mr Whitney and Ms Cameron agreed. Ms Cameron said that until the survey is completed and a plan change promoted incorporating identified sites into the plan, the need for the rule remains.

The biodiversity co-ordinator

[67] Mr Sutherland also gave evidence that the funding from the Biodiversity Advice Fund administered by the Department of Conservation had allowed Waitaki District Council to employ a Biodiversity Co-ordinator to increase awareness and appreciation of biodiversity and to assist with the Ecological Survey Project. A Biodiversity Co-ordinator was recently appointed.

Does the exemption for tenure review and the Plan's other rules and methods achieve the objective?

[68] We accept Forest and Bird's contention that the only other methods which should be counted towards achieving Objective 16.9.2.1 are those methods which exist in the plan and **in reality**. Methods which may (or may not) be given effect to at some future stage do not assist in maintaining indigenous biodiversity.

[69] We conclude that tenure review of itself does not achieve the objective. When taken together, we also conclude that the Plan's non-regulatory methods and both the specific (Rule 4.4.8) and general rules with the exemption (Rule 4.4.7), do not achieve the objective. The general indigenous vegetation clearance rule is an integral component of the set of implementation methods, and without it the methods do not achieve the objective.

Does the exemption fulfil the Council's functions and obligations under the RMA?

[70] Section 31(1)(b) states that the Council has the following function for the purpose of giving effect to the RMA in its district:

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 biological diversity.]

[71] We understand the maintenance of indigenous biological diversity to include protection as one means of halting decline. We find that the tenure review exemption, taken with the other methods in the round, does not control the effects of the use and development of land for the purpose of the maintenance of indigenous biodiversity.

Consistency with adjoining District Plans

[72] Mr Sutherland and Mr Whitney made a lot of the issues for landholders straddling the boundary between Waitaki District and Central Otago District and dealing with inconsistent district plans as a relevant consideration under s 74(2)(c). However, Ms Cameron rightly pointed out that the same argument could be mounted for landholders dealing with McKenzie District where there is no tenure review exemption. She said such issues are dealt with on land straddling the boundaries of districts (and regions) throughout the country.

Giving effect to the Regional Policy Statements

[73] The *Otago Regional Policy Statement* requires us:

- 10.4.1 To maintain and enhance the life-supporting capacity and diversity of Otago’s biota.
- 10.4.3 To maintain and enhance the natural character of areas with significant indigenous vegetation and significant habitats of indigenous fauna.
- 10.5.2 To maintain and where practicable enhance the diversity of Otago’s significant indigenous vegetation and the significant habitat of indigenous fauna, trout and salmon which are:
 - (a) Covered with a statute or covenant for protection; or
 - (b) Habitat or vegetation that support the maintenance or recovery of indigenous species that are uncommon or threatened with extinction (rare, vulnerable or endangered) regionally or nationally; or
 - (c) Vegetation that contains associations of indigenous species which are rare or representative regionally or nationally; or
 - (d) Vegetation that contains a substantially intact, uninterrupted ecological sequence of indigenous species which are rare or representative regionally or nationally; or
 - (e) Important for soil and water values or have functions in natural hazard mitigation;

and to promote and encourage, where practicable, the retention, enhancement and re-establishment of indigenous ecosystems within Otago.

[74] The *Canterbury Regional Policy Statement* states:

Objective 3 Protection or enhancement of:

- (i) Indigenous biodiversity, (including the survival of threatened species, communities and habitats, and species, biological communities and habitats unusual in, or characteristic of Canterbury);
- (ii) Indigenous ecosystem functioning; and
- (iii) Indigenous vegetation and habitats which contribute to the region’s natural character.

The implementing policy is (relevantly):

Policy 4

Areas of indigenous vegetation and habitats of indigenous fauna that meet the relevant criteria of sub-chapter 20.4(1) should be protected from adverse effects of the use, development, or protection of natural and physical resources, and their enhancement should be promoted. In particular, indigenous species,

communities and habitats that are threatened, unusual in, or characteristic of Canterbury should be identified, and their survival, and the survival of ecosystems on which they depend, safeguarded as far as practicable.

The particular sensitivity of these areas of vegetation or habitats to regionally significant adverse effects in terms of sub-chapter 20.4(2) should be reflected in the provisions of district plans in the region.

[75] Our attention was drawn to provisions in the *Proposed Canterbury Regional Policy Statement* which was awaiting decisions on submissions at the time of our hearing. Until this document is operative, it does not need to be given effect to, but should still be considered. It includes:

Objective 9.2.1 Halting the decline of Canterbury's ecosystems and indigenous biodiversity.

The decline in the quality and quantity of Canterbury's ecosystems and indigenous biodiversity is halted and their life-supporting capacity and mauri safeguarded.

Objective 9.2.3 — Protection of significant indigenous vegetation and habitats

Areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified and their values and ecosystem functions protected.

Policy 9.3.2 of the Proposed Canterbury Regional Policy Statement also recognises the priorities for protection in the Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land which we deal with below.

[76] We conclude that the tenure review exemption would not give effect to either the operative Otago or Canterbury Regional Policy Statements or be consistent with the Proposed Canterbury Regional Policy Statement. It would not allow the objectives and policies to be implemented on areas of land containing significant values that have already been freeholded through tenure review, including 3,170 ha of identified ecological SIVs, and to future freeholded land where those numbers can be expected to treble.

The New Zealand Biodiversity Strategy 2000

[77] 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 biodiversity⁴². We agree with Ms Cameron that the exemption from the general vegetation clearance rule makes it more likely that goal three, halting the decline in New Zealand's indigenous biodiversity, would not be achieved.

Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land

[78] In 2007 the Minister for Conservation and the Minister for Environment issued a *Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land* — "*Protecting Our Places*". 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.
- (4) To protect habitats of acutely and chronically threatened native species.

[79] It is less likely that these national priorities will be achieved if vegetation clearance on land subject to tenure review is exempt from the regulatory regime that applies to other land in Waitaki District.

Section 32 analysis

[80] Federated Farmers submitted that Rule 4.4.8 serves a mainly ideological function, is not efficient or effective or the most appropriate method to achieve the objectives of the Plan taking into account its benefits and costs and the associated risks to indigenous biodiversity.

Duplication of process

[81] Mr Page submitted that the Forest and Bird case did not attempt a s 32 analysis by recognising the cost to the landowner associated with the protection of indigenous vegetation at the expense of farming. He said that the tenure review process provides a useful practical approximation of a s 32 analysis. We do not accept that argument for similar reasons to our conclusions on the CPLA above.

[82] We have already found that the tenure review process does not perform the same function or necessarily deliver the same outcomes as sought through the objectives, policies and methods for rural land in the district. It is therefore not a duplication of process to have a rule in the District Plan which provides greater certainty of achieving the objective of the Plan.

Grazing and other farming techniques are not controlled

[83] “Vegetation clearance” is defined as⁴³:

Means felling, clearing or modification of trees or any vegetation by cutting, crushing, cultivation, spraying, or burning. Clearance of vegetation shall have the same meaning.

[84] It is clear from that definition, that the vegetation clearance rule does not control grazing. Federated Farmers submitted that the use of intensive grazing methods (cattle, goats), irrigation, nutrients and other farming techniques could achieve significant vegetation change whilst complying with Rule 4.4.8.

[85] However, the evidence from Dr Walker and Dr Lloyd was that vegetation clearance constituted the major threat to indigenous vegetation. Dr Walker said the rule attempts to constrain existing land uses to more sympathetic modes by constraining activities which are less sympathetic or at least more rapid in their effects. While she accepted that many of the ecological values could be harmed or destroyed by grazing, she said that a lot of them persist in her experience. She said that in her experience the areas with ecological values that persist below 900 m in Waitaki District have all been grazed, probably burned, oversown and topdressed in many cases, but they have persisted despite often not being in great condition. The vegetation clearance activities would be more immediate and more final.

[86] Dr Lloyd had some concerns about the grazing because it generally does not assist indigenous vegetation but he said that many classes of indigenous vegetation are resistant to it and can persist, despite grazing. Dr Lloyd also agreed that grazing is less final than the activities that the rule does control, with grazing being a gradual process with effects that are often but not always reversible. He agreed that there is an ecological benefit in controlling vegetation clearance, even if grazing is a permitted activity and particularly in areas where topography would allow easy mechanical clearance. That was not withstanding the ability to remove indigenous vegetation on a *permitted* basis at 5,000 m² per five years and the exemptions for specific species.

43 WDP at 172.

Practicality of administering the rule

[87] Mr Whitney questioned the practicality of administering the rule given the remoteness and large sizes of land holdings. The rule is one that Council has taken on in relation to a significant area of the district. If there are any practical and logistical issues with monitoring and enforcing vegetation clearance activities on large properties this is true of most rules. Similar rules apply in other districts such as McKenzie District.

Would farmers know what the rule covered on the ground?

[88] Federated Farmers submitted that an important underlying question was whether farmers would know and could be expected to know what vegetation and areas would be covered by the rule.

[89] Dr Walker thought farmers would know what land has been improved and what an exotic species is, but accepted that they may only have a rough idea of how the rule would apply on the ground and an ecologist may be required. Dr Lloyd gave evidence that the definitions in Rule 4.4.8 of shrub land and tussock grass land are quite helpful, considering that most people could use them to find out whether they were in shrub land or tussock grass land. However, he thought whether the tussock grass land has improved pasture in it would be more problematic. He said that often under shrubs there are exotic grasses and they are grazed and stock go into and under the shrub lands for shelter from the sun and the elements.

[90] There may be a need to obtain expert ecological advice. That of itself does not make a rule inefficient or ineffective. Dr Walker said that the assessment could be rapidly and cost-effectively carried out by a person with basic botanical qualifications and knowledge of simple sampling techniques. The skill level required would be less than for significance assessment and the survey or assessment of factors restricted to the parcel of land in question. Dr Lloyd estimated about three days to undertake tenure review ecological assessments, which are a different proposition.

Enforcement

[91] Federated Farmers further submitted that while Rule 4.4.8 is simple enough on its face, the definitions present major difficulties for enforcement. Counsel said that all three definitions call for evidence of plant characteristics nearly impossible to prove once they are gone, with conservation resources reports ironically one likely source of evidence. However, that is to focus on proof of non-compliance and we cannot proceed on the basis that unlawful action will be taken by land users.

[92] We do not accept the argument that the rule is not enforceable. It is open to the Council to change its District Plan at any time if issues arise with a rule.

Economic opportunity costs

[93] Mr Page submitted that that the relevant cost is not so much the cost of pursuing resource consents but rather the economic opportunity costs to farmers of not being able to clear vegetation that may be necessary to carry on farming, a potential outcome of the resource consent process. Vegetation clearance that does not comply with Rule 4.4.8 is not prohibited but is a discretionary activity, which allows consideration of whether consent should be granted and any conditions.

[94] We had evidence from farmers on the costs and their desire to be able to clear indigenous vegetation without the expense and inconvenience of obtaining a resource consent. Control of weed species was raised as a specific concern.

[95] Farmers referred to the need to clear matagouri, although old-man matagouri may be left. Dr Lloyd said that matagouri shrub lands that are taller than 1.5 m are not

nearly as common as such shrub lands that are much lower in stature. He accepted that where fertiliser had been applied native species such as matagouri may grow a good deal faster.

[96] Mr Whitney gave evidence that spraying of sweet briar which is not indigenous would not need consent and neither would the clearance of existing tracks used by stock.

[97] Rule 4.4.8 already allows some farming activities involving the clearance of vegetation by:

- Specifying that to qualify as “indigenous vegetation”, vegetation must reach a threshold of 30 per cent density or species number and 20 per cent where there is structural dominance.
- Specifying threshold areas below which clearance is a *permitted activity*.
- Providing other exemptions, including for activities authorised by a covenant, or for the maintenance of tracks, infrastructure and “improved pasture”.

What are the benefits?

[98] To achieve the Objective, land that has been through the tenure review process needs to be brought into the policy and rule regime that applies to the rest of the district. The policy and rule framework of the District Plan are important to identifying, considering and weighing up adverse, positive and cumulative effects on indigenous biodiversity and other values on a district-wide basis. It is difficult to take a district-wide view when activities affecting indigenous biodiversity resources from geographic areas that have been subject to tenure review are treated differently.

What is the risk of not acting?

[99] Federated Farmers submitted that the risk is small and more notional than real, it is difficult to envisage application of the rule at a practical level. Federated Farmers preferred the Appendix C approach, with Forest and Bird making a Plan change request for priority sites.

[100] We find that there is a real risk of a threat to and loss of indigenous biodiversity with a policy and rule exempting land subject to tenure review from the general rule regime. It is not the responsibility of Forest and Bird to ensure that the Waitaki District Plan provides the appropriate level of recognition and protection of ecological values. That is the function of the Council.

