10. APPROVALS RELATING TO THE CONSERVATION ACT 1987

10.1 CONCESSION UNDER THE CONSERVATION ACT

Schedule 6 of the Act sets out the information requirements for approvals required under the Conservation Act, with Part 1 specifically addressing concessions. Clause 3 sets out the information requirements for applications for concessions. This includes:

A description of the proposed activity:

This is addressed in Section 3 (project description) and Section 4 (approvals required) of this report. For completeness it is noted that concessions are required for the following activities:

> A new concession authorising all activities associated with the expansion of the ski area into the Doolans Basin, as well as the supporting infrastructure that spatially traverses the Rastus Burn (i.e. over the existing Remarkables Concession) ("**Doolans Concession**"); and

> New concession authorising an expansion to the existing Rastus Burn Base Building and associated buildings and utilities located within the access road and Level 3 Car Park **("the Remarkables Base Concession")**.

Information about whether the project could reasonably be undertaken in another location, or in another conservation area or another part of the conservation area, where the potential adverse effects will be significantly less:

The Project includes upgrades to the existing Remarkables Ski Area which is in conservation area (although a recreation reserve). In that respect, there are no other locations to enable the Project.

In respect of the expansion into the Doolans Basin, there are no other practicable locations for the expansion for the following reasons:

> The expansion area needs to be adjacent to the Remarkables Ski Area to be able to effectively use the existing infrastructure and services (including the access road);

> The Doolans Basin is south-facing valley, which has a greater ability to retain snow, improving its longer-term resilience to the potential effects of climate change – this expansion improves the overall resilience of the Remarkables Ski Area;

> Ski activities and ski fields must occur in alpine environments. A significant proportion of alpine environments across New Zealand is within the conservation estate; and

> As has been reiterated throughout this substantive application, the Project has been designed to reduce effects as much as practicable and includes measures that will appropriately manage effects.

Information about the extent to which the project is consistent with:

> **The relevant conservation management strategy and conservation management plan:**

> **Any conservation management strategies or conservation management plans that have been co-authored, authored, or approved by a Treaty settlement entity.**

The applicable conservation management strategy and conservation management plan are addressed subsequently in Sections 10.1.1, of this report.

Information about the extent to which the project is in keeping with the purposes for which the land is held, status, ownership and administration:

Existing Remarkables Ski Area

The existing ski area activities are predominantly within the Rastus Burn Recreation Reserve and accessed by the Remarkables Ski Field Access Road, which in part is a government purpose reserve. The Rastus Burn Recreation Reserve is held as Recreation Reserve under section 17 of the Reserves Act 1977 for the purpose of "*providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside*."

The Rastus Burn Recreation Reserve was reserved in 1980 for the explicit purpose of ski field development, with the Remarkables Ski Area operating from this area since 1985. Much of the public conservation land on which the Remarkables Ski Area is located is already heavily modified, with significant infrastructure, modifications to skiable terrain and the access road.

Given the Project is for upgrades to the existing Remarkables Ski Area, the proposed activity is consistent with the Reserves Act. The Project is not contrary to the purposes for which the Recreation Reserve is held (especially in their current state), given the reason for it being reserved is for the purpose of ski field activities.

Doolans Basin Expansion Area

The Doolans Basin Expansion Area is within the Remarkables Conservation Area. The Conservation Act sets out that a conservation area means land that is land that is held under

the Conservation Act for 'conservation' purposes. Conservation is defined in the Conservation Act as:

> *...the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations*

The terms "protection" and "preservation" have the following meanings, as defined in the Conservation Act. Importantly, these definitions include the wording 'so far as is practicable' which has the effect of not preluding use and development:

> ***Protection,*** *in relation to a resource, means its maintenance, so far as is practicable, in its current state; but includes—*
>
> *(a) Its restoration to some former state; and*
>
> *(b) Its augmentation, enhancement, or expansion:*
>
> ...
>
> ***Preservation****, in relation to a resource, means the maintenance, so far as is practicable, of its intrinsic values.*

As detailed throughout this Substantive Application, the design of the Project has been undertaken iteratively (including in response to feedback received from relevant agencies pre-lodgement) to ensure that the environmental effects on resources within the Doolans Basins are avoided or minimised, **so far as practicable**, while providing an opportunity for the publics enhanced appreciation and recreational enjoyment of the area. Notably, this includes (but is not limited to):

- Co-locating infrastructure and trails to ensure the ski area has the smallest physical disturbance footprint practicable, thus maintaining the vast majority of the concession area in its current state;
- Avoiding key areas of indigenous vegetation through careful trail and infrastructure siting and design and where avoidance is not practicable, minimising the footprint of the affected area;
- Where vegetation removal is required, undertaking such works in accordance with agreed DOC and NZSki protocols (as applied at the Remarkables Ski Area);
- Minimising the volume of earthworks required by forming a single vehicle access and ski trail in the Doolans Basin and utilising the natural topography of the land where practicable to form the access /ski trail;

- Where larger volumes of earthworks are proposed (such as at the mid station and where retaining walls are proposed), these works are vertical cuts (and utilise retaining walls) rather than cut and fill which would require a larger footprint and area of disturbance. In the case of the mid station cuts, these works are proposed to minimise the visibility of the mid station;

- Ensuring the ensures that the overall vegetation disturbance is required, key threatened and at-risk species are proposed to be relocated in accordance with NZSki and DOC's existing vegetation relocation protocols at the Remarkables Ski Area;

- Utilising an existing tarn for water storage, rather than creating a new reservoir which would further increase the vegetation and earthworks disturbance. While consideration was given to pumping water from the Rastus Burn, this was discredited early to avoid transferring water from one catchment to another, particularly where didymo is present within the Rastus Burn; and

- Applying accidental discovery protocols to the small area of the works footprint that has not be subject to a detailed walk over by heritage experts.

