

IN THE ENVIRONMENT COURT AT CHRISTCHURCH

ENV-2018-CHC-

I MUA I TE KOOTI TAIAO O AOTEAROA

<b>IN THE MATTER</b>	<b>of an appeal under Clause 14 of Schedule 1 of the Resource Management Act 1991</b>
<b>AND IN THE MATTER</b>	<b>of the proposed Queenstown Lakes District Plan</b>
<b>BETWEEN</b>	<b>Royal Forest and Bird Protection Society of New Zealand Inc</b>
	Appellant
<b>AND</b>	<b>Queenstown Lakes District Council</b>
	Respondent

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**Notice of Appeal by the Royal Forest and Bird Protection Society of New Zealand Inc**

Dated 19 June 2018

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Royal Forest and Bird Protection Society  
of New Zealand Inc  
PO Box 266  
Nelson 7010  
Email: [s.gepp@forestandbird.org.nz](mailto:s.gepp@forestandbird.org.nz)  
Tel: 021 558 241  
Solicitor acting: Sally Gepp

To: The Registrar  
Environment Court  
Christchurch

**MAY IT PLEASE THE COURT:**

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated ('Forest & Bird'; 'the Society') appeals against Queenstown Lakes District Council's decision on the Queenstown Lakes District Plan (the Council and the proposed plan).
2. Forest and Bird made a submission on the proposed plan.
3. Forest and Bird is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. The decision was publicly notified on 7 May 2018.
5. The decision was made by the Council.
6. The parts of the decision that Forest and Bird is appealing are provisions relating to protection of indigenous biodiversity and landscape as identified in this notice of appeal

**Parts of decision appealed, reasons for appeal, and relief sought**

7. In addition to the reasons set out in Figure 1 below, the general reasons for Forest & Bird's appeal are that the provisions appealed against:
  - a. do not give effect to relevant provisions of the Otago Regional Policy Statement (RPS);
  - b. are not consistent with Part 2 of the Resource Management Act ('the Act');
  - c. do not implement the Council's functions under s 30 of the Act; and/or
  - d. do not represent best resource management practice.
8. The parts of the decision appealed, reasons for the appeal and relief sought are set out in Table 1 below. Where specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons

for its appeal. Forest & Bird also seeks any consequential changes made necessary by the relief sought below.

**TABLE 1: PART OF DECISION APPEALED, REASONS FOR APPEAL AND RELIEF**

<b>Part of decision appealed</b>	<b>Reasons for appeal (in addition to those set out in paragraph 7 above)</b>	<b>Relief</b>
<b>Chapter 3</b>		
Objective 3.2.4.2		Reinstate notified objective
Policy 3.2.4.2.1 New Policy 3.3.17	Schedule unlikely to be a comprehensive list of SNA's in the district and need to ensure that values of sites not on schedules can be protected.	Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna, referred to as Significant Natural Areas through scheduling them on the District Plan maps, or through resource consent processes and ensure their protection
Notified Objective 3.2.4.3		Reinstate notified objective as follows: Maintain or enhance the survival chances of rare, endangered, or vulnerable species of indigenous plant or animal communities

Chapter 21 Rural		
Zone purpose	Need to encourage a shift away from seeing the Rural Zone as being primarily about farming	<p>Add paragraph to explain that a large part of the Rural Zone is in fact land managed for conservation and recreation purposes, and ecosystem servicing – in our national park and conservation areas.</p> <p>Add the following paragraphs:</p> <p>Recognise that the greatest loss of biodiversity has been on the basin floors</p> <p>Recognise that extensive low-intensity pastoral farming based on grassland-shrubland ecosystems contributes to the district’s nature conservation, landscape, recreation and tourism values.</p> <p>Recognise the importance of healthy tall tussock grassland for catchment water yield.</p>
New policy	Land uses can adversely affect wetlands, which are a national priority to protect. Although there are rules relating to the clearance of indigenous vegetation, other activities such as cattle pugging, earthworks, planting and drainage can degrade wetlands.	<p>Add new policy</p> <p>Avoid the degradation of natural wetlands.</p>
Objective 21.2.8		Avoid subdivision and development in areas that are identified as being unsuitable for development.
Policy 21.2.8.1		<p>Amend policy as follows:</p> <p>Assess subdivision and development proposals against the applicable District Wide chapters, in particular, the objectives and policies of the Natural Hazards, Indigenous Vegetation, Wilding and Exotic Trees and Landscape chapters.</p>
21.2.9 Objective		<p>Reinstate and Amend as follows:</p> <p>Ensure commercial activities do not degrade landscape <u>and nature conservation</u> values, rural amenity, or impinge on farming activities</p>
Policy 21.2.9.2		<p>Amend as follows:</p> <p>Avoid the establishment of commercial, retail, <u>forestry</u> and industrial activities where they would degrade rural quality or character, amenity, <u>nature</u></p>