Conclusion

[101] After considering the matters in s 32, we find that the exemption is not the most appropriate policy or method to achieve Objective 16.9.2.1 in the District Plan. We find that the costs of an exemption considerably outweigh the benefits, given the high risk of further loss of indigenous biodiversity, and that the rule should apply to land that has been through tenure review in the same way as it applies to other land. We do not accept the reasons and explanation supporting the approach as expressed in the District Plan (see [18]).

The relevance of the Environment Court’s decision in Royal Forest and Bird Protection Society of New Zealand Inc v Central Otago District Council

[102] The Council’s s 42A report writer, the hearing panel, Mr Sutherland and Mr Whitney all rely on the Environment Court’s decision in *Royal Forest and Bird Protection Society of New Zealand Inc v Central Otago District Council* EnvC Auckland A128/04, 23 September 2004 as support for the tenure review exemption in

the Waitaki District Plan. In that case the Court approved a tenure review exemption to the Central Otago District Plan's general indigenous vegetation clearance rule.

[103] Forest and Bird submitted that the *Central Otago District Council* case should be distinguished on the basis that there are significant differences between that decision and the present proceedings. Their reasons:

- DOC supported a tenure review exemption. The Director-General did not submit on the present Plan change prompting the s 42A report writer to comment that “it would be useful for [the Director-General] to at least proffer an opinion on this matter”. Counsel for the Director-General then presented a submission to the hearing Panel which explained why a tenure review exemption had been supported in the Central Otago Plan, that a similar submission had not been sought in the Dunedin or Queenstown/Lakes plan and that “more information is now available on Tenure Review outcomes than there was when the Central Otago decision was made”.
- The Court has before it specific evidence as to the outcomes of tenure for nature conservation values in the Waitaki District (unlike in the *Central Otago District Council* case).
- The objectives and policies for tenure review are now different.
- The case was decided prior to the 2003 amendment which created the requirement under s 31(1)(b)(iii) for Councils to control the effects of the use of land for the purpose of the maintenance of indigenous biodiversity.

[104] We hold that the *Central Otago* case has very limited relevance to this appeal. It concerns a different district, under different legislative provisions and policy settings, and with very different evidence before the Court.

Part 2

[105] We conclude that the exemption from the general indigenous vegetation clearance rule for land that has been through tenure review would not promote the purpose of the RMA — *sustainable management* — and as reflected in Objective.16.9.2.1. A resource consent process for indigenous vegetation clearance should cover all land in Waitaki District, under which the effects of clearance, the regional documents and District Plan objectives and policies, other relevant matters and pt 2 of the RMA can be considered for specific proposals.

Section 290A — the Council's decision

[106] We have had regard to the Council's decision but we are not bound to follow it. We come to a different conclusion on the basis of the evidence before us and as set out above.

Result

[107] The appeal by Forest and Bird should be allowed.

[108] The following changes are to be made to the Plan:

- Policy 16.9.3.6 is to be deleted;
- The 16.9.5 *Explanation and Reasons* are to be amended to delete the para commencing “The general indigenous vegetation clearance rule, however, does not apply to land that has been freeholded under the Crown Pastoral Land Act 1998 ...”;
- The exemption to Rule 4.4.8 which reads “, or shall not apply to land that has been freeholded under Part 2 of the Crown Pastoral Land Act 1998” is to be deleted.

[109] If there are any other consequential amendments to the Plan required, leave is reserved to the parties to bring them to our attention within 10 working days.

Costs

[114] It is the usual practice of the Court not to award costs on Plan Change appeals and we do not encourage any applications for costs in this case, but as a matter of formality we reserve the issue of costs.

Appeal allowed

Reported by Philippa Breden



Department of
Conservation
Te Papa Atawhai

File Ref: PAC 13 04 75 02

23 January 2013

Ross Lawrence
Ski Area Manager – the Remarkables
PO Box 359
Queenstown 9348

*Sean Dent
Southern Planning*

Dear Ross

**CONCESSION APPLICATIONS: ROAD REALIGNMENT AND CARPARK
DEVELOPMENT, CURVEY BASIN LIFT AND ASSOCIATED WORKS, LAKE
ALTA WATER ABSTRACTION AND ASSOCIATED WORKS**

I am pleased to inform you that the above applications have been granted. No submissions were received on the publicly notified concessions being Lake Alta and the road realignment and carpark works.

Enclosed are copies of the recommending reports and decisions. I will now prepare the concessions documents and these will be sent out to you shortly.

Please contact the writer for clarification of any matter relating to this.

Yours sincerely

Richard Clarke
Permissions Officer
DDI: 03 474 6956



Notified Concession Final Report to Decision Maker

Final Report to Decision Maker: Greg Lind – Wakatipu Area Manager

Notified Application for a Notified Easement Concession

Applicant: NZSki Limited – Remarkables Ski Area

Permission Record Number: OT-34110-SKI

File: PAC 13 06 75 02

The purpose of this report is to provide a thorough analysis of the application within the context of the legislation, the statutory planning framework and actual and potential effects, so the Decision Maker can consider the application and make a decision whether it should be granted or declined.

1.0 Summary of proposal

A decision in principle was made to grant this concession on 25 September 2012 and it was publicly notified on 29 September 2012. Submissions closed on 30 November 2012. No submissions were received. The Officer's Report detailing the analysis which led to the decision to approve the concession in principle subject to the outcome of public notification is DM 1047242.

Type of concession sought: Notified Easement.

Term sought: Thirty years. To align with the term of the ORC water permit, as requested by the applicant.

Description of the proposed activity: Increased water abstraction from Lake Alta, the installation of a new pump in the lake, a bubble transducer in the lake (for measuring abstraction rates) and the construction of a new pump house and underground pipe. The proposed works form part of a large scale redevelopment of the ski field which includes the installation of a new lift, new trails, new snowmaking equipment and the realignment of the access road entering the car parks and expansion/redevelopment of the car park areas (for details refer to the Officer's Reports: Curvy Basin ski lift and associated works DM 1047140, Road realignment and car parks DM 1047254).

Description of locations where activity is proposed:

Location	Activity
Rastus Burn RR - Remarkables Skifield – NZSki Limited	Commercial ski field. Proposed activities are summarised above.
Remarkables Conservation Area	

The Officer's Report detailing the analysis (DM 1047242), which led to the decision to grant subject to the outcome of public notification is attached at f 28 on the file.

2.0 Information available for consideration

This is contained in the Officer's Report.

3.0 Acknowledgement of complete application (s17S)

An application is deemed complete once all information required under section 17S has been received.

The application was deemed complete before the Officer's Report was prepared.

4.0 Analysis of proposal (s17T, 17U, 17V, 17W, 17X, 17Y)

The full analysis is outlined in the Officer's Report.

5.0 Relevant information about the applicant

This is outlined in the Officer's Report.

6.0 Proposed operating conditions

The special conditions to be imposed on the concession are those outlined in the Officer's Report.

Term: Thirty years.

Fees: A condition is recommended that any fees to be imposed on this concession will be established at a later date.

7.0 Applicant's comments on draft report

NZSki's consultant was advised on 17 December 2012 that no submissions were received. The terms and conditions as outlined in the Officer's Report are acceptable to NZSki.

8.0 Summary and Conclusions

No submissions were received. The analysis/summary conclusions and recommended special conditions are those outlined in the Officer's Report.

9.0 Recommendations to decision maker

Pursuant to the delegation it is recommended that Greg Lind the Wakatipu Area Manager approve the granting of a Notified Lease concession to NZSki Limited subject to the standard concession contract; and the special conditions identified in the Officer's Report.

 14/1/13

Signed:
Richard Clarke - Permissions Advisor

 14/1/13
Signed:
Dave Johnstone - Permissions Manager

Recommendation Approved / ~~Declined~~

 21/1/13



Notified and non notified Concession Officer's Report to Decision Maker

To: Wakatipu Area Manager – Otago Conservancy

Application: Lake Alta – increased water abstraction and associated works

Applicant: NZSki Limited – the Remarkables Ski Area

Permission Record Number: OT-34110-OTH

File: PAC 13 04 75 02

Date: 20 September 2012

The purpose of this report is to provide a thorough analysis of the application within the context of the legislation, the statutory planning framework and actual and potential effects, so the Decision Maker can consider the application; and confirm that it should be notified; and make a decision in principle whether it should be granted or declined.

1.0 Summary of proposal

Information about the applicant:

NZSki ltd is an existing ski field owner/operator based in Queenstown.

Type of concession sought: An easement for increased water abstraction and associated structures to abstract the water.

Background and summary of application

The Remarkables ski area is part way through a programme of upgrading its trail network. To date these works have included a range of terrain modifications and the expansion of snowmaking capacity from 3 to 14 ha. The ski area now hosts 70 snowmaking machines. Over the next five years further trail works are planned, including a new chairlift and trails into the “Curvy Basin” area. Once these works are complete the ski area will have up to 125 snowmaking machines covering 36ha of trails.

To operate this extent of snowmaking to its full potential NZSki have requested to use more water from Lake Alta, to directly convey this water from the lake through a combination of above and underground pipes, and to construct a new pumping station by the top of the Alta chairlift.

Snow is the obvious driving force behind the success of the ski area. Snow quality underpins visitor satisfaction and therefore builds repeat business. Furthermore the benefit of snowmaking during an era of climate change is self-evident. However as natural snowfalls are highly variable an immediate imperative for more snowmaking is to ensure the ski area can open on a pre-

determined date in late June. Greater certainty of opening would allow the ski area to command more pre-bookings for the early winter, a time of high set up costs and uncertain patronage. This benefit was evidenced in the 2012 winter when artificial snow allowed a limited opening of the ski area prior to any significant natural snowfall.

The key points of the current application are summarised below:

Increased water take from the Rastus Burn and Lake Alta

- To generate and then maintain a sufficient coverage of snow over 36ha of trails would require up to 400,000 m³ of water per winter season.
- This water would be sourced from both a) the Rastus Burn stream at the current pumping house and b) directly from Lake Alta. Water would be taken from the stream before any draw down from the lake would occur. At times water would be drawn from both points simultaneously.
- The stream would not be taken below a minimum flow of 15 ls⁻¹ at the current pump house. The lake would not be drawn down further than 57cm below its stream outlet. When both these limits are reached snowmaking would be suspended until the stream and/or lake receive more water from natural inflows.
- The increased water take would draw down the lake up to 42cm lower than under the current concession.
- Under the current concession Lake Alta is usually drawn down to its minimum by late June and is not fully restored until the end of August. With the increased abstraction, full replenishment is not expected to occur until late October.
- To improve monitoring of lake levels a NIWA designed 'bubble transducer' will be placed on the lake bed. This transducer will be housed within a thin 25 metre conduit to be disguised to minimise any visual effects.

Directly conveying water from Lake Alta to the ski area.

- NZSki currently pumps water for snowmaking from Lake Alta back into the Rastus Burn stream. From the in-stream discharge point it takes about 2 ½ hours for the water to flow 1.3km to the current pumping station near the base building.
- During this transit some of the pumped lake water is lost through the permeable stream bed. More of the extracted lake water is lost whenever cycles in weather conditions halt snowmaking. Every time this occurs about 2 ½ hours of extracted lake water will bypass the pumps unused.
- To eliminate these inefficiencies NZSki propose to convey water directly through pipes from the lake to a new pump house and then onto the ski area. This would provide a protected and instantaneous flow of water to the snowmaking network.
- Overall the new piping would run about 520 from the lake outlet to a new pumping station by the top of the Alta Chair. The first 210m of pipe would be a temporary, above ground installation for the winter period. The remaining 310m of piping would be permanently buried within a trench.

- The first 210m of pipe is to remain above ground to avoid the adverse effects of constructing a trench within the Lake Alta Basin. The connection between the above ground and underground pipes will be located at the boundary of the Remarkables Conservation Area and The Rastus Burn Recreation Reserve.
- The 310m of underground pipe would be dug by 20-ton class excavators within a construction corridor up to 9 metres wide. These excavations would disturb up to 3,000m² of vegetation which will be restored as works are completed. The vegetation habitats predominantly affected would be bouldery tussock grassland and a small wetland.
- This underground pipe would terminate at a manhole sized junction over which the above ground pipe would commence. The above ground pipe would then connect to a control box located 5 m from the lakeshore. From this control box will be feeder pipes to two underwater pumps which will draw the water from the lake. A cable from the bubble transducer will also connect to the control box. Smaller power and communications cables would traverse the same line as the piping.
- With the exception of the bubble transducer conduit, the above ground pipe and all the equipment in or close to the lake will be temporarily installations for the winter period.

New pumping station

- Additional pumping capacity is required to service the increased snowmaking network. The new pumps would be housed in a single story pump house 14m long by 6m wide.
- The optimal position for a new pump house would be the top of the Alta Chair. The high elevation will assist generating water pressure. This location is unobtrusive, has little vegetation and minimises the length of above and underground piping from Lake Alta. Some excavations will be required to build a level building platform. The underground pipe would connect directly to the pump house.
- The existing pump house will be retained to manage water taken from the Rastus Burn.

