

**BEFORE THE QUEENSTOWN LAKES  
DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991 (the "Act")

**AND**

**IN THE MATTER** of the Queenstown Lakes District Proposed District Plan

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**SUPPLEMENTARY LEGAL SUBMISSIONS FOR:**

Darby Planning LP (#608),  
Soho Ski Area Limited (#610),  
Treble Cone Investments (#613)  
Lake Hayes Ltd (#763)  
Lake Hayes Cellar Ltd (#767)  
Mount Christina Limited (#764)

Hearing Stream 02 - Rural, Rural Residential and Rural Lifestyle, Gibbston  
Character Zone, Indigenous Vegetation and Wilding Exotic Trees - Chapters 21,  
22, 23, 33 and 34

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## 1. Introduction

- 1.1 These legal submissions supplement the legal submissions on behalf of the submitters named on the cover page, dated 24 April 2016.

## Chapter 33 Indigenous Vegetation

2. The evidence of Chris Ferguson suggests amendments as follows:

*"Insert a new exception, as Rule 33.3.4.4, as follows:*

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

3. The below submissions set out the legal tests for the above instruments identified, to illustrate the process and protection provided by those instruments.

### 4. Conservation Management Strategy or Concession under the Conservation Act

- 4.1 The Conservation Act 1987 promotes the conservation of New Zealand's natural and historical resources. The Act provides the mandate for the activities of the Department of Conservation.

- 4.2 Functions include management of the conservation estate, conservancy advocacy and education, and fostering the use of resources for recreation and tourism.

#### *Conservation Management Strategies (CMS)*

- 4.3 The purpose of a CMS is to implement general policies and establish objectives for the integrated management of natural and historic resources, including any species, managed by the Department, for recreation, tourism, and other conservation purposes.<sup>1</sup> A Conservation Management Plan (CMP) is then prepared under section 17E of the Act to establish detailed objectives for the implementation of a CMS.

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<sup>1</sup> Section 17D Conservation Act 1987

- 4.4 CMS and CMPs are prepared through a thorough statutory process including consultation with iwi, local authorities, Conservation Boards and the Director General and Minister of Conservation<sup>2</sup>. The CMS for Otago has recently completed public consultation (after public notification in June 2013) and is currently in the process of its final review by the Conservation Authority. Once in place that CMS will last until 2024.
- 4.5 The CMS provides a detailed list of threatened and at risk indigenous fauna present in Otago.

#### *Concessions*

- 4.6 A concession is required to be obtained under the Conservation Act in order to undertake any activity within a conservation area. The process of obtaining a concession is not dissimilar to a notified resource consent under the RMA, including the requirement to provide a detailed assessment of environmental effects. Concessions will not be granted by the Minister of Conservation if the proposed activity is contrary to the provisions of the Act or to the purpose for which the land concerned is held.<sup>3</sup> The Minister may also decline the application if there are no adequate or reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity.<sup>4</sup>
- 4.7 Unlike the RMA, the Conservation Act is not subject to an overarching purpose statement. The provisions of the Act are more conservation focussed than the enabling purpose of sustainable management under the RMA, for example the Department's functions under the Conservation Act include 'to manage land for conservation purposes'.<sup>5</sup>
- 4.8 Concessions and CMSs do not act in isolation; in considering whether to grant a concession the decision maker must consider the relevant CMS and whether it more appropriately covers the activity in question. A concession must be implemented in accordance with a CMS, and when preparing a CMS regard must be had to existing concessions.
- 4.9 From the above, it can be concluded that the process of obtaining permission to clear indigenous vegetation in accordance with the Conservation Act provisions is a thorough process which provides for a stronger bottom line of environmental protection than would be required under the RMA. Accordingly, the process should

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<sup>2</sup> Section 17F-G Conservation Act 1987

<sup>3</sup> Section 17U(3) Conservation Act 1987

<sup>4</sup> Section 17U(2) Conservation Act 1987

<sup>5</sup> Section 6 Conservation Act 1987

not be duplicated or frustrated by requiring that those permissions granted also be subject to a resource consent process.

## 5. **Recreation Permit under the Land Act**

- 5.1 A recreation permit is granted under section 66A of the Land Act 1948 for the purpose of use or occupation of pastoral lease or Crown land for any commercial undertaking for recreation, which in the opinion of the Land Settlement Board may be properly undertaken on that land.
- 5.2 An application for a permit goes through a public notification process and must not be granted if the activity is incompatible with any water or soil conservation objectives relating to the land. The Board has open ended discretion to apply conditions and terms on any permit granted.
- 5.3 The legislative tests above set a threshold for environmental protection and public participation. In addition, a permit is granted with the deemed condition that it will be exercised with all of the local authority rules, regulations and the provisions of the RMA.<sup>6</sup>
- 5.4 The above means there should be no need to require a duplicate consent under the District Plan for the same activity.

## 6. **Reserve Management Plan under the Reserve Act**

- 6.1 Reserve management plans are required to "provide for and ensure the use, enjoyment, maintenance, protection, and preservation, as the case may require, and, to the extent that the administering body 's resources permit, the development, as appropriate, of the reserve for the purposes for which it is classified".<sup>7</sup> They are also required to incorporate and ensure compliance with the principles relating to the management and purpose of the type of reserve to which they apply.
- 6.2 Reserves and reserve management plans can be used as a methods (other than a rule in a plan) to meet the objectives and policies of RMA plans although they may not have been developed for that purpose. For example, a historic reserve classification under the Reserves Act could be used to assist in the management of a historic site under council control in place of some RMA plan controls.

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<sup>6</sup> Section 66A(5) Land Act 1948

<sup>7</sup> Section 41(3) Reserves Act 1977

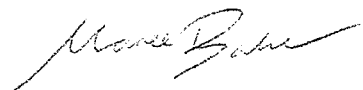
- 6.3 A Reserve Management Plan is prepared in accordance with a public consultation and decision making process. It is also subject of the general purpose of the Act, which includes:

*"ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats, and the preservation of representative samples of all classes of natural ecosystems and landscape which in the aggregate originally gave New Zealand its own recognisable character"<sup>8</sup>*

## 7. Conclusion

- 7.1 74(2)(b)(i) of the RMA requires that district plans have regard to management plans and strategies prepared under other Acts, this includes reserve management strategies.
- 7.2 The above examples of legislative instruments which can be used to manage significant indigenous vegetation, other than through the RMA provide legitimate alternatives which do not need to be duplicated through a resource consenting process prescribed through the District Plan.

Dated this 25<sup>th</sup> day of May 2016



Maree Baker-Galloway, Counsel

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<sup>8</sup> Section 3(1)(b) Reserves Act 1977