		<u>conservation values</u> , and landscape.
Policy 21.2.9.3 New Policy 21.2.1.12		Amend as follows: Avoid the establishment of commercial, retail, <u>forestry</u> and industrial activities where they would degrade rural quality or character, amenity, <u>nature conservation values</u> , and landscape.
New standard - Table 2	Intense mob stocking on winter break feed areas results in significant areas of mud which contributes sediment to streams and rivers. Failure to meet this standard should require a controlled consent to control the risk of sediment.	All winter break feed areas shall have well vegetated buffers at least 3m wide along all water courses they drain into.
Proposed Rule 21.5.7	Beef cattle and deer have similar effects as dairy cattle and should be included.	Reinstate rule as notified, with addition of deer and beef cattle.
21.5.39	Nature conservation values need to be included as an assessment matter. Wildlife especially at nesting time can be adversely affected by activities on the surface of the lakes and rivers.	Add Nature Conservation Values as an assessment matter for all items.
<b>Chapter 22 Rural lifestyle</b>		
Objective 22.2.1	To better reflect the purpose and principles of Part II RMA and enable the Council to fulfil its function to maintain indigenous biodiversity nature conservation value need to be addressed in this chapter.	Maintain and enhance the district's landscape quality, character and visual amenity <u>and nature conservation values</u> while enabling ruralliving opportunities in areas that can avoid detracting from those landscapes.
New policy	To better reflect the purpose and principles of Part II RMA and enable the Council to fulfil its function to maintain indigenous biodiversity nature conservation value need to be addressed in this chapter.  Rural life style blocks can threaten nature conservation values, both directly and indirectly through the increase in density of pets that threaten wildlife, and increased fragmentation of indigenous vegetation and habitats.	New policy:  Any development including subdivision shall avoid adverse effects on SNA's and avoid undermining the integrity of nature conservation values.

**Chapter 33 Indigenous Biodiversity**

33.1 Purpose	Improved and more accurate wording sought	The District’s lowlands comprising the lower slopes of mountain ranges and valley floors have been modified by urban growth, farming activities and rural residential development. Much of the indigenous vegetation habitat has been removed, <u>or modified</u> and <u>the remaining remnants are likely to be vulnerable and important to retain</u> . These areas are identified in the Land Environments of New Zealand Threatened Environment Classification as either acutely or chronically threatened environments, having less than 20% indigenous vegetation remaining.
Policy 33.2.1.1	Proposed amendments more appropriate in terms of s 6(c) and higher order documents.	Identify <u>and protect</u> the District’s Significant Natural Areas and schedule them in the District Plan, including the ongoing identification <u>and protection</u> of Significant Natural Areas through resource consent applications, using the criteria set out in Policy 33.2.1.8, <u>the list of threatened species in Part 33.7, and threatened land environments shown in Part 33.9</u> . This is in DOCs submission that we supported in further submissions – Note the decision also ditched the threatened environments in 33.9.
Renumbered Policy 33.2.1.2 Original Policy 33.2.2	Proposed amendments more appropriate in terms of s 6(c) and higher order documents.	Provide standards in the District Plan for <u>the protection maintenance and enhancement of</u> indigenous vegetation that is not identified as a Significant Natural Area or threatened species, which are practical to apply and that permit the <del>removal</del> <u>clearance</u> of a limited area of indigenous vegetation <u>in specified circumstances</u> .
33.2.1.4	Other covenants can be equally as effective as QEII covenants.	Encourage the long-term protection of indigenous vegetation and in particular Significant Natural Areas by encouraging land owners to consider non-regulatory methods such as <del>open</del> <u>space-covenants</u> administered under