Limit	DOC concession	ORC water permit	Proposed
Lake draw down	15 cm	20 cm	57 cm
Draw down reference	Not specified	Average lake level	Outlet level – 1799.97m asl
Rate of lake draw down (mm) / abstraction (ls ⁻¹)	5 mm day ⁻¹	Max of 74 ls ⁻¹ AND In any rolling 14 day period 1) no more than 31,100m ³ of water 2) no more than 20cm draw down.	Absolute max of 125ls ⁻¹ Avg daily max 94ls ⁻¹
Estimated volume of lake water used	40,000-90,000 m ³	248,800 m ³	400,000 m ³ (inclusive of Rastus Burn take)
Minimum flow of Rastus Burn (from the ski area)	Not specified	15ls ⁻¹	15ls ⁻¹

Refer plan 1 and photographs attached to this report. The full analysis is undertaken in section 4 of this report.

2.0 Information available for consideration

Staff comments

The Wakatipu Area Office comments are attached on the file (Area report DOCDM-1033354). A site inspection with ski area personnel and staff from the Conservancy and Area Offices occurred on 26 April 2012. The inspection included visits to all the areas where the proposed works may take place.

Area Office staff have undertaken site inspections on several occasions prior to 26 April 2012. This report incorporates comments from the area report on the effects of the proposals and makes recommendations on the proposals.

Otago Conservation Board

The application was discussed at the Board meeting on 20 July 2012. The advice (unconfirmed minutes) provided to the Department concerning this proposal was:

The board supported in principle the increased water take from Lake Alta, including the new monitoring equipment (bubble transducer) and data that will be available through DOC and the ORC.

Recommend that revegetation and aftercare conditions be given high priority in the concession, and follow up requirements specified and monitored.

Recommend the option of no pipes is explored, with a small reservoir constructed at the existing pumphouse, to cover lag demand.

Comment

Revegetation and its implementation is given high priority by the Department (refer to recommended special conditions 7 – 9 in section 6 of the report).

The option of no pipes and augmenting the flows in the Rastus Burn with a new holding reservoir at the base building was not considered a practical option by NZSki.

Loss of water through the stream bed, and loss after the pump is turned off as water abstracted from Lake Alta passes the existing pump house, makes the existing system very inefficient.

As mentioned above there is a time delay of 2 ½ hours before water abstracted from the lake reaches the pump house. Delays in snowmaking due to adverse weather conditions means the pump has to be turned off and this leads to further loss of water.

In addition, the reservoir needed to hold the water would be large (about the size of a commercial swimming pool), and would be an extra unnecessary modification close to the ski field base building which has limited space available for such a structure.

Iwi consultation

The application does not trigger any consultation triggers with Ngai Tahu or the runanga for Otago Conservancy.

3.0 Acknowledgement of complete application (s17S)

The application was deemed complete on 14 March 2012.

4.0 Analysis of proposal (s17T, 17U, 17V, 17W, 17X, 17Y, 17 S (W))

Section 17T(2) requires the Minister to decline an application within 20 working days of it being deemed complete, if "...the application does not comply or is inconsistent with the provisions of this Act or any other relevant conservation management strategy or plan..."

Comment: The application is consistent with the conservation management strategies as outlined below.

4.1 Public notification s17T (4):

It is recommended that the intention to grant this concession is publicly notified for the increased water take and permanent bubble transducer conduit to be located on the bed of Lake Alta.

It is not considered necessary to publicly notify the intention to grant the overland temporary pipe; the temporary control box, pumps and connecting pipes; the underground pipe and the new pump house. The temporary overland pipe and ancillary equipment has already been approved and the other developments should be managed similarly to any other trail, snowmaking and building approvals, which have been non notified.

4.2 Analysis - Statutory context (consistent/inconsistent) and assessment of effects:

4.2.1 Conservation General Policy and the Otago Conservation Management Strategy

Conservation General Policy – May 2005

The activity of ski field development is not inconsistent with the objectives and policies of the General Policies. These policies are subject to the more specific policies found in the CMS and management plans.

Otago Conservation Management Strategy – August 1998

The application is consistent with objectives and implementations points of the Otago Conservation Management Strategy, in particular the provisions for the Remarkables Special Place (10.26) and the functional objectives relating to Commercial Recreation and Tourism (28.1):

28.10 Commercial Recreation and Tourism

Management issue for the ski fields: *The three skifields (on Department managed land) have undergone a resurgence in the last three years with development investments particularly for snow making and good snow conditions raising interest in skiing to new heights. With this has come the desire of the skifield owners to develop further facilities and further modify the areas to cater for current demand and projected increases. The department has a very important job considering the large scale development and modification plans of these companies and undertaking objective monitoring.*

Objective for commercial recreation: *To ensure that recreation and tourism concessions (including concessions for special events) bring benefits in terms of opportunities to enjoy natural and historic resources or recreational opportunity in natural settings, without causing undue adverse effects on those resources or settings or on the enjoyment of them by other people.*

10.26 Remarkables Special Place provisions

Management issues: *Skifield development, eg, snowmaking and its water supply and storage; sewage disposal to Rastusburn; slope grooming in areas of exposed rock; road maintenance and safety; car parking.*

Retention of natural tussock grassland, wetland and alpine ecosystem communities.

Objective for Remarkables: *To protect the very high landscape and ecological values of the area, and its historic value, and the remoteness of parts of it, while allowing appropriate parts of it to be used for a range of recreational opportunities including the existing commercial skifield.*

Implementation policies:

The lessor's (departments's) discretionary powers in the ski area lease will be exercised in terms of the objective, subject to provisions of section 17 of the Reserves Act to the extent that the lease is of parts of the recreation reserve.

Detailed analysis of effects – the analysis provided below outlines and discusses each component of the application.

4.2.2 Description of the area

Lake Alta is situated within an alpine cirque basin. The lake is approx 14 hectares in size and up to 35 m deep. During the winter the lake is covered by a thick layer of snow and ice. The lake is enclosed by steep walls of rock and scree to the north, west and south while to the east a moraine forms a large hill which retains the lake within the cirque. This moraine is composed of unsorted glacial debris of rocks, boulders and gravels occasionally mixed with finer material. The moraine is permeable which leads to subsurface water forming many seepages and springs. While the top of the moraine is mostly flat the outer slopes drop steeply into the wider Rastus Burn landscape in which the ski area has been built. This outer slope is predominantly bouldery tussock grassland.

The Rastus Burn stream begins at the lake's outlet and initially flows for about 80 m to a small tarn. At this point the stream is considered to gain flow through subsurface seepage from the lake. The stream then cascades down to the wider alpine basin where it gains more flow from various sources at the base of the moraine wall. The stream then reaches a meandering wetland until it gathers pace again, joining another waterway from the Sugar Bowl basin before reaching the existing pumping station close to the base building.

The proposal covers crown land managed by the Department. This area is divided into The Remarkables Conservation Area and Rastus Burn Recreation Reserve. The ski field lies within the Recreation Reserve and operates through a series of leases, licenses and easements. The Rastus Burn Recreation Reserve is 659 ha in size. Overall the greater Remarkables Conservation Area is over 17,000 ha in size.

The management of public conservation land across the Remarkables is directed through the 1998 Otago Conservation Management Strategy (CMS). While many provisions of this CMS are relevant the Remarkables is identified as a Special Place (section 10.26). This designation aims to protect the area's very high landscape, ecological, historic and remote values while allowing appropriate parts to be used for recreation, include the existing ski field.

4.2.3 Effects of the activity applied for

NZSki were first granted a concession to take water from Lake Alta in 2005. The approved concession limited the lake draw down to 15cm. In 2009 NZSki applied to increase the draw down limit from 15cm to 50cm. At this time the Department considered the assessment of effects was insufficient, leading to NZSki withdrawing the application.

This new application proposes to draw down the lake by up to 57cm. NZSki have provided several reports to support their environmental impact assessments, including accounts of the lake's aquatic ecology (Ryder Consulting), the basin's hydrology (Raineffects) and on indigenous vegetation (Davis Consulting Group).

This report reviews NZSki's application in stages of hydrology, freshwater habitats, terrestrial habitats, landscape and recreational amenity.

4.2.3.1 Hydrology

Lake Alta

It is proposed to lower Lake Alta by up to 57cm below the level of its stream outlet. The outlet level is considered a more reliable reference point than either an 'average' or 'start of winter' lake level. The level has been surveyed at 1799.97 metres above sea level (asl). The minimum lake level would therefore be 1799.40 m asl.

A once-off draw down of 57cm provides a volume of 75,000m³. In reality this will be gradually replenished and abstraction would continue whenever the lake rose above the minimum. NZSki proposes to cap abstraction at 400,000m³ per season, which is to be inclusive of water taken from the Rastus Burn stream. If at the start of winter the actual lake level is greater than the outlet level, this extra water would not affect the minimum allowed lake level. However any additional storage would be counted towards the overall abstraction cap.

NZSki have used rainfall records to model the effect of taking more water on the lake's surface level. Due to the high demand for snowmaking early in the season the lake would typically reach its minimum extent by the end of June. For the rest of winter natural inflows should then sustain the lake at least at this minimum, with any additional recharge being available for snowmaking use. Once snowmaking ceases the lake is expected to return to its natural level by the end of October. This is approx. 20 weeks after the beginning of winter.

The Department notes these calculations are based on a set of rainfall records from 1993 to 1999. During this period the region experienced three major floods (1994, 1995 and 1999) which may have skewed rainfall averages over this time². For example the average rainfall for Queenstown Airport from 1993 to 1999 was 819mm while from 1969 to 1999 the average was 726mm (11% less). There is therefore a risk that the calculated recharge rates are overestimates and that lake levels could remain below normal for a longer period than anticipated.

2: David Hamilton and Associates, (2010). Shotover Country Plan Change River and Flooding Risk Assessment.

The Rastus Burn stream

Increasing the water take from Lake Alta and piping this water directly to the snowmaking pumps will reduce the natural flow of the Rastus Burn stream. As the lake falls below its outlet the initial surface flow of the stream will dry up. At about 80m from the lake the stream enters a small tarn where subsurface seepage of lake water would partially recharge flow (fig 1). After the tarn the stream is further replenished by both surface and subsurface flows and NZSki expects the stream to attain at least its minimum flow of 15ls^{-1} by the time it reaches the current pump house. Any flow over this minimum would be used for snowmaking as required. However as demand for snowmaking varies the stream is expected to flow above its minimum on a regular basis. NZSki considers this will mirror natural flow patterns.

NZSki consider that any artificial changes to stream flow will be within natural fluctuations. NZSki has observed that during dry periods the first 80m reach of the stream has been observed to dry up naturally. However the Department notes that unlike Lake Alta NZSki has not modelled how artificial changes would be superimposed over natural patterns. Without such estimates it is difficult to judge whether the stream will retain a healthy flow through the snowmaking season. It is possible that artificially triggered low flows will be more frequent than what naturally occurs.

4.2.3.2 Freshwater habitats

Lake Alta

Lake Alta is a relatively inhospitable habitat for freshwater flora and fauna. This can be attributed to its high elevation, low nutrient status, low productivity and the strong seasonal influence of ice and snow. No fish have been recorded in the lake and there is little algae, emergent plants or submerged macrophytes. The lake's shallow margins provide some habitat for benthic invertebrates capable of enduring the winter extremes. Within the lake Zooplankton are seasonally abundant, taking advantage of reverse thermal stratification during the winter.

NZSki considers the ecological impacts of taking more water from Lake Alta will be minor. The Zooplankton are not unique to the area and NZSki considers that their abundance would be resilient to any abstraction of water within the top $1\frac{1}{2}$ metres of the lake. Furthermore NZSki do not expect the increased water take to affect the lake's winter temperature stratification.

The Department considers that an artificially lowered lake may expose a greater width of the shoreline to the rigours of ice. This could exacerbate the stresses facing benthic invertebrates in the lake margins and lead to a decline in their abundance. There may also be unexpected effects on the abundance of Zooplankton, as sampling to date may not have sufficiently accounted for natural fluctuations of Zooplankton within the lake.

The lake's freshwater habitat may also be affected by the disturbance of sediment during installation of the conduit for the bubble transducer. To minimise this problem NZSki undertake to conduct all underwater works by hand using scuba divers.

This new snowmaking proposal will require 2 underwater pumps to be temporarily placed on the lake bed (currently only 1). Any equipment placed within the lake has the potential to rust or otherwise degrade the lake's water quality. NZSki have undertaken to only place equipment of inert materials into the lake.

The Rastus Burn stream

While the natural flow patterns of the Rastus Burn stream could be affected the stream provides little freshwater habitat. No fish have been recorded and there is no emergent plant growth or

macrophytes. The main effect of any flow changes may be the reduction of habitat for benthic invertebrates such as mayflies, stoneflies and caddisflies.

However the extent and significance of invertebrate habitat loss is uncertain. As the stream's flow is naturally variable any invertebrates may have lifecycles already adapted to water stress. Another mitigation of flow loss is that the winter snow pack may naturally maintain a moist, oxygenated environment in which invertebrates could survive³. Furthermore many benthic invertebrates are highly mobile and numbers could quickly recover over summer through dispersal from nearby water bodies. While any artificial changes may have no significant effects on species already attuned to natural disturbance, the scale of these artificial effects may exceed natural tolerances.

