

MACKENZIE DISTRICT COUNCIL
PLAN CHANGE 19
ACTIVITIES ON OR WITHIN WATERBODIES

MINUTE 2 AND DIRECTIONS OF COMMISSIONERS DARRYL MILLAR AND CHRIS CLARKE
AND
DECISION ON THE EVIDENCE OF MS CROSSMAN

The Hearing

1. The Hearing has been adjourned.
2. We have completed our preliminary deliberations on the evidence of Mr Head (Visual impacts). This has identified the need for further information and/or assessments. This Minute outlines the issues and provides Directions to the Parties.
3. We also provide Directions for Ms Newell, as agreed during the hearing, and discuss the evidence of Ms Crossman prepared for Opuha Water Limited.

The Director General of Conservation

4. The Director General of Conservation filed a submission addressing various aspects of the Plan Change. Expert ecology evidence was filed by Mr Grant. We also received ecology evidence from Mr Jolly on behalf of Jet Boating New Zealand Limited. The evidence of the experts was disparate insofar as it related to the impacts of motorised water craft operating on threatened bird species. That said, Mr Grant did appear to acknowledge that there was no clear evidence connecting his concerns with the actions of such craft. Within this context legal submissions by Ms Newell advocated that we adopt a precautionary approach with respect to rules that the Department sought to apply to the Godley, Cass Tasman and Dobson Rivers.
5. Given this we sought guidance as to whether established caselaw would assist our consideration of Ms Newell's proposition.
6. We also sought guidance as to the exact parts of the submission that Mr Grant's evidence related to and the relief that was being sought.
7. Accordingly, we **Direct** that **Ms Newell** provide:
 - Additional legal submissions addressing the precautionary approach discussed above; and
 - A summary specifying the submissions relevant to Mr Grant's evidence and the relief being sought. A table may be sufficient.

8. The above is to be provided to the Council no later than **5pm Wednesday 12th December 2018**. Council staff will advise the Parties of its availability and provide a copy where requested and/or make it available on the Council website.
9. A consequence of seeking the additional legal submissions is that we consider it is appropriate that other Parties are afforded the opportunity to review and comment (if they so choose). Accordingly, we direct that if any Party wishes to provide comment on the submissions, they must provide this (in writing) to the Council by **5pm Wednesday 19th December 2018**. For clarity we confirm that any additional commentary from other parties is limited to the legal submissions on the precautionary approach issue only.

The Evidence of Mr Head – Visual Assessment

10. We heard expert landscape evidence from Mr Head. When referring to the view of Lake Pukaki and its relationship with Aoraki Mount Cook, Mr Head's evidence concluded that:
"It would be detrimental to this vista that is enjoyed by many at a local, national and international level if the sublime simplicity of lake and mountain was interrupted by even one motorised surface water craft crossing the lake and diminishing this grandeur."
11. As a result, Mr Head recommended that motorised craft used for recreational purposes be limited to the eastern side of Lake Pukaki as illustrated in the map attached as Appendix 1 to his evidence.
12. The approach taken by Mr Head was to identify "popular (formed) scenic viewing areas" and "popular (unformed) scenic viewing pull offs", and to assess the visual impacts arising from the operation of craft on the lake when viewed from these locations. The location of the viewing areas was noted on Figure 1 on page 6 of his evidence and described in the body of the evidence. The locations themselves are varied in nature from the formal signed and sealed lookouts of places such as "Peter's Lookout" on the western margin of the Lake and the Pukaki Information Centre on the south side of the Lake, to less formal gravel areas that provide, in some locations, access to the Lake edge. The basis of Mr Head's assessment was that all of these locations were considered equal in value in terms of the visitor experience and their function.
13. Our preliminary consideration of this aspect of Mr Head's evidence is that we are of the view that we need to test the extent to which such areas should be treated equally. In other words, should the assessment of potential impacts be undertaken from all of these locations, or from the major purpose designed lookouts. Given this we will ask the Council's reporting officer to investigate and determine if it is possible to distinguish between these areas in terms of their intended function and purpose. This may require engagement with Council staff and possibly the NZTA. Related to this issue we also wish to determine if there is any data available regarding the use of these areas (visitor and/or visitor numbers) and, if such data is available, how usage may vary throughout the year. Accordingly, we issue Directions below.
14. Our request for this information extends also to the consideration of the evidence of Mr Farren (Acoustic). We say this for the reason that Mr Farren has adopted the viewing points identified by Mr Head as the basis for his assessment.

15. Accordingly, we **Direct** that **Ms Harte**:
- Undertake a brief assessment to determine the function and purpose of the “viewing areas” identified in Mr Head’s evidence;
 - Determine the availability of usage data for these areas; and
 - Present the results in a supplementary report no later than **5pm Wednesday 12th December 2018**.
16. As with Ms Newell’s additional legal submissions, the Council will make the supplementary report available and Parties will have the opportunity to provide comment, in writing, no later than **5pm Wednesday 19th December 2018**.
17. We note, for completeness, that the outcome of Ms Harte’s assessment may give rise to the need for additional expert evidence. Given this, and as we are yet to fully complete our deliberations, we signal that further Minutes and Directions may follow. As a consequence, the hearing remains adjourned.

Opuha Water Limited

18. Opuha Water Limited (OWL) provided a statement of evidence by Julia Crossman. This was provided to the Council on Monday 26th November. We have concluded that Ms Crossman’s evidence constitutes “expert evidence”. Given this, it should have been filed with the Council no later than 20 November, as directed in the Council’s notice of hearing.
19. As a consequence, we must decide whether to waive compliance with the time limit and thus whether the evidence can be accepted. Our considerations are framed by sections 37 and 37A of the RMA. In particular section 37A(1) states that:
- (1) A consent authority or local authority must not extend a time limit or waive compliance with a time limit, a method of service, or the service of a document in accordance with section 37 unless it has taken into account—*
- (a) the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and*
 - (b) the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and*
 - (c) its duty under section 21 to avoid unreasonable delay.*
20. Given the content of Ms Crossman’s evidence, which largely replicates the original submission, we do not consider that any party is disadvantaged. Moreover, waiving the requirement to comply has not, and will not, impact on the processing timeline associated with this Plan Change.
21. Accordingly, the evidence of Ms Crossman is accepted.
22. As a consequence of this we **Direct** that Council staff are to make the evidence available to the Parties by placing it on the relevant section of the Council’s website.

23. Any queries in relation to this Minute and the Directions should be made to Ms Ann Rodgers in the first instance. Contact details are contained in the Council's Hearing Notice.

DATED: 4th December 2018

A handwritten signature in black ink, consisting of a large initial 'D' followed by several vertical strokes and a long horizontal flourish.

DK Millar
Commissioner