It is considered that the proposed Doolans expansion is not inconsistent with the purpose for which the land is held, for the following reasons:

- The Project has been carefully designed to avoid effects on the highest value vegetation communities, as described in the memorandum in A.21 Effects Management and Compensation Overview Addendum.

- The Doolans expansion impacts only a small part (262 ha) of the wider Conservation Area (33,000 ha). The Project area in the Doolans Basin represents less than 1% of the Remarkables Conservation Area. The actual area of vegetation disturbances is considerably smaller, with the wider vegetation disturbance across the Rastus Burn and Doolans being in the order of 15.94 hectares, or 0.4% of indigenous vegetation cover located above 1,1000m;

- The Project enables more people to access, use and enjoy the Doolans Basin for recreational purposes – both in winter (ski season) and summer through the access created into the basin by the Project. Commercial ski fields provide (relatively for the alpine environment) safe and convenient access for the public to recreational activities in the alpine environment. The Doolans Basin is currently relatively inaccessible for the vast majority of the public due to its geographical location and limited access options, limiting the number of people who can appreciate and obtain recreational enjoyment out of the conservation land. This is in keeping with the conservation purpose of the

conservation land within Doolans Basin as it will provide the public with greater ability to access the conservation land for their appreciation and recreational enjoyment.

- The Doolans expansion area is adjacent to a Recreation Reserve, explicitly created for ski field activities. The Doolans expansion relies on existing infrastructure (including access) located within the Recreation Reserve; and
- All activities associated with the Project within the conservation estate have been purposefully designed to avoid environmental effects as far as practicable, with the proposed conditions setting out how the effects that cannot be avoided will be managed on an ongoing basis.

The intent of the Biodiversity Compensation Project is to develop (alongside DOC) and implement projects on the conservation estate that provide ecological benefits to compensate for the Project's residual ecological effects. The Biodiversity Compensation Project is clearly consistent with 'conservation purposes'.

A description of—

- **The potential effects (positive and negative) of the proposed activity:**
- **Any actions that the applicant proposes to take to avoid, remedy, mitigate, offset, or compensate for any adverse effects of the proposed activity: and**
- **Details of the type of concession for which the applicant is applying.**

The effects associated with the Project are addressed in detail in Section 6 of this substantive application report, and in the supporting technical assessments. This section also includes the measures proposed by NZSki to manage adverse effects.

In respect to the type of concessions, Section 4 of this report details the type of concessions required, and the proposed concession documents contained in **Part H** also document the nature of concessions required.

A statement of—

- **The proposed duration of the concession; and**
- **The reasons for the proposed duration:**

NZSki is seeking the duration for the new concessions sought as part of this substantive application to be 40 years. In accordance with section 17Z(1) of the Conservation Act, a lease or licence may be granted for a term not exceeding 30 years, or where the Minister is satisfied that there are exceptional circumstances, for a term not exceeding 60 years. 40 years is considered to be appropriate, for the following reasons:

- A longer term reflects the significant investment that NZSki will be undertaking by establishing ski activities in the Doolans Basin, providing the appropriate time to achieve a safe return on investment; and
- The technical assessments supporting this application demonstrate that the effects of the Project can be appropriately managed.

Relevant information relating to the applicant, including any information relevant to their ability to carry out the proposed activity (including whether the applicant or any company director, trustee, partner, or anyone else involved with the application has been convicted of any offence or has any current criminal charges pending before a court):

Information about NZSki is provided in Section 1 of this report. NZSki has been subject to one conviction under the Health and Safety Act for a breach resulting in a guest fatality in 2020.

If the applicant applies for a lease, a licence granting an interest in land, or an easement:

- **Reasons for the request; and**
- **Sufficient information to satisfy the panel that it is appropriate under to grant the lease, licence, or easement (as the case may be):**

As documented earlier, NZSki is applying for several types of concession. The reason for the request is documented in Section 3 of this report, and the information contained in this substantive application in respect of the Project rationale, actual and potential effects and effects management measures are considered to be sufficient to satisfy the panel that it is appropriate to grant the concessions sought.

Full details of any consultation undertaken with relevant iwi and with reserve owners and managers:

The consultation undertaken by NZSki in respect of the Project is addressed in Section 5 of this substantive application report.

Information about financial and legal liabilities and obligations associated with the land:

NZSki operates the Remarkables Ski Area under a number of existing authorisations issued under the RMA, the Reserves Act and the Wildlife Act 1953. Further detail is provided in Section 2.

Any obligations arising, including upon expiry of the concessions, are expressly covered by the conditions of the concessions and by the agreed processes in those concessions. In particular, the rehabilitation protocol to be followed by NZSki and DOC at the conclusion of activities is contained in Schedule 3A of each of the concessions. Any other obligations in relation to termination or expiry of the concessions are covered by term 20 of Schedule 2 for each concession.

Should any further information on the financial and legal liability and obligations associated with the concession areas above be required, NZSki can provide this as and if necessary.

Confirmation that the applicant has written agreement from the holder of a right of first refusal or right of offer or return to waive that right for the purposes of any lease proposed in the application if—

- **The proposed lease will be for a term (including any renewals) that will or is likely to be more than 50 years; and**
- **The granting of the lease will trigger the right of first refusal or right of offer or return.**

The proposed new concessions include leases for specific activities (as described in the proposed concession documents contained in **Part H** of the application documents). The proposed term does not exceed 50 years. It is understood that the granting of the concessions as sought, including the lease components, will not trigger a right of first refusal clause given the duration sought is less than 50 years.

10.1.1 Part 3B Conservation Act

Clause 7(1)(a)(ii) of Schedule 6 of the FTAA requires any concessions and conservation area to take into account Part 3B of the Conservation Act 1987 (excluding sections s17SB and 17U(3)) as if the application were an application for a concession under Part 3B.