3: Ryder Consulting Ltd, (2000) Aquatic ecological assessment of the upper Rastus Burn catchment in relation to potential flow manipulations.

4.2.3.3 Terrestrial habitats

Lake margins

While most of the shoreline of Lake Alta is steep and rocky some sections harbour a mixture of tussocks, shrubs, mosses and lichens. When present this vegetation ceases abruptly just above the waterline as winter ice acts to prevent growth closer to the water (fig 2). Any lowering of the lake is therefore not expected to directly impact riparian vegetation. There is a risk that some riparian vegetation could be indirectly lost through undercutting of the shoreline by wave erosion across a lowered lake surface. This risk is better detailed under Landscapes. Other than some vegetation the lake margins provide little other habitat. No birdlife has been found breeding at the lake.

Alpine vegetation

The first 210m of pipe will be placed above ground for the winter period. This temporary installation is not expected to impact the alpine vegetation in the Lake Alta basin.

To install the 310m of underground pipe a trench would be dug from the border of the Remarkables Conservation Area to the top of the Alta Chair. While the trench would only be 80cm in width and 1.5 m deep the construction corridor will be up to 9m wide. Heavy equipment to be used will include 20 tonne diggers. Fig 3 illustrates the construction of a similar pipeline in the Sugar Basin in 2006.

Construction will disturb up to 3,000m² (0.3ha) of alpine habitat. This area is predominantly bouldery tussock grassland (fig 5) and seepage wetland (fig 6). Table 2 and Map 1 provide further detail of the location and composition of these habitats.

After insertion of the pipe NZSki would progressively backfill the trench, spreading surplus material over the trench line and then restore the displaced vegetation. Replanting would be timely according to current protocols to minimise soil erosion and maximise survivorship rates.

While no threatened plant species have been identified the affected vegetation is valued as highly representative of the Remarkables Ecological district. However NZSki considers that while some temporary effects are unavoidable that restoration will avoid any permanent effects on the ecology of these habitats. NZSki also point to the small size of the disturbed area (0.3ha) relative to the extent of neighbouring public conservation land.

The Department is concerned that the composition of the glacial terrain may complicate the construction and restoration of the underground pipeline. This may lead to damage occurring outside the construction corridor and project delays suspending replanting until at least the following summer. Alpine vegetation can be difficult to rehabilitate and there are many risks to a

timely and complete restoration. Any replanted tussocks are expected to re-establish within 2-4 years. While this is sufficient for maintaining visual amenity a complete restoration will take longer as the establishment of inter-tussock species is a slower process. This may be compromised if topsoil is eroded prior to new plants taking hold.

The tussock grassland also features some rock outcrops through which the pipeline will traverse. These areas will require drilling and blasting of large boulders and infilling of surface hollows to maintain a consistent slope for the pipe. Any tussocks in these areas would be replaced by rocks.

The seepage wetland to be affected is part of a recognised network of wetland areas within the Rastus Burn. To minimise environmental impacts to this wetland NZSki propose to dig through a narrowed construction corridor of 6m. To speed up restoration and avoid hydrological problems the low lying vegetation will be uplifted in segments and quickly replaced.

In addition to the underground pipeline the footprint of the new pumping station will require some excavations to create a level building platform. This would remove some alpine cushion plants and snow tussocks however as proposed site is mostly rock NZSki does not expect any significant environmental effects (fig 4).

Distance from lake	Vegetation	Area of disturbance (m ²)	Notes
0-205	Bouldery cushion plants	Temporary (winter) above ground pipeline	
- Approximate boundary of Conservation Area and Recreation Reserve -			
206-515	Tussock grassland	2,790	<i>Chionochloa macra</i> interspersed with inter-tussock species, large boulders and surface hollows.
516-520	Wetland	30	6m construction corridor. Turf to be removed in segments

Alpine wildlife

While no direct surveys were conducted for this proposal some endangered species are known to inhabit alpine habitats such as The Remarkables including Kea (naturally uncommon), cryptic skink (gradual decline) and velvet worm (recommended as threatened). However none of these species are unique to the Remarkables. It is also expected that a multitude of common insects are spread over the alpine area. Any of this wildlife could be affected either through displacement from their usual habitat or indirectly through a reduction of food sources. NZSki consider that as the disturbed area is relatively minor and any vegetation loss temporary, no wildlife will be significantly affected by the construction of a section of underground pipeline.

4.2.3.4 Landscape

Lake Alta

Under normal conditions the lowering of any lake by over ½ metre would have significant adverse effects on its natural character. In the case of Lake Alta a lowered shoreline would extend over a muddy rocky substrate, particularly along the eastern margins which are most visited in summer. Furthermore an artificially lowered lake could lead to wave erosion gradually undercutting substrate below the normal shoreline. This could lead to slumping of the lake margins which would irrevocably degrade the lake's natural form. However the abstraction of water from Lake Alta occurs over the winter period when the lake is usually covered by a cap of snow and ice.

Therefore NZSki considers that any visual change to the lake will not be observable. This ice cap would also protect any sensitive shorelines from wave erosion.

The Department considers there is a risk that artificially low lake levels may co-occur during warmer periods where the lake has little or no ice. Two recent examples include a) a site visit by Area Staff in late May 2006 (fig 7) and b) media reporting from the 27th May 2009 showed that snow blanketed the area while Lake Alta was unfrozen¹. If this scenario would occur while the lake was being drawn down for snowmaking wave erosion could quickly undermine the natural lake margins.

The lake's margins may also be at risk from lower than normal ice abrasion. Each winter the lake's shoreline is abraded by a layer of ice that moves up and down with natural changes to lake levels. If the lake is drawn down to artificially low levels this abrasive effect may erode underneath the natural shoreline. This could also lead to slumping of sensitive parts of the shoreline.

Other potential effects on the lake's landscape include the installation of a bubble transducer conduit. If installed flush on the lake bed the conduit would be easily observable through the lake's clear waters (fig 8). NZSki will therefore partly bury the conduit beneath the bed and camouflage it with rock material. The conduit will also require a small trench to be cut by hand into the lake shoreline. Given the narrow width of this trench NZSki considers it appropriate to restore the cut with rocks and vegetation.

1: Source URL (retrieved on 18/04/2012 - 16:27): <http://www.odt.co.nz/news/queenstown-lakes/58176/snow-thick-too-quick-lake-freeze>

The Rastus Burn stream

As previously described increasing the use of lake water will reduce the natural flow of the Rastus Burn stream. If any flow changes are greater than expected the natural character of the stream may be adversely affected. NZSki explain that as snowmaking coincides with extensive winter snow any changes will not be observable. By the time the snow pack melts the flow of the stream will be restored ensuring the visual amenity of the stream is unaffected.

The Department notes that during the early and intensive part of the snowmaking season the Rastus Burn might only be partially snow covered (fig 7). There is also a direct relationship between a stream's flow and the accumulation of snow over its surface. However as the timing and scale of any artificial changes are uncertain it is also difficult to predict if the natural character of the Rastus Burn will be affected and if these changes would be seen by visitors.

Alpine Terrain

The construction works of the underground section of pipeline will have significant temporary adverse effects on the natural character of the alpine terrain (fig 3). The restoration of vegetation is detailed under Terrestrial Habitats. In terms of visual amenity, while the transplanted vegetation will partially disguise the trench's construction the Area Office is concerned that visual effects will remain until re-growth is completed (fig 9).

The new pumping station will be clearly seen from higher elevations of the Rastus Burn basin and adjacent ridgelines and saddles. However as the structure will be located close to the top of the Alta Chairlift any additional impacts on landscape are considered minor.

4.2.3.5 Recreational amenity

Summer

Outside the winter season the Rastus Burn Recreation Reserve is visited by locals and tourists who take advantage of the ski field's road to access the alpine setting. While some visitors are content to undertake a short car stop others will walk to Lake Alta and other nearby features. The Rastus Burn basin is also clearly visible from the surrounding peaks, ridgelines and saddles frequented by mountaineers, rock climbers and trampers (fig 10). Several concessionaires have rights to guide to the lake and/or provide mountaineering instruction for Single and Double Cones. While no accurate counts of overall visitor numbers are available some track counter and survey estimates suggest that during summer Lake Alta alone may receive over 100 visitors a week.

The Department considers the main effect on recreational amenity would be the incomplete restoration of the tussock grassland and seepage wetland on the outer moraine wall. Any construction over these areas will leave a longer lasting change to the reserve's natural character. Any other effects of the proposal on recreational amenity would be minimal. These include the bubble transducer conduit and temporary winter surface piping, control box and pumping equipment.

During the construction period there will be a range of significant temporary adverse effects on the area's recreational amenity. The Area Office notes that NZSki has not yet provided information to address these effects, including the management of public safety.

Winter

During the winter season the basin is frequented by skiers and snowboarders, most of who are traversing steep chutes and slopes from Shadow Basin. The Lake Alta basin is also sought by ski tourers, snow cavers and ice divers. For most of winter the lake is frozen with a thick ice cap which safely supports these winter pursuits.

The first application to take water from Lake Alta generated discussion about how reducing the lake underneath the ice could leave a void into which the ice may collapse. This risk was further investigated and discounted in preference for a gradual lowering of the ice cap according to sinking water levels. This would have few adverse effects on winter amenity except some surface cracks (which would rapidly refreeze) and the presence of broken, rubbly ice at the lake's edge. The Area Office expects this conclusion to remain relevant for the increased water take. However ongoing monitoring is recommended for unexpected effects, particularly during periods of rapid lake draw down.

There will some visual effects from some of the temporary pumping equipment. The above ground pipeline will extend approximately 210metres and will not be completely removed until late spring. During years of heavy snowfall sections of the pipe may be overlain by snow until early summer.

4.2.3.6 Effects on culture and heritage

There are no known sites of cultural or historical significance in the area affected by this proposal. However the proposed activities occur in a Statutory Acknowledgement Area, pursuant to the Ngai Tahu Claims Settlement Act 1998.

4.2.4 Further comments

Abstraction rates

The existing concession and resource consent set limits to both the volume and rate of water abstraction from the lake (table 1). Under the new proposal NZSki have stipulated limits to per second abstraction rates however they also request that no other daily or fortnightly abstraction limits be applied. While this limit is a matter for the ORC to consider, NZSki's current concession has an abstraction rate limit of 5mm a day. To align the conditions of the new concession and resource consent is considered advantageous.

NZSki's new proposal sets limits on water use at 400,000m³ per season provided the lake level does not fall further than 57cm below its outlet and the Rastus Burn stream maintains a minimum flow of 15ls⁻¹ from the current pump house. NZSki's per second abstraction limits are determined by the capacity of the network rather than having any environmental function.

In this situation there appears little conservation benefit from restricting the rate of water abstraction. Limits on abstraction rates are typically implemented to allow adequate replenishment of water reserves where multiple users are continually using a single resource. Abstraction limits may also minimise adverse effects to riparian margins. In the case of Lake Alta and the Rastus Burn stream; there are no other consented water takes, there are few riparian habitats and abstraction would only occur for a the winter months. It is recommended that no limits to abstraction rates are imposed on the concession and this would defer to resource consent processes in this regard.

Resource consent requirements

Under the Otago Regional Water Plan both the increased water take and disturbance to the lake bed will be assessed as discretionary activities. Concurrent to their concession application NZSki have lodged applications for these ORC consents for a term of 30 years.

Under the Queenstown Lakes District Operative Plan the subject site is contained within the Ski Area Sub Zone of the Rural General Zone. Correspondingly the new pump house will be assessed as a controlled activity as the building is within this zone and associated with ski area operations. However the vegetation clearance will be assessed as a restricted discretionary activity as the clearance of indigenous vegetation is above 1070m. QLDC consents are on hold pending approval of a DOC concession.

Existing concession

The current system for extracting water from Lake Alta to augment the flow of the Rastus Burn is approved under concession PAC-13-04-150. Though this new application requires some components of the existing concession, several changes will be required. These include the extension of surface piping for up to 210 metres, the placement of two water pumps in Lake Alta and the connection of the NIWA bubble transducer to the control box. It is recommended that the existing concession be surrendered and all temporary pumping equipment and pipes be authorised through a new concession.

4.6 Purpose for which the land is held s17U(3):

Ski field development is considered to be not contrary to the purposes for which the land is held. Provided the recommended conditions are complied with, any adverse effects on the Land are expected to be no more than minor.

5.0 Relevant information about the applicant

Convictions on any charge related to the activity applied for or on any conservation related issue: Not applicable.

Past compliance with concession conditions: The applicant has complied with concession conditions in the past.

The applicant has concessions for 3 ski fields on public conservation land (the others being Coronet Peak and Mt Hutt). Over the past few years, a good re-vegetation and monitoring protocol has been implemented to ensure earthworks such as those described in this application proceed with few problems

Credit check result: Not applicable.