		the Queen Elizabeth II National Trust Act, <u>Reserves Act, or Conservation Act and other protective mechanisms.</u>
Old policy 33.2.1.5	Proposed amendments more appropriate in terms of s 6(c) and higher order documents.	Recognise anticipated activities in rural areas such as farming and the efficient use of land and resources <del>while having regard to</del> <u>however these must be undertaken in a way that protects the significant indigenous vegetation and habitats of indigenous fauna and maintains and enhances indigenous biodiversity. The maintenance, protection or enhancement of indigenous biodiversity values.</u>
33.2.1.6	This policy is inconsistent with the objective and polices in Chapter 33.	If the ecosystem or habitat cannot be avoided, adverse effects are managed by avoiding significant adverse effects. Where adverse effects are not significant: <ul style="list-style-type: none"> <li>a. they are avoided in the first instance;</li> <li>b. where they cannot be avoided, they are remedied;</li> <li>c. where they cannot be remedied they are mitigated; and</li> <li>d. where residual adverse effects remain, and cannot be mitigated they are offset.</li> </ul>
New Policy 33.2.1.8 (b)	Replacement of 20% with 10% no longer meets National Priority 1 in the Statement of National Priorities nor is it consistent with Section 33.1 Purpose of the Indigenous Vegetation and Biodiversity Chapter of the proposed District Plan.	OR b. Rarity Whether the area supports; i. indigenous vegetation and habitats within originally rare ecosystems; ii. indigenous species that are threatened, at risk, uncommon, nationally or within the ecological district; iii. indigenous vegetation or habitats of indigenous fauna that has been reduced to less than <del>10%</del> 20% of its former extent, regionally or within a relevant Land Environment or Ecological District;
New policy	Policy gives effect to objectives and other policies in the plan.	Facilitate and support restoration of degraded natural ecosystems and indigenous habitats using indigenous species that naturally occur and/or previously occurred in the area.
Policy 33.2.2.2		Allow the clearance of indigenous vegetation within Significant Natural

		<p>Areas and other areas that meet the criteria in Policy 33.2.1.8 only:</p> <ul style="list-style-type: none"> <li>a. in exceptional circumstances; and</li> <li>b. in circumstances where significant adverse effects are avoided;</li> <li>c. where adverse effects are not significant, adverse effects are avoided remedied or mitigated so that the significant indigenous biodiversity values of the areas are retained</li> </ul>
New policy	New policy to give effect to higher order documents and section 6(c).	Significant adverse effects of the use and development on habitats of indigenous birds in wetlands, beds of rivers and lakes and their margins for breeding, roosting, feeding and migration are avoided and other effects are avoided, remedied or mitigated.
Policy 33.2.3.2	This policy is worded as an offset policy and adverse effects are not remedied by offsetting.	Delete
Policy 33.2.3.3	Important to add connectivity to this policy.	Encourage the retention and enhancement of indigenous vegetation including in locations that have potential for regeneration, or provide stability, <u>or connectivity</u> and particularly where productive values are low, or in riparian areas or gullies.
Policy 33.2.3.4	The policy as drafted is drafted as an assessment matter .	Delete and replace with  When considering the proposals for the clearance of indigenous vegetation, avoid: effects on threatened species; areas within a land environment (defined by the Land Environments of New Zealand at Level IV) identified as having less than 20% indigenous vegetation remaining
33.3.3.2 -4	The indigenous vegetation clearance rules including the definitions and exemptions are not sufficiently certain	Rewrite the indigenous vegetation definition and exemptions and rules to ensure that they comply with minimum



	<p>including because:</p> <ul style="list-style-type: none"> <li>a. The use of percentages introduces subjectivity and uncertainty.</li> <li>b. The definition of indigenous vegetation, when combined with the reference to structural dominance fails to recognise that vegetation will often include interspersed indigenous and exotic species;</li> <li>c. The definition of structural dominance is uncertain as it is not clear what “dominance” is.</li> </ul>	<p>legal standards for certainty and enforceability.</p> <p>If this can not be achieved:</p> <p>33.3.3.2</p> <p>Rules 33.5.1 to 33.5.4 shall apply where indigenous vegetation attains ‘structural dominance’ and coverage by indigenous vascular and non-vascular plant species exceeds 20% of the total area to be cleared, or the number of indigenous vascular and non-vascular plant species exceeds 20% of the total number of species present in the total area to be cleared.</p> <p>33.3.3.3</p> <p>Rules 33.5.1 to 33.5.4 shall apply where indigenous vegetation does not attain structural dominance and coverage by indigenous vascular and non-vascular plant species exceeds 30% of the total area to be cleared, or the number of indigenous vascular and non-vascular plant species exceeds 30% of the total number of species present in the total area to be cleared.</p> <p>33.3.3.4</p> <p>Structural dominance is attained when indigenous species are in the tallest stratum and are visually conspicuous, and coverage by indigenous species exceeds 20% of the total area.</p>
<p>Table 1 - 33.4.2</p>	<p>This provision risks reducing the biodiversity values of Significant Natural Areas. Other than for exemptions there should be no permitted level of clearance of vegetation in SNA’s. QEII or other covenants may not have conditions that ensure that the Policies and Objectives of the District Plan will be met.</p>	<p>Delete</p>