While several provisions in Part 3B of the Conservation Act require or allow the decision-maker to decline an application, in the context of the FTAA, the Panel must give greatest weight to the purpose of the FTAA, being to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

The relevant matters in Part 3B of the Conservation Act are addressed below.

Section 17S – Contents of the application

Section 17S of the Conservation Act prescribes the contents of an application for a concession, which is described in Clause 3(1) of Schedule 6 of the FTAA requiring the applicant to provide a much broader strategic and land-management assessment upfront.

This includes matters relating alternative locations, providing information to the extent the activity is keeping with the purposes for which the land is held, status, ownership and administration, iwi consultation and financial and legal obligations associated with the land.

Section 10.1 of this report provides an overview of where the required information is provided.

Section 17U – Matters the Panel must have regard to

Section 17U(1) – Matters to have regard to

Section 17U(1) of the Conservation Act requires that the Panel have regard to a number of matters in considering an application for a concession. The matters in section 17U(1)(a)–(e) are set out in Table 10-1 below.

Table 10-1: Matters the Panel has regard to in considering an application for a concession

Section	Matter	Reference in Application
17U(1)(a)	The nature of the activity and type of structures/facilities	> Section 3 > Clause 2 of Schedule 2 of each concession document (Part H.02-H.04)
17U(1)(b)	The effects of the activity, structure or facility	> Section 6
17U(1)(c)	Any measures that can reasonably and practicably be undertaken to avoid, remedy or mitigate any adverse effects	> Section 6 > Section 7 > Part H.02-H.04
17U(1)(d)	Information contained in an application	> Section 10.1 (above)
17U(1)(e)	A relevant environmental impact assessment, including any audit or review.	> Section 6

The matters included within section 17U(1)(f) and (g) are not relevant under the FTAA.

Section 17U(2) – Discretion for the Panel to decline an application

Section 17U(2) of the Conservation Act provides that the Panel may decline an application if it considers that:

> There is insufficient or inadequate information to enable it to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility; or

> There are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.

The information contained in the application and supporting technical assessments in **Part B** is considered adequate and sufficient for assessing environmental effects of the Project.

A comprehensive assessment of potential effects has been undertaken as part of planning for the location and design of the Remarkables Ski Area, and the expansion and trail development within the adjacent Doolans Basin contained within Section 6 with proposed management measures and monitoring actions contained in Section 7. Where possible, the Project has been designed to avoid or mitigate potential effects, for example:

> The proposed new concessions are subject to a suite of construction and rehabilitation conditions intended to minimise adverse effects in the alpine environment. Across all approvals, works must only be undertaken by contractors and machinery operators with alpine earthworks experienced and with indigenous vegetation restoration. Machinery and vehicle access is confined to existing access tracks and ski trails (unless otherwise specified) with disturbance of terrain or vegetation outside authorised work areas avoided. Construction activities will incorporate drainage measures, best practise erosion and sediment controls protecting surrounding vegetation, wetlands and watercourses.

> The re-vegetation protocol contained within the "*Protocol for the rehabilitation of natural environments following ski area development*" is applicable for all concessions sought. This document outlines rehabilitation protocols and adaptive management to ensure alpine environments are restored as close as practicable to a pre-development condition. Requirements for detailed alpine vegetation removal, translocation and prompt reinstatement ensuring successful reinstatement will minimise ecological disturbance and maximise restoration outcomes.

> The application for each concession proposes a suite of conditions reflecting expert advice to ensure that potential effects from construction and operational activities are managed. A major component of the conditions for the works within Doolans Basin is the development of management plans to be certified by DOC a minimum of 20 working days before works commence, including:

- A TEMP which will manage ecological effects on indigenous vegetation, avifauna, wetlands and invertebrates within the Project Area.
- A Lizard Management Plan will be implemented to manage the loss of McCann's skinks through the alpine project area, with a second management plan proposed to be prepared and implemented with respect to works in Car Park 3.
- A CEMP will suitably manage construction related effects, with site-specific Erosion and Sediment Control Plan require to manage earthworks and the discharge of sediment laden water at a micro scale.
- A forward-looking Annual Works Plan for future maintenance and upgrades, detailing:
  - Proposed modifications to existing structures, assets, facilities;
  - Details on any new structures, infrastructure, land disturbance activities, changes to operations or service delivery, preventative maintenance (whether that be restoration or revegetation); and
  - The proposed timing, commencement, completion, implementation or termination of the relevant works, uses and activities.

- Through, the experts' assessment of effects contained within **Part B**, it is apparent that most effects can be appropriately managed. Where enduring residual effects remain to ecological values, natural character and the back-country recreation experience, these effects are considered to be functionally necessary for the establishment of the proposed ski field operations and ancillary components and have been substantially reduced, addressed and compensated for commensurately.
- The effects assessments have informed the siting and design of buildings, structures and infrastructure through an iterative process in order to find the most suitable and practicable areas having regard to the topographic constraints, operational and safety requirements within a treacherous high-altitude alpine environment.
- While expansion will alter aspects of the existing backcountry, on balance it will provide for greater public recreational access and enjoyment of the alpine environment. Suitable alternative areas of remoteness and solitude remain nearby within the Hectors Mountains, and the consent conditions provide for a mechanism to address concerns of existing recreation groups and operators concerns through the leading and formation of a Recreation User Group.

- The proposed development represents a logical expansion of the existing ski-field development within the Rastus Burn and will increase NZSki's resilience to climate change.
- Importantly, to the extent that the Panel considers there are residual adverse effects, these are not sufficient to justify declining the proposal given the directive in the purpose of the FTAA, and sections 85(3)-(5) of the FTAA. Further, the delivery of significant regional benefits in accordance with the purpose of the FTAA, can and must outweigh any such adverse effects in the decision making for the Project.