6.0 Proposed operating conditions

Term: A term of 30 years is recommended. This will align the concession with the recommended term of the ORC water permit.

Fees: To be established upon reaching a final decision for the application.

Special conditions: These conditions are recommended in addition to the conditions outlined in the existing lease:

1. Other consents, approvals and assessments

This concession approval will not supersede any other lawfully required consents, approvals and assessments from other agencies. This includes (but is not limited to) geotechnical, engineering, district and regional resource consents, and building consents. Copies of these approvals are to be provided to the Grantor prior to works commencing.

2. Monitoring

- a. Monitoring of silt control, disturbance of wetlands, revegetation and all works at sensitive sites is to occur by an independent monitor (agreed to by the grantor and the concessionaire) at a frequency of an average of one site visit per week for the duration of works. All costs are to be at the expense of the concessionaire. Reports are to be provided to both parties.
- b. Monitoring of other works may be conducted by Departmental staff as required by the Department. All costs are to be at the expense of the concessionaire.
- c. All works will be included in the annual monitoring conducted by the Grantor in conjunction with ongoing independent monitoring.

3. Contractor selection

Only contractors with a demonstrated ability in alpine earthworks and restoration are to be used.

4. Fuel

Vehicle fueling and storage is to take place only in designated areas established by the concessionaire's staff in consultation with DOC staff.

5. Avoidance of Wetlands

- a. Wetlands are to be avoided where possible. Where areas of surface or sub-surface drainage are unable to be avoided, suitable provision for maintaining their flow and quality is to be installed eg. coarse rock, geocloth, piping, silt traps.
- b. If construction debris falls into non target wetland areas this must be reported to the Grantor and immediately remediated.

6. Control of surface runoff and silt

- a. Suitable drainage, cut-outs and silt traps are to be installed to control new surface flows into lower areas of vegetation, wetlands and watercourses.

7. Public Access and Safety

- a. The public is to be able to pass freely and safely through the area, particularly the walking track to Lake Alta, whenever possible.
- b. When this access is required to be temporarily restricted, it is to have prior agreement of the Department, is to be publicly advertised by the concessionaire at their expense, and suitable alternative access is to be provided.
- c. Signage advising the public as to the nature of the work is to be installed at the expense of the concessionaire.

8. Removal and storage of vegetation

- a. Vegetation is to be stripped and stored locally as construction progresses. It must be stripped with enough surrounding soil and humus to allow for successful storage and replanting survival.
- b. Stripping may be by machine or by hand, whichever will provide the best chance for success given the nature of the vegetation.
- c. Watering of this material may be required, at the direction of the Grantor or its nominated Monitor, to ensure its survival while stored.

9. Re-vegetation

- a. Vegetation is to be replanted as soon as possible following completion of works. Re-vegetation planning must include provision for follow-up maintenance prior to the end of the growing season.
- b. Where there is sufficient plant material and humus to allow survival, stripped material can be split. To supplement re-vegetation works split material may also be sourced from other areas in the Rastus Burn Recreation Reserve.
- c. Plant spacing is to be at a density as specified by the independent monitor on site.
- d. To intensify re-vegetation of tussocks, nursery reared plants must be used where there is insufficient existing vegetation available for transplanting. The rearing and planting of any plants to be brought on site must be to the satisfaction of the Grantor.
- e. The seed of appropriate species should be broadcast to promote vegetation growth in the rock walls and between transplanted/planted tussocks.

- f. Geo-textile cloth is to be laid over any areas where there has been insufficient replanting by May 1st. This is to be removed in the following spring and re-vegetation works continued.
- g. Completion of re-vegetation works will be at the discretion of the Grantor.

10. Re-vegetation Protocol

- a. The existing re-vegetation protocol must be updated to ensure it reflects both the extra requirements of this new project and the ongoing requirements of any concurrent re-vegetation actions.
- b. The protocol must set standards for re-vegetation actions, timeframes for achievement of goals and processes for remedying problems as they arise.
- c. The reviewed protocol must be approved by the Grantor prior to this project commencing.

11. Construction timeframes

- a. Prior to works commencing the concessionaire must submit an overall project plan to the Grantor and the independent monitor. This plan should provide a timeline of the key construction stages, the works to be completed in each stage, the equipment to be used for each stage and anticipated monitoring requirements.
- b. A briefing must be provided by the independent monitor to contractors and the concessionaire's staff prior to each key construction stage.
- c. All works are to be completed by May 1st each year.
- d. Should the concessionaire desire construction be staged over two or more years the project plan is to account for remediation measures for unfinished works that may become redundant due to changing circumstances.

12. Remediation of works

- a. Any remediation highlighted by monitoring will be carried out as specified by the Grantor at the cost to the concessionaire.

13. Suspension of works

- a. The Grantor, at its sole discretion, may require all works to be suspended until suitable remediation is provided.

14. Satisfactory Completion of works

- a. Final completion of revegetation and any other remedial works will be at the discretion of the Grantor.

15. Monitoring the effects of the increased water take.

After each winter season NZSki is to undertake monitoring surveys of the integrity of the riparian margins, invertebrate habitats and landscape values of both Lake Alta and the Rastus Burn stream;

- (a) This monitoring programme should be designed by a suitably qualified expert who has been pre-approved by the Grantor. (b) Baseline data should be collected prior to the increased snowmaking regime being exercised. (c) The Concessionaire is required to report on the results of this monitoring to the Grantor no later than 1 May of each year during the Term. (d) If after the first two seasons of monitoring there are no new adverse effects that become apparent as a result of the monitoring (in the sole opinion of the Grantor), then the Grantor may (at his sole discretion) vary the intervals that monitoring is required under section 17ZC(3) of the Conservation Act 1987 to instead occur thereafter at three-yearly intervals during the Term, or to any other interval deemed appropriate by the Grantor.

16. Lake margins

As a pre-cautionary approach to safeguard lake margins from unexpected erosion the abstraction of water should not exceed the currently permitted limit of 15cm until Lake Alta is completely covered by a lasting cap of ice and snow. If after the first two seasons of monitoring there are no new adverse effects that become apparent as a result of the monitoring (in the sole opinion of the Grantor), then the Grantor may (at his sole discretion) vary this condition under section 17ZC(3) of the Conservation Act 1987, to any other limit deemed appropriate by the Grantor.

17. Ice subsidence

That the surface of the frozen lake be routinely monitored to detect any rapid subsidence that may affect the usually safe passage.

18. Lake contamination

Any equipment to be permanently or temporarily placed within Lake Alta must be of inert materials that will not rust or otherwise contaminate the lake.

19. Bubble transducer

Landscaping measures to disguise the bubble transducer conduit should be sufficient to ensure natural character of the lake is maintained.

20. Removal of surface pipe and equipment

That NZSki take all practical steps to ensure the above ground pipe is removed prior to the summer walking season. If pockets of deep snow cannot be removed then the pipe should be removed in segments where possible.

7.0 Applicant's comments on draft Officer's Report

The applicant was sent draft copies of the reports on 28 August 2012. With respect to this application they make the following comments. The Department's response is in italics.

Page 4, Section 3.0: There was an error in the draft report, the application was deemed complete on the 14th March 2012.

The report has been corrected.

Page 7, Section 4.2.3.1: Lake Alta hydrology. NZSki assures DOC that the hydrological monitoring is accurate and that Lake Alta will recharge as proposed in the application.

The Department was attempting to illustrate the difficulties involved with modelling the lake's recharge with a limited set of data. The Department is not questioning the structure of the model or the assumptions that underpin it. The concern is that the model's results are only derived from a limited set of rainfall data - 7 years. As such it is believed there will always be a degree of uncertainty in the conclusions. Had the modelling been based on a larger set of data these uncertainties would be reduced. In either case, the Department is not suggesting the requested water take be reduced, or for further modelling or more data collection. Instead the recommendation is for follow up monitoring of the effects of the water take on freshwater values as outlined in condition 15. This is simply a precautionary approach to ensure the conservation values are protected as has been anticipated, but not guaranteed, by the applicant.

Page 8, Section 4.3.3.1: NZSki assures DOC that NZSki has assessed impacts on the Rastus Burn as part of their hydrological monitoring and that any ecological effect of low flows will be less than minor.

The Department accepts that NZSki has broadly considered adverse effects on the Rastus Burn. The report attempts to highlight that the artificially lowered flow levels of the Burn have not been modelled to the same degree of detail as Lake Alta. The Department's concerns were focused on the Upper Rastus Burn, and not the flow below the pumphouse. As with the Lake Alta, the Department is not proposing to reduce the proposed water take, or any further modelling or data collection. Instead the Department recommends follow up monitoring once the concession is in operation. This should be clarified as monitoring of the Upper Rastus Burn only, and that the stream below the pumphouse does not require any oversight in this regard.

Page 10/11 Section 4.2.3.4. NZSki assures DOC that the proposed snowmaking regime will not affect lake margins.

The Department broadly agrees with NZSki's assessment that it would be unusual for snowmaking to occur without the lake being frozen and that wave generated erosion associated with water abstraction will be unlikely. However the Department maintains that it remains plausible for naturally low lake levels coinciding with the onset of intensive snowmaking before the lake has a substantial ice cap. The main concern is for subsequent erosion of the vegetated sections of the lake margins, as this would cause irreversible damage, hence the precautionary approach not to allow the additional water abstraction until the ice cap is solid. The Department anticipates that the window of time when NZSki would require more than 15cm of lake water before the lake is fully frozen would actually be very small. If snowmaking commenced before an ice cap formed, it would be just before the ice cap formed, and NZSki would quickly be able to access the additional water once the ice did form. However the right combination of environmental variables could certainly erode the shoreline in a very short space of time.

Page 14 – Section 6 - proposed operating conditions

Recommended term. NZSki requested that the term of the concession line up with the term recommended for the ORC water permit which is 30 years.

This is accepted by the Department, subject to the implementation of the recommended monitoring conditions.

Condition 11 – Construction timeframes

NZSki supports the requirement to submit an overall project plan for the proposed works. NZSki will provide internal project plans and copies of the minutes from its weekly construction and rehabilitation meetings.

Condition 15 – Monitoring the effects of increased water take

NZSki support the requirement that some monitoring needs to be undertaken, however, have some concerns over the expense of annual monitoring and generation of information (baseline data) that is already available in the consultant reports. NZSki suggest that annual monitoring occur for the first 2 years, and at 3 yearly intervals thereafter if the first 2 years reveal no significant adverse effects are occurring.

The Department agrees in principle that the frequency of the freshwater/riparian/landscape monitoring should be decreased over time if no significant adverse effects are detected in the early

years of the concession. However the Department does not recommend locking in a phase down of the monitoring as unforeseen events could warrant a different response. With regards to what is the baseline data, the Department considers it is important to obtain baseline information on every parameter to be monitored in the summer immediately prior to the concession becoming operative. The Department believes this is in NZSki's best interests, as much of the data in the reports is derived from surveys completed several years ago. By collecting 2012/2013 data then both the Department and NZSki will have a current view of the state of freshwater values. In regards to what to monitor, the proposed monitoring is centred on the uncertainties identified in the report, including the health of macroinvertebrates in the Upper Rastus Burn, the zooplankton in Lake Alta, and the riparian margins of both the Lake and Upper Burn, and general landscape values of these features. This will require a mix of photo monitoring, possibly some measured transects of lake margins, and objective, repeatable surveys of fauna in the upper stream bed and water column of the lake. However the Department will take advice from a suitably qualified consultant before confirming what should be monitored and how it should be monitored. In summary, the condition could be reworded as follows.

"After each winter season NZSki is to undertake monitoring surveys of the integrity of the riparian margins, invertebrate habitats and landscape values of both Lake Alta and the Rastus Burn stream;

(a) This monitoring programme should be designed by a suitably qualified expert who has been pre-approved by the Grantor. (b) Baseline data should be collected prior to the increased snowmaking regime being exercised. (c) The Concessionaire is required to report on the results of this monitoring to the Grantor no later than 1 May of each year during the Term. (d) If after the first two seasons of monitoring there are no new adverse effects that become apparent as a result of the monitoring (in the sole opinion of the Grantor), then the Grantor may (at his sole discretion) vary the intervals that monitoring is required under section 17ZC(3) of the Conservation Act 1987 to instead occur thereafter at three-yearly intervals during the Term, or to any other interval deemed appropriate by the Grantor."

Condition 16 – Lake Margins

NZSki object to this condition and request that it is removed. NZSki considers it would be unlikely that climatic conditions would be conducive to snow making prior to an ice cap having formed over Lake Alta. NZSki does not want to be unnecessarily restricted by this condition. NZSki state that this condition is not in the ORC recommended conditions for the water permit.

The Department agrees it would be unusual for the lake to be artificially lowered without an ice cap, however if this risk is realised the damage to shorelines may be irreversible. To protect the conservation values of the basin the Department recommend's the restriction is retained. It should be noted that the window of an unfrozen lake during intensive early season snowmaking should be small. The Department proposed that this restriction could be reviewed after two years, as per the proposed water take monitoring conditions, when the Department will have more information to evaluate chances of unexpected erosion occurring.

