

Caption summary

Queenstown Lakes District Council v Allenby Farms Limited
(Defendant)

Charge(s):	Offence:	Permitting the use of land (Defendant)
	Act/Section:	Resource Management Act 1991 s 9(3) and 338(1)
	Penalty:	A fine not exceeding \$600,000

Summary of facts

Introduction

- 1 The offence outlined in this summary of facts relate to the unlawful clearance of indigenous vegetation on a property at Mount Iron, Wanaka (the **Property**).
- 2 The Property is approximately 90 hectares and is legally described as Lot 104 Deposited Plan 412843.
- 3 The Property is owned by Allenby Farms Limited (the **Defendant**).
- 4 The Managing Director of the Defendant arranged for the indigenous vegetation clearance works to take place.

Background

- 5 In 2011 the Council undertook a preliminary ecological investigation of the Mt Iron slopes with a view to identifying areas on the Property as a Significant Natural Area (**SNA**) as part of the upcoming District Plan review. The Council corresponded with the Defendant about these investigations in 2012.
- 6 On 10 February 2015, the Council sent a letter to the Defendant advising that areas of the Property had been identified as potentially containing sites of significant indigenous vegetation and/or habitats of significant indigenous fauna. The letter sought feedback from the Defendant as part of the assessment of potential SNAs for scheduling in the proposed Queenstown Lakes District Plan (**Proposed Plan**). The letter informed the Defendant about the process for including the areas in the Proposed Plan.
- 7 On 20 April 2015, the Council sent another letter to the Defendant confirming that the areas on the Property identified as potentially significant would be scheduled as a SNA in the Proposed Plan. The letter advised that the Proposed Plan would be publicly notified later in the year and that a resource consent would be required to undertake specified activities, including the clearance of indigenous vegetation within any land scheduled as an SNA. The letter also included a table outlining the proposed changes that would be made to the rules for activities in SNAs in the Proposed Plan.

The Proposed Queenstown Lakes District Plan (Proposed Plan)

- 8 The Proposed Plan was notified on 26 August 2015. Schedule 33.8 of the Proposed Plan contains the Schedule of SNAs and identifies an SNA referenced as E18C as being located on the Property. The SNAs on the Property are also illustrated on Proposed Plan Maps 8 and 18.
- 9 The rules in the Proposed Plan relating to SNAs had immediate legal effect pursuant to section 86B(3)(b) of the Resource Management Act 1991 (**RMA**).
- 10 Chapter 33 of the Proposed Plan relates to Indigenous Vegetation and Biodiversity. The purpose statement for Chapter 33 (Part 33.1) states that the rules applicable to SNAs have immediate legal effect.
- 11 Table 1 of Section 33.4 of the Proposed Plan outlines the rules for clearance of indigenous vegetation. Rule 33.4.2 in Table 1 provides that activities located within SNAs that comply with all standards in Table 3 are a permitted activity. Activities that do not comply with the standards in Table 3 are a discretionary activity.
- 12 Rule 33.5.8 in Table 3 provides that the clearance of indigenous vegetation within SNAs shall not exceed 50m² in area in any continuous period of five years.
- 13 Section 33.3.4 of the Proposed Plan contains exemptions to the Rules permitting vegetation clearance:
 - (a) Rule 33.3.4.2 allows indigenous vegetation clearance for the operation and maintenance of existing and in service/operational roads, tracks, drains, utilities, structures and/or fence lines, but excludes their expansion; and
 - (b) Rule 33.3.4.3 allows indigenous vegetation clearance for the construction of walkways of 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.

Submission

- 14 On 23 October 2015, the Defendant made a submission on the Proposed Plan. The submission sought amendments to the boundaries of the SNAs on the property to reduce SNA area E18C at its northern end and to extend the SNA at its southern end. The submission specified that partial relief was not sought in that if the SNA Reduction is not approved, the part of the submissions seeking the SNA Extension would be withdrawn.
- 15 During hearings held in May 2016 on Chapter 33 of the Proposed Plan, the Council responded to the submissions made by the Defendant. The Council considered that the reduction in the northern boundary of the SNA was not appropriate, however, an extension to the southern boundary of the SNA would be appropriate. The Panel deferred consideration of the boundaries of the SNA to the hearings on the Proposed Plan Maps. These hearings are likely to be heard in 2017.