Section 17U(3) – consistency with legislation and purpose for which the land is held

Clause 7(1)(a)(ii) of Schedule 6 of the FTAA states that the Panel is not to consider section 17U(3) of the Conservation Act.

Section 17U(4) – Alternative locations

Section 17U(4) of the Conservation Act provides that the Panel must not grant an application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where they are satisfied that the activity:

- Could reasonably be undertaken in another location that:
  - Is outside the Conservation Area to which the application relates;
  - Is in another Conservation Area or in another part of the Conservation area to which the application relates, where the potential adverse effects would be significantly less; or
  - Could reasonably use an existing structure or facility or the existing structure or facility without the addition.

Alternative locations and layouts were explored by NZSki prior to making these new concession applications. Given that the activity is occurring within an alpine mountain range and the extent of surrounding land owned within DOC tenure, all options considered were located within the Conservation Estate.

Section 10.1 (above) and the technical assessments contained in **Part B** identify a lack of practical alternative locations given the functional and operational requirements of ski activities to occur within alpine environments and the opportunity to co-locate and integrate with the adjacent ski area and infrastructure within the Rastus Burn Recreation Reserve. The selected location has been identified through technical assessments and refined iteratively to be the most suitable location for the activity within the south-facing basin in an area containing terrain appropriate for safe ski field operations. What has resulted is a

location within Doolans Basin or the Remarkables Conservation Area that will create the least potential adverse effects while providing for ski area activities which are regionally significant to Otago.

There are no existing structures or facilities which could reasonably be used in terms of section17U(4)(b) of the Conservation Act.

For these reasons, the Panel is not precluded from granting these concessions on the basis of section 17U(4)(b).

Sections 17U(5), (6) and (7) – limitations on granting a lease or licence

Sections 17U(5), (6) and (7) of the Conservation Act provide limitations on granting a lease or licence. The provisions require the Panel to consider if the lease or licence is necessary for safety or security or integral to the activity, and whether the exclusive possession for a lease is necessary for safety, security or competent operation of the activity. However, the Panel is not required to decline the approval if it finds those matters are not met.[504]

- The proposed lease, license and easement conditions (for a variety of interests) are considered appropriate having regard to sections 17(U)(5)-(7) of the Conservation Act. The upfront investment relating to the proposed ski field activities and support infrastructure requires a secure appropriate tenure arrangement and a level of operational control that requires exclusive possession and occupation of lease areas and an ability to operate within the licence areas for a 40-year term. This will provide for public safety, security of infrastructure and ongoing ski field operation, maintenance and longevity.
- Exclusive possession around the Project's structures and facilities is necessary given the significant embedded infrastructure already present and to remain consistent with prior concessions granted within the Rastus Burn.
- Given the reasons why exclusive possession is required and giving most weight to the purposes of the FTAA, there is no reasonable or lawful basis to decline, and it is appropriate to grant the leases, licences and easements sought.

Section 17U(8) - Appropriateness of grant in the circumstance

Under section 17U(8) of the Conservation Act, as modified by the FTAA, the Panel is not required to grant a concession if they consider the grant is inappropriate in the

[504] Schedule 6, Clause 7(2)(a), Ibid.

circumstances of the particular application. For the reasons set out above, it is appropriate to grant these concessions, because:

> There is sufficient and adequate information to enable the Panel to assess the effects;

> There are adequate methods to mitigate the effects;

> It is not reasonable to locate the Project outside of the Remarkables Conservation Area;

> It is appropriate to grant the leases, licences and easements sought (including because of the reasons why exclusive possession is required for the leases); and

> In its decision-making the Panel is required to give the most weight to the purpose of the FTAA which is supportive of granting the concession.

Section 17W – Relationship between concessions and conservation management strategies and plans

Section 17W of the Conservation Act, as modified by the FTAA, requires the Panel to consider the consistency of the Scheme with the relevant CMS or a conservation management plan, but does not require the Panel to decline the approval if it finds any inconsistency.

The Otago CMS is relevant under section 17W of the Conservation Act and is assessed in Section 10.2.2.

Consistency must be assessed on a holistic basis, such that inconsistency with one policy does not equate to inconsistency with the policies and objectives as a whole;

> The Project aligns generally with the Otago CMS; and

> If the Panel was to disagree with this assessment of consistency, the purpose of the FTAA must be given greater weight, and a finding of inconsistency does not require the Panel to decline the approval.

Section 17X – Conditions

Section 17X of the Conservation Act, as modified by the FTAA, provides that the Panel may impose such conditions as they consider appropriate, provided they are no more onerous than necessary[505]. Section 17X provides a non-exhaustive list of conditions that may be imposed including:

[505] Sections 81(2)(d) and 83, Schedule 6 clause 8. Clause 8(3) applies instead of section 17Y(1) of the Conservation Act 1987.

- The payment of specified rent, fees and royalties (not compulsory under the regime as modified by the FTAA, compared to section 17Y of the Conservation Act);
- The payment of compensation for adverse effects on the Crown's or public interest in the land;
- The payment of a bond;
- The waiver or reduction of any rent, compensation or bond;
- A requirement to remove structures at the end of the term; and
- Periodic reviews of terms and conditions including rent.

The new Doolans concession will be subject to a DOC concession fees, calculated as 3% share of gross annual revenue to ensure an appropriate return for the use of public conservation land (in accordance with section 17Y(2)). The existing Rastus Burn Concessions fees remain as per the recently approved concession renewal;[506]

The Panel is also required to impose any conditions that the Minister/Director-General of Conservation indicates are relevant to manage risks to, and potential liabilities of, the Crown arising from the granting of the concession.[507]

A suite of proposed concession conditions have been suggested within **Part H** to adequately remedy, avoid or mitigate adverse effects.