Comments by Ryder consulting

NZSki commissioned Ryder Consulting (RC) to review the sections of the report that cover the effects on aquatic ecology (section 4.2.3.2 Freshwater habitats). In summary RC, does not agree with parts of the Department's assessment. RC states that there is little sign of benthic invertebrates in the lake margins. RC indicates that the lowering of the lake level will not significantly affect any benthic invertebrates in the lake if there are any. No significant adverse effects are expected on the Ratus Burn, including increase sediment discharge or any significant adverse effects on invertebrates.

The Department acknowledge that in terms of benthic invertebrates, it will be those species adapted to flowing conditions in the stream that would be more affected rather than any species residing in the lake margins where the water is still. RC's feedback in this regard should be considered when designing the freshwater monitoring programme. It might not be necessary to survey for invertebrates on the lakes margin, just the zooplankton in the water. However at this stage the Department does not recommend entirely discounting benthic macroinvertebrates in the lake margins until the monitoring programme is agreed upon. It must also be clarified that the monitoring of freshwater fauna and lake margins should occur during the summer period once the ice is melted and the lake fully recharged. It is intended for this monitoring to investigate environmental values once the system has returned to its natural state, and not to measure environmental effects during winter abstraction.

The Department accepts RC's comments that Lake Alta and the Rastus Burn have low sediment and detritus levels. This part of the draft report can be discounted. We also accept that the invertebrate fauna are generalists, and this informs our conditional acceptance of scaling back the freshwater monitoring programme after the first two years.

8.0 Summary and Conclusions

The application is consistent with the relevant legislation, and the purposes for which the land is held. The special conditions are designed to avoid, remedy or mitigate any adverse effects on the environment.

9.0 Recommendations to decision maker

Pursuant to the delegations it is recommended that Greg Lind, Wakatipu Area Manager:

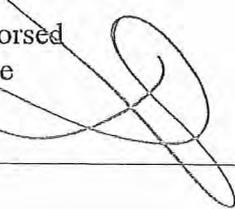
Lake Alta water abstraction and associated new structures

1. Deem that this part of the application is complete in terms of s17S of the Conservation Act 1987; and
2. Agree that if the application to increase the volume of water abstraction from Lake Alta with associated new structures on the lake bed is approved in principle, then the intention to grant the concession will be publicly notified; and
3. Approve in principle the granting of an easement for the increase in water abstraction and new structures in Lake Alta, subject to the outcome of public notification; and
4. Having regard to s49(1) of the Conservation Act 1987, be satisfied that any intent to grant the Concession would be of local or regional interest only, in which case the publication of the public notice on this matter be limited by way of notification only in the local papers.

New structures within the Rastus Burn Recreation Reserve; underground pipe, temporary surface pipe and ancillary equipment

4. Deem that this part of the application is complete in terms of s17S of the Conservation Act 1987, and
5. Agree that is not considered appropriate to give public notice of the intention to grant the easement; and
6. Approve the grant of non notified easement for the a) the underground pipe; b) temporary surface pipe and ancillary equipment; and c) pump house.

Name: Richard Clarke
 Permissions Officer (Concessions) 
 Date: 20/9/12

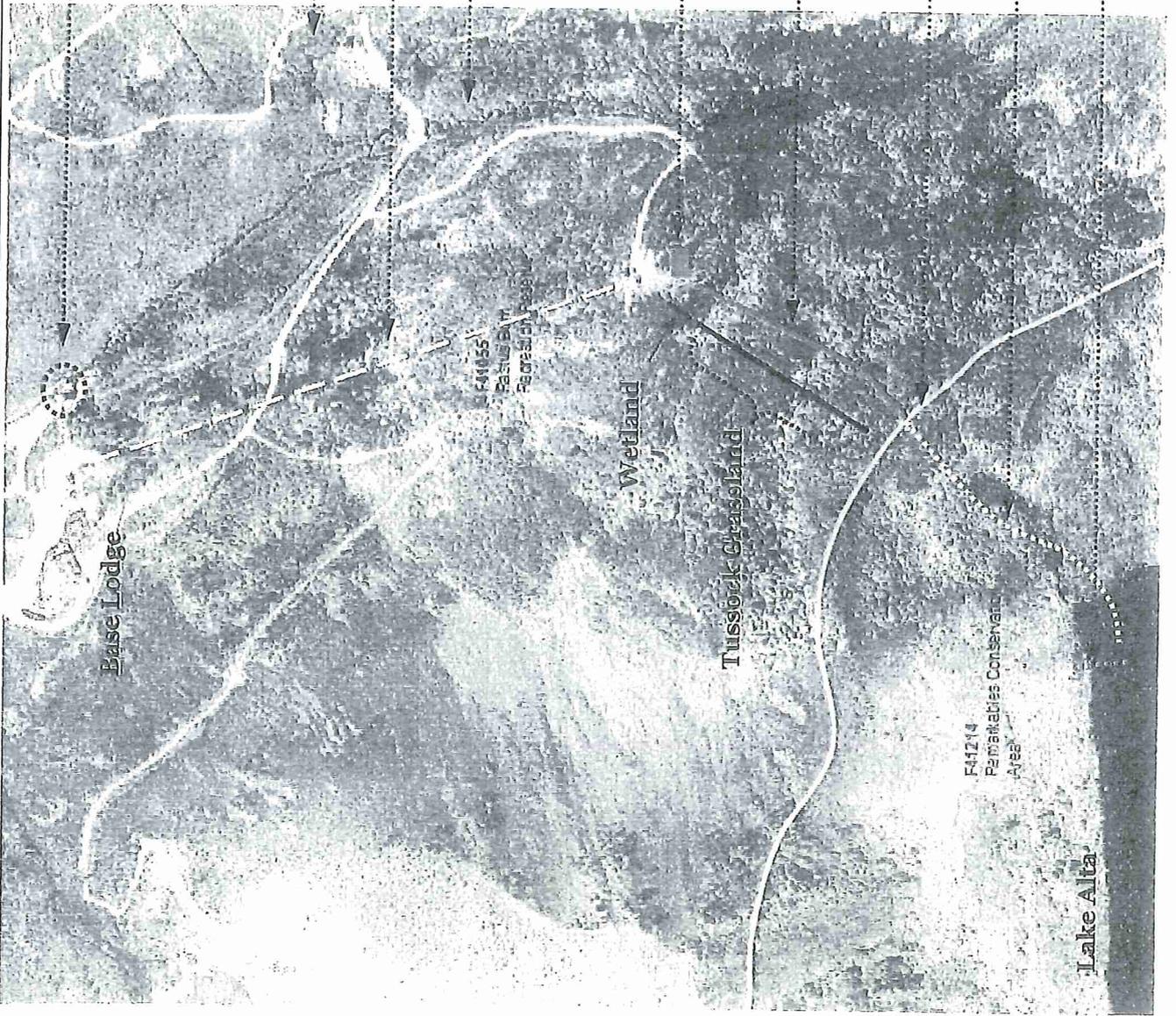
Recommendation endorsed
 Name: Dave Johnstone
 Permissions Manger 
 Date: 25/9/12

Recommendation:

- 1 ~~Approved/Declined~~
- 2 ~~Approved/Declined~~
- 3 ~~Approved/Declined~~
- 4 ~~Approved/Declined~~
- 5 ~~Approved/Declined~~
- 6 ~~Approved/Declined~~

Signed: 
Greg Lind
Wakatipu Area Manager
Date: 25/9/2

Map 1: Location of proposed new infrastructure. All position indicative only and not to scale.



Existing pump house (to remain)

Sugar Bowl Stream (supplements the Rastus Burn)

Alta Chairlift

Rastus Burn

New pump house

Underground pipeline

Boundary of Conservation & Recreation Areas

Temporary surface pipe to temporary pump in the lake (approx. route).

Location of conduit for NIWA bubble transducer to measure lake levels

Figure 1: The small tarn 80m from the outlet.



Figure 2: The main vegetated section of the Lake Alta shoreline

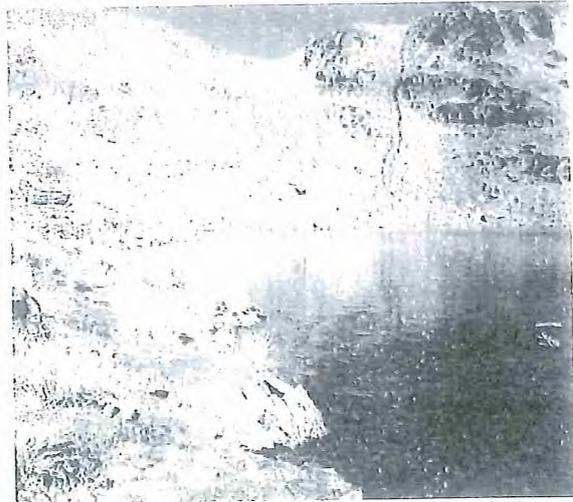


Figure 3: Previous construction of underground pipe in the Sugar Basin in 2006.



Figure 4: Approx. location of the new pump house close to top of Alta Chair. *Approx. position of pumphouse and route of pipeline shown in red.*

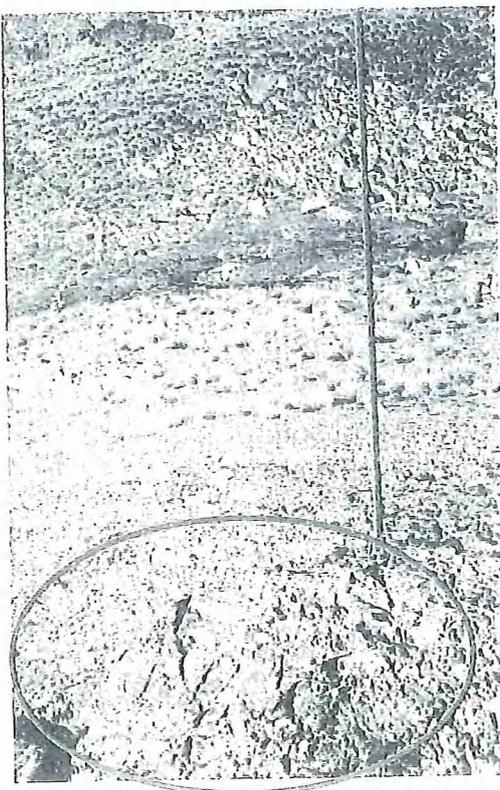


Figure 5: Route of the pipe through bouldery Tussock Grassland. *Approx. route of pipeline shown in red.*