33.3.4.4		Indigenous vegetation clearance for the construction of walkways or trails up to 1.5 metres in width provided that it does not involve the clearance of any threatened plants listed in section 33.7 or any tree greater than a height of 4 metres, or clearance within any area identified as being an Significant Natural Area when assessed against the criteria in Part 33.10.
Table 1: 33.4.5	It is not appropriate to rely on a process under a different piece of legislation with a different purpose.	Delete
Table 2 33.5.1	5000m2 is large and will not enable the maintenance of indigenous biodiversity throughout the district. The Rule fails to provide opportunities to protect areas meeting the criteria for SNA's	Delete and replace with: 33.5.1 The indigenous vegetation is not more than 500 square meters of indigenous vegetation generally or more than 1000 square metres of tall tussock grassland communities of the genus <i>Chionochloa</i> . 33.5.2 The indigenous vegetation is not: <ul style="list-style-type: none"> <li>a. located within 20m of a water body; indigenous bush;</li> <li>b. inland saline vegetation;</li> <li>c. associated with limestone outcrops;</li> <li>d. an indigenous turf community associated with tarns, glacial moraines or river margins;</li> <li>e. associated with wetlands; associated with 'originally rare' terrestrial ecosystem types described in Schedule ##;</li> <li>f. not habitat of a threatened or at risk indigenous species listed in Section 33.7</li> <li>g. closed canopy matagouri (<i>Discaria toumatou</i>) dominated shrubland that has a canopy height of greater than 1.5 metres;</li> <li>h. diverse indigenous shrubland, where 'diverse' means three or more species of indigenous shrub;</li> </ul>

		<ul style="list-style-type: none"> <li>i. indigenous shrubland containing: Bog Pine (<i>Halocarpus bidwillii</i>); Celery Pine (<i>Phyllocladus alpinus</i>); Hall's totara (<i>Podocarpus hallii</i>); or Mountain totara (<i>Podocarpus nivalis</i>); Within a land environment</li> <li>j. (defined by the Land Environments of New Zealand at Level IV) that has 20 percent or less remaining in indigenous cover. 33.5.3</li> <li>k. There shall be no exotic tree planting into an area of indigenous vegetation, bush, shrubland or tall tussock grassland (<i>Chionochloa sp.</i>) that exceeds the thresholds contained in Table 2</li> </ul>
Table 3: Activity status		Change from discretionary to non-complying.
Original Rule 33.5.6 (and Policy 32.2.1.2 section 33.7) <sup>1</sup>	<p>There was no scope to delete this standard.</p> <p>The decision is wrong when it found that the standard would have no purpose.</p>	Reinstate Section 33.7, Policy 32.2.1.2 and Rule 33.5.6 as notified and all references to these provisions that were in the notified plan.

<b>Chapter 34</b>		
Purpose	Need to recognise that dense stands of wilding conifers can also affect water yield.	Wilding trees are spreading across parts of the District and have visually degraded parts of the landscape, biodiversity values and can threaten the productive values of the soil resource, and reduce on water yield The spread of wilding trees has left other areas vulnerable to landscape and biodiversity degradation.
Objective 34.2		Protect the District's landscape, biodiversity and water and soil resource values from the spread of wilding exotic trees.

<sup>1</sup> See paragraphs 1395-1403

## Attachments

9. The following documents are attached to this notice of appeal:
  - a. A copy of the relevant parts of the Commissioners' decision;
  - b. A list of names and addresses of persons to be served with a copy of this notice;  
and
  - c. A copy of Forest and Bird's submission and further submission to the Queenstown Lakes District Council.
10. Parties served with a copy of this notice of appeal will not be served with the attachments, and may obtain a copy from the Appellant on request.



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Sally Gepp / Peter Anderson  
Counsel for Royal Forest And Bird Protection Society of New Zealand Incorporated

22 May 2018

### Address for Service

Peter Anderson  
PO Box 2516, Christchurch 8140

Sue Maturin  
PO Box 6230, Dunedin 9059

Telephone: 021 558 241  
email: p.anderson@forestandbird.org.nz

021 222 5092  
s.maturin@forestandbird.org.nz

### Advice to recipients of copy of notice of appeal

#### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

You may apply to the Environment Court under [section 281](#) of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see [form 38](#)).

**\*How to obtain copies of documents relating to appeal**

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

**Advice**

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

- Schedule 1 form 7 heading: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 June 2006, by [regulation 10\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).