Section 17Z Term of Concession

Section 17Z of the Conservation Act, as modified by the FTAA, provides that a lease or licence maybe granted for a term not exceeding 30 years, or for a term between 30 and 60 years if the Panel is satisfied there are exceptional circumstances.[508]

The exceptional circumstances for why the term sought of 40 years should be granted by the Panel are ser out in below. Granting a term of 40 years will further the purpose of the FTAA and provide a level of security for the Concessionaire in terms of the significant investment required for the scale of works within the ecologically sensitive Conservation Estate.

The term 'exceptional circumstances' is not defined in the Conservation Act. However, it is used in other legislation. The Supreme Court has considered the term in other contexts and

[506] See section 17X(c) of the Conservation Act 1987 and schedule 6, clause 8(1) of the FTAA.

[507] Section 78 and Schedule 6 clauses 4(2) and 9, Ibid.

[508] Schedule 6 clause 13, Ibid.

found it describes a circumstance which is out of the ordinary course, or unusual, or special or uncommon – an exception rather than the rule.[509]

A 40-year term is required to make the scale of investment viable, directly pertinent to the purpose of FTAA and given the long-standing ski field development operations since 1985 within the Remarkables demonstrated by the number of authorisations held by NZSki.

Section 17ZF Aircraft

Section 17ZF relates to aircraft landings and hover activities within public conservation land.

Aircraft landing or hovering associated with the Project would occur during the construction phase and would be authorised through the concession conditions and constructed-related approvals. Helicopter operations to support health and safety, search and rescue activities, avalanche management and to respond to medical emergencies may also be undertaken.

No discretionary aircraft landing activities are proposed in routine ski area operations. Any commercial operators or third parties wanting to undertake take-off and landings within the ski area required to hold an appropriate concession that is in possession of the operator.

10.2 STATUTORY POLICY DOCUMENTS

10.2.1 Conservation General Policy 2005

Clause 3 (1)(d)(i) of Schedule 6 of the Act requires a substantive application to include information about the extent to which the project is consistent with a relevant policy statement, conservation management strategy and conservation management plan.

The Conservation General Policy 2005 (“**CGP**”) provides the overarching policy for the management of the conservation estate, seeking to ensure that activities undertaken on conservation land are done in accordance with the purpose of the land. The following analysis is applicable to all activities within this application requiring approval from the Department of Conservation.

The CGP primarily sets out policies relating to the development of conservation management strategies. The most pertinent provisions for the project are set out in Section 11 of the CGP – activities requiring specific authorisation, including (of relevance to the Project):

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[509] *Wong v R* [2008] NZSC 29, [2008] 3 NZLR 1 at [8]; referring to *R v Kelly* [1999] 2 All ER 13 (CA) at 20. See also *Creedy v Commissioner of Police* [2008] NZSC 31, [2008] 3 NZLR 7 at [31] – [32]; *Ye v Minister of Immigration* [2009] NZSC 76, [2010] 1 NZLR 104 at [34].

- Any application for concession or other authorisation must comply with, or be consistent with, the objectives of the relevant Act, the statutory purpose for which the place is held and any conservation management strategy or plan;[510]
- Activities on conservation lands and waters should avoid, remedy or mitigate any adverse effects and maximise positive effects;[511] and
- All concession or authorisation holders should monitor the effects of authorised activities.[512]

In respect to these provisions:

- The consistency of the project in respect to the statutory purpose for which the land is held is addressed in Section 10.1 above (in respect to the concessions sought);
- An assessment of the Project against the relevant strategies or plans is addressed later in this report;
- Section 6 of this report contains an assessment of environmental effects; and
- Section 7 of this report, and the proposed conditions provided in **Part H** to these application documents, set out the monitoring proposed as part of this Project.

10.2.2 Otago Conservation Management Strategy 2016

Introduction

The purpose of a Conservation Management Strategy ("**CMS**"), as defined by section 17D of the Conservation Act, is to implement statements of general policy, and to establish objectives for the integrated management of natural and historic resources, including species managed by DOC and for recreation, tourism and other conservation purposes.

The Otago CMS was approved by the New Zealand Conservation Authority in 2016 and partially reviewed in 2022, and describes the conservation values present in Otago, and provides guidance for DOC's work in the form of a vision, objectives, outcomes for Places, policies and milestones translating DOC's strategic outcomes to Otago.

Te Rūnanga o Ngāi Tahu did not co-author the Otago CMS but input from them was provided to, and incorporated by, the New Zealand Conservation Authority. The New Zealand

[510] CGP Policy 11.1(a).
[511] GCP Policy 11.1(b).
[512] CGP Policy 11.1(c).

Conservation Authority includes one appointment on the nomination of Te Rūnanga o Ngāi Tahu.[513]

The "Places" described in Part Two of the Otago CMS have been identified for the purposes of integrated conservation management and require some specific management direction. Importantly, the Doolans Basin is within the Remarkables-Hector area of the Western Lakes and Mountains/ Ngā Puna Wai Karikari a Rākaihautu Place.

The Otago CMS has two volumes. Volume I includes:

> A vision for Otago, and whole-region objectives, policies and milestones;

> Outcomes, policies and milestones for Places within Otago;

> Other specific whole-region policies and milestones that address legislative and general policy requirements; and

> Objectives for implementation monitoring and reporting, and review.

Volume II contains maps and a public conservation lands and waters inventory.