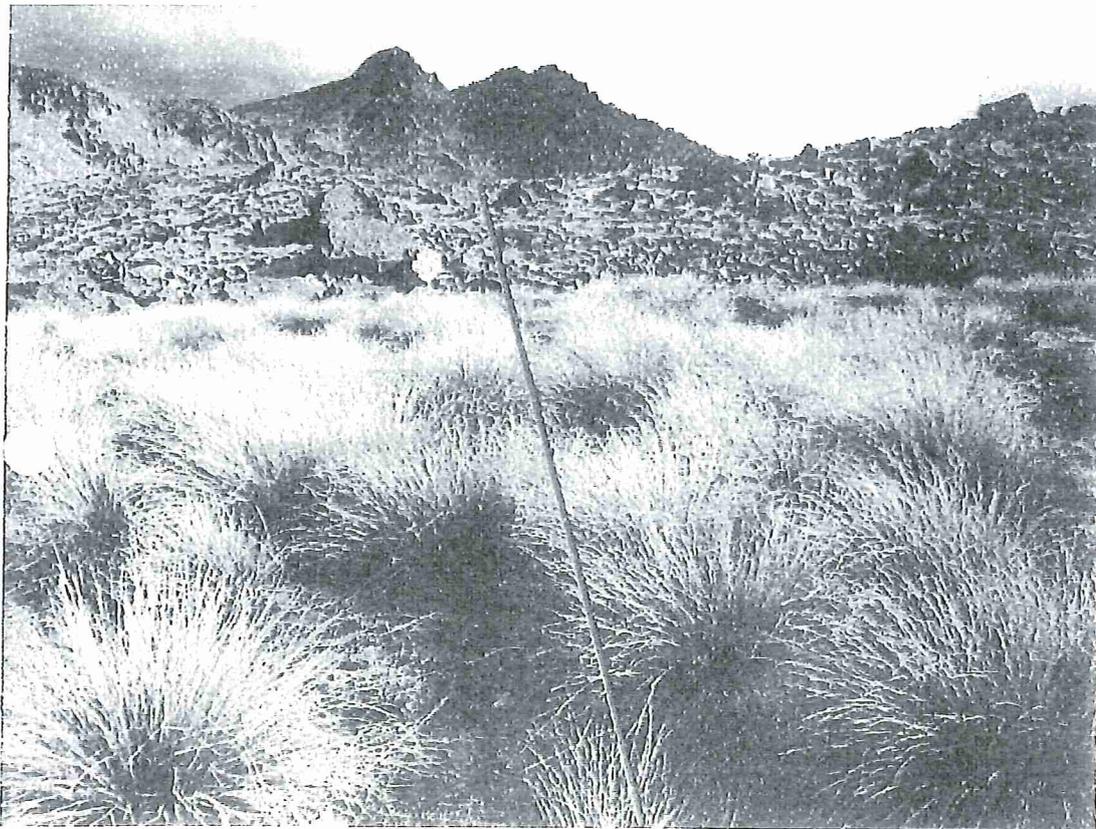
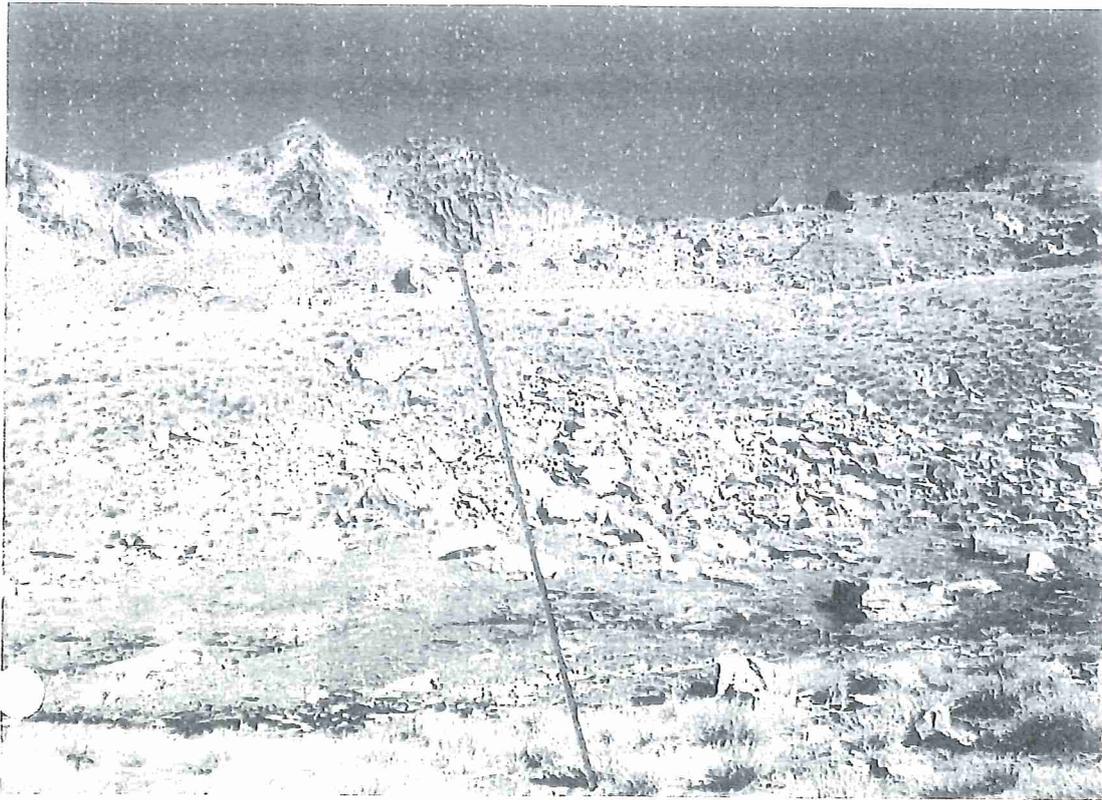


Figure 6: Route of the pipe through Seepage Wetland. *Approx. position of pump house (not to scale) and route of pipeline shown in red.*

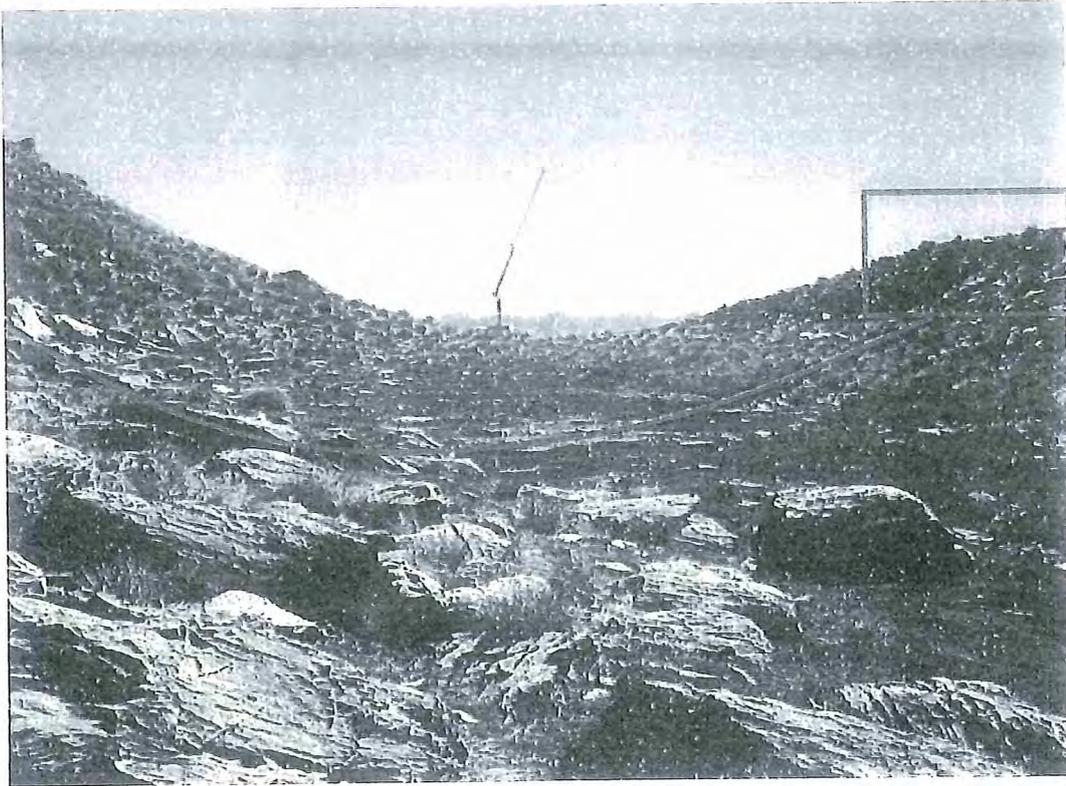


Figure 7: Lake Alta late May/early June 2006. The lake was unfrozen during early winter conditions. This photo also shows the natural character of the stream during partial snow cover.



Figure 8: Margin of Lake Alta showing rocky bed through which the conduit pipe would be buried. *Approx. route of conduit shown in red.*



Figure 9: Example of early-stage re-growth of tussock grassland: Waterfall Face Mar 2012

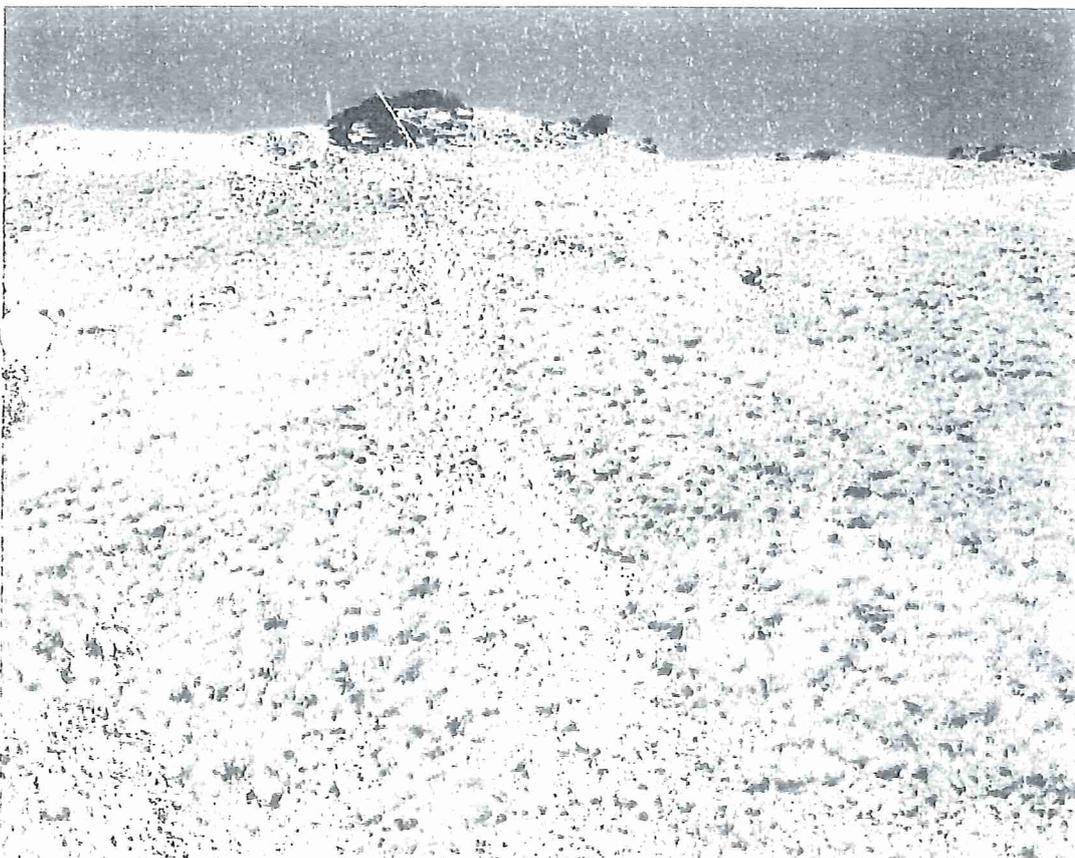


Figure 10: Lake Alta Basin as viewed from Doolans Saddle.
Approx. route of the proposed pipeline is marked in speckled grey.





DECISIONS OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

NOTIFICATION UNDER s95 AND DETERMINATION UNDER s104

RESOURCE MANAGEMENT ACT 1991

Applicant:	NZSKI Limited
RM reference:	RM130662
Application:	Application under Section 88 of the Resource Management Act 1991 (RMA) for Land Use Consent to remove indigenous vegetation to enable earthworks to undertake various alterations at the ski field.
Location:	Remarkables Ski Area – 253 Kingston Road, Queenstown Rural
Legal Description:	Section 1-6 Survey Office Plan 24738 held on Computer Freehold Register 8279
Zoning:	Rural General - Ski Area Activity Sub-zone
Activity Status:	Restricted Discretionary
Notification Decision:	Non Notified
Final Decision:	GRANTED SUBJECT TO CONDITIONS
Date Decisions Issued:	11 November 2013

SUMMARY OF DECISIONS

1. Pursuant to sections 95A -95F of the RMA the application will be processed on a **non-notified** basis given the findings of Section 6.0 of this report. This decision is made by David Wallace, Planner on 8 November 2013 under delegated authority pursuant to Section 34 of the RMA.
2. Consent is **granted** pursuant to Section 104 of the RMA, subject to the conditions outlined in **Appendix 1** of this decision imposed pursuant to Section 108 of the Act. The consent only applies if the conditions outlined are met.
3. To reach the decision to grant consent the application was considered (including the full and complete records available in Council's TRIM file and responses to any queries) by Jane Sinclair, Independent Commissioner, as delegate for the Council. This decision was made and its issue authorised under this delegated authority pursuant to Section 34 of the RMA on 8 November 2013.

1.0 PROPOSAL, SITE DESCRIPTION AND SITE HISTORY

Consent is sought under section 88 of the RMA to remove indigenous vegetation to enable earthworks to undertake various alterations at the ski field.

The resource consent application documentation provided with the application and attached as Appendix 2 to this report, titled "Assessment of effects on the environment" written by Southern Planning Group, is comprehensive and considered accurate, therefore it is adopted for the purposes of this report. This information will be henceforth referred to as the application report. The descriptions of the site history, the site and location and the proposal are at section 2.0, 3.0 and 4.0 of the application report respectively and are accepted with the following addition:

- Following discussions with the applicant it has been established that the concrete apron proposed over the Rastus Burn culvert is proposed be covered with 50 - 100mm of local material (mix of crushed rock and fine gravel/sand) to blend in with the surrounding environment.

2.0 ACTIVITY STATUS

2.1 THE DISTRICT PLAN

The subject site is zoned Rural General – Ski Area Sub Zone and the proposed activity requires resource consent for the reasons outlined in section 5.0 of the application report. This is considered accurate and therefore adopted for the purposes of this report.

Overall, the application is considered to be a **restricted discretionary** activity.

2.2 NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH

Based on the applicant's review of Council records, the piece of land to which this application relates is not a HAIL site, and therefore the NES does not apply.