Circumstances

- 16 On 21 June 2016 the Queenstown Lakes District Council (**Council**) received a complaint about alleged indigenous vegetation clearance works that had taken place within a proposed SNA on the Property.

- 17 On 24 June 2016, Council officers visited the Property, accompanied by ecologists from Davis Consulting Group. Council officers entered the property from Hidden Hills Drive, at the northern end of the Property. Once on the Property, the officers saw a significant amount of Kanuka had been cleared within SNA E18C on the Property. Particular observations included:
- (a) excavated tracks were clearly evident from a point near to the entrance, along fence boundary lines and throughout the Property.
 - (b) indigenous vegetation (Kanuka) had been cleared along large portions of the eastern boundary of the Property (which borders Department of Conservation (DOC) land). The clearance was approximately 5-6m in width for a distance of 725m.
 - (c) tracking 5-6m in width was also observed in locations further south on the Property, which continued towards the centre and northern boundary of the Property.
 - (d) Near to the centre of the Property were four large cleared areas, three of which were approximately 600m² in area. One of the areas was larger than the others, measured at 20m wide and approximately 60m in length (comprising of an estimated area of 1200m²).
- 18 Numerous GPS points were taken during the site visit, as illustrated in **MAP A** attached. From these GPS points, the approximate area of indigenous vegetation cleared is estimated as follows:
- (a) Along the fence/boundary lines: 3,800m²;
 - (b) In the four larger cleared areas near the centre of the Property: 3,000m²; and
 - (c) For internal tracks: 2,300m².
- 19 In total, the approximate area of indigenous vegetation cleared was 9,100m².
- 20 The ecologist who accompanied Council officers to the Property on 24 June 2016 confirmed that the vegetation cleared was indigenous vegetation and that the vegetation is ecologically significant. The clearance of the larger areas is of greatest significance. The effect of the vegetation clearance is the loss and fragmentation of indigenous vegetation and habitat within a chronically threatened environment, as defined by the Threatened Environment Classification for New Zealand. Habitat destruction and degradation is widely considered to be a main driver in species decline and extinction, ultimately decreasing indigenous biodiversity, which in this instance is expected to provide habitat for native lizards, birds (e.g. bellbirds, fantail and grey warbler) and invertebrates.

Analysis

- 21 Given the amount of indigenous vegetation cleared from the Property, a resource consent for a discretionary activity was required pursuant to rule 33.5.8.
- 22 The vegetation clearance was not permitted pursuant to rule 33.3.4.2 because the width of the clearance was substantially wider than the existing tracks and fence lines on the Property, and resulted in the expansion of these tracks and fence lines.
- 23 The vegetation clearance was also not permitted pursuant to rule 33.3.4.2 because the tracks constructed were wider than 1.5 metres in width and involved the clearance of trees greater than four metres in height.

Defendant comments

- 24 The Managing Director of the Defendant provided a written statement to the Council. In that statement, the Defendant stated:
- a. He arranged for some track and fence line work on the Property on or about the week of 16 May 2016.
 - b. The work was part of the normal farming operations on the Property for the tracks, and that similar work had been undertaken many times over the past 50 years.
 - c. Clearance of the fence line was done for the first time this year, partially as a fire break and partially to allow access to areas to replace fencing and provide stock access.
 - d. The work was done with a 120 Bero slasher attached to a 21 tonne tracked excavator. In the past the work has been done with bulldozers, diggers and graders.
 - e. The cleared area was wider than expected but that was unavoidable because the width of the cleared area was the minimum that the machine could achieve.
 - f. The tracks are an integral part of farming operations on the Property and no concerns have been raised in the past about the maintenance work. The tracks also provide a vital link to the DOC estate. DOC would otherwise have no vehicular access to their land on Mr Iron and are reliant on tracks on the Property to access and maintain their facilities.
 - g. Allenby Farms were and still are totally unaware that it has transgressed in any way with the work. It understood that a large portion of its Property has recently been identified as an SNA and it had engaged experts to prepare submissions on the District Plan Review. Its understanding was that its submission on the SNA was intended to preserve its position enabling clearing work to be undertaken, and that it has been party to numerous meetings with Council about the SNA proposal in which it voices its concerns about its identification in the Proposed Plan.
 - h. Allenby Farms had not been informed that consent or permission was required for the clearing work undertaken.
- 25 The Defendant has not previously appeared before the Court.