Part One – A vision for Otago

Overview

The vision for Otago – 2066 includes aspects such as:

> Otago is renowned for its wide diversity of distinctive landscapes and vegetation, evidence of a long human history, and its suite of recreational opportunities, which change with the seasons;

> There is an effective Treaty partnership between DOC and Ngāi Tahu;

> More conservation is achieved by working co-operatively with Ngāi Tahu, other agencies, communities and businesses, resulting in conservation outcomes that are responsive to change, new and innovative;

> Flowing from the mountains to the sea- ki uta ki tai-Otago's diverse freshwater systems support healthy aquatic ecosystems. All riparian margins are clothed in predominantly indigenous vegetation;

> Otago terrestrial ecosystems and their species are thriving at a self-sustaining level;

[513] Ngāi Tahu Claims Settlement Act 1998, s 272; Deed of Settlement, section 12.9.1.

- Otago's rich history remains visible and accessible with communities actively involved in sharing their stories;
- People enjoy public conservation lands and waters. A network of well-managed recreational opportunities in Otago offers locals and visitors exciting, informative and memorable experiences of international quality;
- Traditional backcountry opportunities where natural qualities dominate enable people to experience peace, natural quiet and the challenges of self- sufficiency. More residents seek out new recreational opportunities and take advantage of opportunities near where they live; and
- Businesses are integral to sustaining a healthy environment. Business partnerships add value to the public's use and enjoyment of natural, historic, recreational and cultural values. Prosperous communities have been created, which improves the health, wealth and well-being of Otago people and their families.

The Otago CMS sets out that Otago has a character that is distinct from other regions in New Zealand, and there is a vast diversity of landscapes, ecosystems, species and climates which contribute to New Zealand's international identity and reputation.

The benefits of ski infrastructure are alluded to in the Otago CMS, which states that the tourist areas of Queenstown and Wanaka are visited year-round for many recreational and adventure pursuits, either as individual or club activities or via commercial operators. The presence of several of the country's major ski fields, three on public conservation lands and waters, is a driver for New Zealand's winter tourism market.

The Otago CMS emphasises the importance of the partnership between DOC and Ngāi Tahu, including in Section 1.4 which provides 11 objectives and 18 policies specific to the relationship between DOC and Ngāi Tahu. These objectives and policies relate to DOC; however, it is noted that the establishment mana whenua advisory group is intended to be consistent with the partnership approach set out in these provisions.

Otago by 2026

Section 1.5 of the Otago CMS sets out the national and regional conservation objectives for natural heritage, history, recreation, public engagement and conservation gains from business partnerships to be delivered by management of conservation resources within Otago between 2016 and 2026.

Natural heritage

The key objectives in respect of natural heritage seek the following outcomes:

- The diversity of New Zealand's natural heritage is maintained and restored, with priority given to;[514]
  - Conserving a full range of New Zealand's ecosystems to a healthy functioning state, with an emphasis on the priority ecosystem units in Appendix 4 (Wye Creek fixed marginal strip);
  - Supporting the work of others to maintain and restore ecosystem types selected from Appendix 2 (low alpine, high alpine cushionfield, wetland cushionfield, alpine seepage sedgeland and regenerating shrubland);
  - Conserving threatened species to ensure persistence, with an emphasis on those species listed in Appendix 5;
  - Maintaining or restoring populations of nationally iconic species that occur locally, with an emphasis on those species listed in Appendix 7 (Kea);
  - Conserving significant geological features, landforms and landscapes, including those listed in Appendix 9, where they are on public conservation lands and waters. With respect to Appendix 9:
    - The Remarkables Conservation Area (including the Nevis River) is a "representative public conservation area" and is of national significance because of its protected land status; and
    - Appendix 9 includes features listed in district plans as having Outstanding Values (refer to Sections 2.4.1.2 - 2.4.1.3 of this Report.
- Partnerships are built with others to maintain or restore the species, natural features and ecosystems that collectively are valued by a local community as defining their locality;[515]
- Advocate for the protection of priority heritage, such as priority ecosystem units and threatened species; and significant geological features, landforms and landscapes at risk of permanent degradation selected from Appendix 9;[516]
- Contain or control pest plants and animals and wild animals; and [517]

[514] Otago CMS Objective 1.5.1.1.
[515] Otago CMS Objective 1.5.1.2.
[516] Otago CMS Objective 1.5.1.4.
[517] Otago CMS Objective 1.5.1.7.

> Encourage further research and investigations into the flora, fauna and ecology of Otago to gain a better understanding of the natural biodiversity.[518]

The Project has been assessed against the natural heritage objectives of the Otago 2026 section of the Otago CMS, seeking protection, maintaining and restoration of indigenous biodiversity, ecosystems and natural processes with priority given to threatened species and rare or sensitive ecosystem types. Several of the alpine ecosystem types are identified as rare, sensitive or slow to recover.

In respect of the above objectives, the following is noted:

> The effects on these communities have been assessed as varying from low to high dependant on rarity, ecology function and abundance within the Ecological District;

> The Project incorporates a comprehensive vegetation management and translocation framework (with measurable performance standards to achieve 60% indigenous cover and monitoring annually for 3 years and then biennially for a further 4 years manage residual effects associated with earthworks and vegetation removal. The spatially contained approach of physical works will maintain ecology integrity in conjunction with habitat-tract methodology to maintain ecological integrity at a population level assisting in retention of the maximum extent of representative ecosystem types. These measures collectively align with the objectives to maintain ecological processes, support persistence of indigenous species where direct loss is unavoidable;

> Residual effects are addressed through a Biodiversity Compensation Project following 6 months of construction activity over an area of 13.8 hectares within conservation land, concession land or QEII covenant land subject to consultation with relevant administering authorities and mana whenua. The provision of long-term ecological gains will address the residual impacts associated with loss of indigenous vegetation. The construction of a boardwalk through monetary contribution to DOC will occur providing for recreation while maintaining the integrity and protection of waterbody values; and

> Whilst permanent infrastructure will be introduced into the back country landscape, the activity remains recreation focused (a seasonal activity) and does not involve intensive built form development with the scale of building limited to operational requirements. This distinguishes the proposed activity from more intensive land-uses.