3.0 SECTION 95A NOTIFICATION

A: *The applicant has not requested public notification of the application (s95A(2)(b)).*

AND

B: *No rule or national environmental standard requires or precludes public notification of the application (s95A(2)(c)).*

AND

C: *The consent authority is not deciding to publicly notify the application using its discretion under s95A(1).*

AND

D: *There are no special circumstances that exist in relation to the application that would require public notification (s95A(4)).*

SUCH THAT

E: *A consent authority must publically notify an application if it decides under s95D that the activity will have or is likely to have adverse effects on the environment that are more than minor (s95A(2)(a)).*

An assessment in this respect is therefore made in section 4 below:

4.0 **ASSESSMENT OF EFFECTS ON THE ENVIRONMENT (s95D)**

4.1 **MANDATORY EXCLUSIONS FROM ASSESSMENT (s95D)**

- A: *Effects on the owners or occupiers of land on which the activity will occur and on adjacent land (s95D(a)).*
- B: *The activity is for a **controlled and restricted discretionary** activity, so that adverse effects which do not relate to a matter of **control or discretion** have been disregarded (s95D(c)).*
- C: *Trade competition and the effects of trade competition (s95D(d)).*
- D: *The following persons have provided their **written approval** and as such adverse effects on these parties have been disregarded (s95D(e)).*

Person (owner/occupier)	Address (location in respect of subject site)
Department of Conservation	Administrators of the Site

4.2 **PERMITTED BASELINE (s95D(b))**

The consent authority **may** disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect. In this case earthworks are permitted and effects from undertaking earthworks will be disregarded.

4.3 **ASSESSMENT: EFFECTS ON THE ENVIRONMENT**

Taking into account sections 4.1 and 4.2 above, the following outlines an assessment as to if the activity will have or is likely to have adverse effects on the environment more than minor:

The Assessment of Effects provided at section 6.0 of the application report is comprehensive and is considered accurate. The opinions in the supporting ecologist reports are also accepted. Those documents are therefore adopted for the purposes of this report with the following additional comments:

At the time the application was proposed it was not clear whether the concrete apron proposed over Rastus Burn was to be covered or treated to avoid potential visual effects from the brightness of the unnatural surface when seen in views by the public from the Lake Alta access track. The applicant clarified they are proposing to cover the concrete surface with local aggregate/soil/sand from the surrounding area thereby blending the apron area in with the surrounding access roads and tracks. This proposal will effectively mitigate any effects that may have arisen from the concreted area.

It is noted that the applicant has a history of undertaking vegetation removal and replacement and it is recognised that they have been successful in areas where the proposed methodologies have been tried and tested under other resource consents (RM110011). The same level of success is anticipated where vegetation will be removed, earthworks undertaken and vegetation replaced as part of the current proposal.

In all other respects relating to effects on the environment the application report is sufficient and it is concluded that adverse effects on the environment are not likely to be more than minor.

4.4 **DECISION: EFFECTS ON THE ENVIRONMENT (s95A(2))**

Overall the proposed activity is not likely to have adverse effects on the environment that are more than minor.

5.0 EFFECTS ON PERSONS

Section 95B(1) requires a decision whether there are any affected persons (under s95E) in relation to the activity. Section 95E requires that a person is an affected person if the adverse effects of the activity on the person are minor or more than minor (but not less than minor).

5.1 MANDATORY EXCLUSIONS FROM ASSESSMENT (s95E)

- A: *The activity is a **controlled and restricted discretionary** activity, so that adverse effects which do not relate to a matter of **control / discretion** have been disregarded (s95E(2)(b)).*
- B: *The persons outlined in section 4.1 above have provided their **written approval** and as such these persons are not affected parties (s95E(3)(a)).*

5.2 PERMITTED BASELINE (s95E(2)(a))

The consent authority **may** disregard an adverse effect of the activity on a persons if a rule or national environmental standard permits an activity with that effect. In this case the permitted baseline is as found within section 4.2 above.

5.3 ASSESSMENT: EFFECTS ON PERSONS

Taking into account sections 4.1 and 4.2 above, the following outlines an assessment as to if the activity will have or is likely to have adverse effects on persons minor or more than minor:

There are no neighbours nearby and no person is considered to be affected by the proposed removal and in most cases replacement of indigenous vegetation in the ski field area.

5.4 DECISION: EFFECTS ON PERSONS (s95B(1))

In terms of Section 95E of the Act, no person is considered to be adversely affected.

6.0 OVERALL NOTIFICATION DETERMINATION

Given the decisions made above in sections 4.4 and 5.4 the application is to be processed on a non-notified basis.

7.0 S104 ASSESSMENT

7.1 EFFECTS (s104(1)(a))

Actual and potential effects on the environment have been outlined in section 4 of this report. Conditions of consent can be imposed under s108 of the RMA as required to avoid, remedy or mitigate adverse effects.

7.2 RELEVANT DISTRICT PLAN PROVISIONS (s104(1)(b)(vi))

The relevant objectives and policies of the District Plan are contained in Part 4 – *District Wide Issues* and Part 5 – *Rural Areas*.

Part 4 – District Wide

The following objectives and policies are relevant:

Objective 1 - Nature Conservation Values

The protection and enhancement of indigenous ecosystem functioning and sufficient viable habitats to maintain the communities and the diversity of indigenous flora and fauna within the District.

Improved opportunity for linkages between the habitat communities.

The preservation of the remaining natural character of the District's lakes, rivers, wetlands and their margins.

The protection of outstanding natural features and natural landscapes.

The management of the land resources of the District in such a way as to maintain and, where possible, enhance the quality and quantity of water in the lakes, rivers and wetlands.

The protection of the habitat of trout and salmon.

Policies:

- 1.1 *To encourage the long-term protection of indigenous ecosystems and geological features.*
- 1.2 *To promote the long term protection of sites and areas with significant nature conservation values.*
- 1.3 *To manage the sensitive alpine environments from the adverse effects of development.*
- 1.4 *To encourage the protection of sites having indigenous plants or animals or geological or geomorphological features of significant value.*
- 1.5 *To avoid the establishment of, or ensure the appropriate location, design and management of, introduced vegetation with the potential to spread and naturalise; and to encourage the removal or management of existing vegetation with this potential and prevent its further spread.*
- 1.6 *To allow development which maintains or enhances the quality of the environment in areas identified as having rare, endangered, or vulnerable species of plants or animals of national significance, or indigenous plant or animal communities that are of outstanding significance to the nation.*
- 1.7 *To avoid any adverse effects of activities on the natural character of the District's environment and on indigenous ecosystems; by ensuring that opportunities are taken to promote the protection of indigenous ecosystems, including at the time of resource consents.*
- 1.11 *Encouraging the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*
- 1.13 *To maintain or enhance the natural character and nature conservation values of the beds and margins of the lakes, rivers and wetlands.*
- 1.16 *To encourage and promote the regeneration and reinstatement of indigenous ecosystems on the margins of lakes, rivers and wetlands.*
- 1.18 *To manage and protect the sensitive alpine environments by avoiding, remedying or mitigating any adverse effects of development.*

Objective:

Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values.

Policies:

1 Future Development

- (a) *To avoid, remedy or mitigate the adverse effects of development and/or subdivision in those areas of the District where the landscape and visual amenity values are vulnerable to degradation.*

- (b) *To encourage development and/or subdivision to occur in those areas of the District with greater potential to absorb change without detracting from landscape and visual amenity values.*
- (c) *To ensure subdivision and/or development harmonises with local topography and ecological systems and other nature conservation values as far as possible.*

15. Retention of Existing Vegetation

To maintain the visual coherence of the landscape and to protect the existing levels of natural character by:

- (a) *Encouraging the retention of existing indigenous vegetation in gullies and along watercourses;*
- (b) *Encouraging maintenance of tussock grass-lands and other nature ecosystems in outstanding natural landscapes.*

The effects arising from the area of vegetation being temporarily displaced by the proposed activity will be less than minor and mitigation proposed will ensure nature conservation values will be maintained, future earthworks will be undertaken in a way that mitigates effects and existing vegetation will be retained. The development meets the above district wide objectives and policies.

Objective 6 - Ski Area Sub-Zone

To encourage the future growth, development and consolidation of existing Ski Areas, in a manner which mitigates adverse effects on the environment.

Policies:

6.1 *To identify specialist sub-zoning for Ski Area activities.*

6.2 *To anticipate growth, development and consolidation of skifields within Ski Area Sub-Zones.*

It is considered that development of the skifield areas is being encouraged by the proposed activity and associated effects are being appropriately mitigated.

Overall the proposal is aligned with the relevant objectives and policies and it is not inappropriate to grant resource consent.

7.3 DECISION ON RESOURCE CONSENT PURSUANT TO SECTION 104 OF THE RMA

Consent is **granted** subject to the conditions outlined in *Appendix 1* of this decision report imposed pursuant to Section 108 of the Act.

8.0 OTHER MATTERS

Local Government Act 2002: Development Contributions

In granting this resource consent reference was made to Part 8 Subpart 5 Schedule 13 of the Local Government Act 2002 and the Council's Policy on Development Contributions contained in Long Term Council Community Plan (adopted by the Council on 25 June 2004).

This proposal is not considered a "Development" in terms of the Local Government Act 2002 as it will not generate a demand for network infrastructure and reserves and community facilities.

For the forgoing reasons a Development Contribution is not required.

Administrative Matters

The costs of processing the application are currently being assessed and you will be advised under separate cover whether further costs have been incurred.

Should you not be satisfied with the decision of the Council, or certain conditions, an objection may be lodged in writing to the Council setting out the reasons for the objection under Section 357 of the Resource Management Act 1991 no later than 15 working days from the date this decision is received.

You are responsible for ensuring compliance with the conditions of this resource consent found in Appendix 1. The Council will contact you in due course to arrange the required monitoring. It is suggested that you contact the Council if you intend to delay implementation of this consent or reschedule its completion.

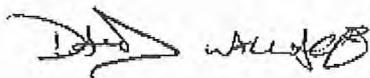
This resource consent is not a consent to build under the Building Act 2004. A consent under this Act must be obtained before construction can begin.

Please contact the Council when the conditions have been met or if you have any queries with regard to the monitoring of your consent.

This resource consent must be exercised within five years from the date of this decision subject to the provisions of Section 125 of the Resource Management Act 1991.

If you have any enquiries please contact David Wallace on phone (03) 450 0301 or email david.wallace@qldc.govt.nz.

Prepared by



David Wallace
PLANNER

Reviewed by



Craig Barr
SENIOR PLANNER

APPENDIX 1 – Consent Conditions
APPENDIX 2 – Application Report

APPENDIX 1 – CONSENT CONDITIONS

General Conditions

1. That the development must be undertaken/carried out in accordance with the plans:
 - 'Overall Layout and Proposed Snowmaking Plan'
 - 'Plan and Location Plan Sheet 1 of 2'
 - 'Remarkables Skifield Rastus Burn Crossing Typical Details Sheet 2 of 2'

stamped as approved on 7 November 2013

and the application as submitted, with the exception of the amendments required by the following conditions of consent.

- 2a. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
- 2b. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to Council an initial fee of \$100. This initial fee has been set under section 36(1) of the Act.

Rastus Burn Apron

3. Within one month of completing construction of the concrete apron over Rastus Burn the consent holder shall vegetate the eastern and western edges of the rock armoured batter (beyond the extremities of the concrete apron) with tussock species relocated from areas of earthworks undertaken within the Rastus Burn Recreation Reserve.
4. The concrete area shall be covered with local material to ensure it blends in with the surrounding environment.

Removal and Storage of Vegetation

5. Vegetation is to be stripped and stored locally as construction progresses. It must be stripped with enough surrounding soil and humus to allow for successful storage and replanting survival.
6. Stripping may be by machine or by hand, whichever will provide the best chance for success given the nature of the vegetation.
7. Stripped material shall be watered if required to ensure its survival while stored.

Re-Vegetation

8. Vegetation is to be replanted as soon as possible following completion of works. Re-vegetation planting must include provisions for follow up maintenance prior to the end of the growing season.
9. Where there is sufficient plant material and humus to allow survival, stripped material can be split. To supplement re-vegetation works split material may also be sourced from other areas within the Rastus Burn Recreation Reserve.
10. Plant spacing is to be at a density approved by the Department of Conservation's on site independent monitor.
11. To intensify the re-vegetation of tussocks, nursery reared plants must be used where there is insufficient existing vegetation available for transplanting.

12. The seed of appropriate species should be broadcast to promote vegetation growth in the rock walls and between transplanted/planted tussocks.
13. Geo-textile cloth is to be laid over any areas where there has been insufficient replanting and there is a likelihood of topsoil erosion by May 1st. This is to be removed in the following spring and re-vegetation works continued.

Avoidance of Wetlands

14. Wetlands are to be avoided where possible. Where it is not possible to avoid areas of surface or subsurface drainage, suitable provisions for maintaining their flow and quality are to be installed e.g. coarse rock, geo-cloth, piping, silt traps.
15. If construction debris falls into any non-target wetland area this must be immediately removed and the area remediated.

Control of Subsurface Runoff and Silt

16. Suitable drainage, cut outs and silt traps are to be installed to control new surface flows into lower areas of vegetation, wetlands and watercourses.