[518] Otago CMS Objective 1.5.1.15.

Based on the above, it is considered that the Project is not inconsistent with natural heritage objectives of the Otago CMS.

Historic and cultural heritage

Actively conserved historic places and historic Icon destinations in Otago are listed in Appendix 10 of the Otago CMS. While Appendix 10 lists no sites within the Project Area, the following are considered to be applicable to the Project:

- Historic and cultural heritage on public conservation lands and waters is valued by New Zealanders; [519]
- Understand the expectations of Ngāi Tahu, the community and others regarding the conservation and management of historic places on public conservation lands and waters; [520]
- Build relationships with Ngāi Tahu, the community, and business to increase understanding, skill, active management and support for historic places; [521]
- Work with Ngāi Tahu to identify and manage places of importance to them according to the values of those places, and where there is a common interest support Papatipu Runanga to lead management; and [522]
- Work with Ngāi Tahu to protect cultural sites and whenua tupuna on public conservation lands and waters from adverse effects of development.[523]

The historic and cultural heritage objectives of the Otago CMS seek to recognise, protect and appropriately manage historic and cultural values on public conservation lands. The Project Area contains no Appendix 10 actively conserved historic places or scheduled cultural heritage sites. The proposed conditions require adherence to the accidental discovery protocol to address the potential for unexpected discovery of archaeological material and must notify Heritage New Zealand Regional Archaeologist and tangata whenua entities if the site appears to be of Māori origin. The establishment of a Mana Whenua Advisory Group provides a formal mechanism to build relationships with Ngāi Tahu and support identification and management of places of importance according to their values.

[519] Otago CMS Objective 1.5.2.1.
[520] Otago CMS Objective 1.5.2.5.
[521] Otago CMS Objective 1.5.2.6.
[522] Otago CMS Objective 1.5.2.8.
[523] Otago CMS Objective 1.5.2.10.

Overall, the precautionary and partnership-based approach to be adopted in historic and cultural heritage management accords with the historic and cultural heritage direction of the Otago CMS.

Recreation

DOC uses various approaches to manage recreation including destination management and visitor management zones. The Remarkables-Hector area is within a backcountry visitor management zone, which is the dominant visitor zone for Otago. The Remarkables Ski Area is classed as frontcountry.

The key objective relevant to the Project relating to recreation seeks to ensure that outdoor recreation is consistent with the requirements to protect indigenous natural, historic and cultural resources, and is consistent with the purpose for which the land is held[524].

With regard to the relevant objectives, the following is asserted:

> The Project represents an integrated extension of the existing Remarkables Ski Area into Doolans Basin which is the gateway to recreation in the wider Hector / Remarkables Mountain areas accommodating growing demand vibrant alpine destination. The Project expands upon a longstanding recreation node (Remarkables Ski Field) providing further access to backcountry while concentrating ancillary infrastructure and operational management within a defined area;

> The Project has been designed to reduce effects and is supported by extensive ecological mitigation, restoration, biodiversity compensation, pest management, cultural engagement and long-term monitoring to balance recreation provision and needs with protection and enhancement of conservation values; and

> In addition, the Project retains public access of all existing summer and winter recreational uses of the Doolans Basin with the wider conservation area. The formation of a Recreational User Group provides for community engagement regarding options for recreation access and management within the Ski Area, and mandates NZSki's role in facilitating wider recreation opportunities in the Remarkables and Hector area. This includes but is not limited to providing alternative opportunities for back-country recreation including locations that continue to provide for solitude, remoteness and low encounters.

[524] Otago CMS Objective 1.5.3.1 and Objective 1.5.3.12.

The ability of the Project to expand recreation access for a significantly larger number of users by expanding the skiable terrain is expected to provide a net enhancement of recreational activities and is consistent with the objectives of this section of the Otago CMS.

Community engagement

While this section of the Otago CMS relates to DOC's aspirations for community engagement, it is noted that the objectives seek to:

> Seek opportunities that connect more people to conservation values;[525]

> Work with partners in enduring relationships to achieve ongoing conservation outcomes;[526]

> Recognise the contribution that public conservation lands and waters within Otago make to the wellbeing and economic prosperity of Otago and New Zealand; and [527]

> Seek opportunities to integrate conservation values into messaging from other agencies.[528]

The Project aligns with the community engagement objectives of the Otago CMS through the establishment of engagement mechanisms to reconcile recreation, conservation, cultural and community interests as much as possible. The establishment of a Mana Whenua Advisory Group and Recreation User Group provides an enduring forum for engagement and active participation throughout construction and operational life of the Project connecting a broad range of people with the values of the conservation land.

Conservation gains from business partnerships

The Otago CMS sets out that business opportunities and partnerships that help deliver conservation gains are part of achieving conservation outcomes. In that respect, the key objectives relating to business partnerships seek the following outcomes:

> Work with concessionaires and other businesses to enhance the conservation experience of their customers and others, build support for conservation and deliver conservation gains consistent with the purpose for which the lands and waters are held; and [529]

[525] Otago CMS Objective 1.5.4.2.
[526] Otago CMS Objective 1.5.4.3.
[527] Otago CMS Objective 1.5.4.5.
[528] Otago CMS Objective 1.5.4.7.
[529] Otago CMS Objective 1.5.5.1.

> Seek opportunities to work with businesses that are looking for ways to demonstrate their commitment to and engagement with conservation. [530]

The Project seeks to facilitate ongoing collaborative relationships to support conservation and conservation gains broadly. As previously described, the Biodiversity Compensation Project will ensure ecological gains are secured within a meaningful conservation context. The direct involvement of DOC in development and implementation of the Biodiversity Compensation Project Plan creates an ongoing partnership between NZSki and DOC providing for adaptive management of conservation outcomes associated with the concession activities. In addition, NZSki will fund the construction of a boardwalk across the wetlands to Lake Alta.

Overall, the Project reflects a collaborative and conservation focused model integrating tourism, recreation access, ecological restoration and long-term environmental management. Implementation of biodiversity enhancement initiatives, investment in conservation infrastructure will ensure accordance with the business partnership objectives of the Otago CMS.

Part Two - Places

Part two of the Otago CMS addresses "Places" in Otago.

Western Lakes and Mountails / Ngā Puna Wai Karikari a Rākaihautū Place

The Project Area lies within the Remarkables Conservation Area of the Western Lakes and Mountails / Ngā Puna Wai Karikari a Rākaihautū Place (documented on Map 5.3.1 of the Otago CMS). This is shown on the figure below:

[530] Otago CMS Objective 1.5.5.3.

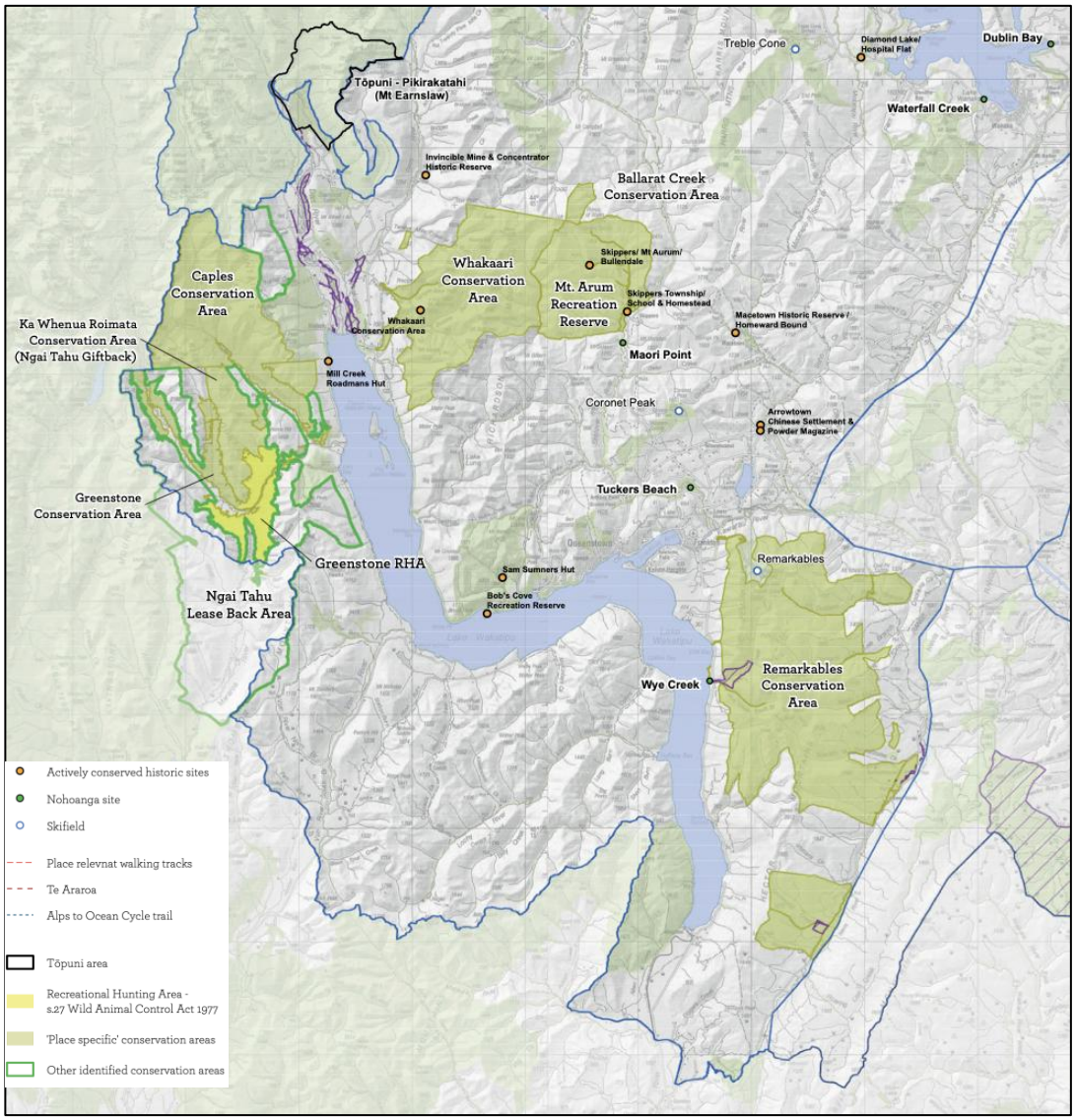

Figure 10-1: Western Lakes and Mountains / Ngā Puna Wai Karikari a Rākaihautū Place (Map 5.3.1 of the Otago CMS)

The Project Area is within the Remarkables - Hector area of the Place. The Remarkables and Tapuae-o-Uenuku / Hector Mountains include several large conservation areas, and the Rastus Burn Recreation Reserve in which the existing Remarkables ski field is located. The Otago CMS notes that the area contains high ecological values due to the area's location in a transition zone between the west (wetter) and the drier Central Otago mountain and valleys.

The overall outcome for the place recognises ski field infrastructure, stating:

> *The Remarkables, Coronet Peak and Treble Cone ski fields provide for intensive use and are highly valued recreation and tourism opportunities enabling access to high-*

altitude areas. Recognition of the ski fields' location on public conservation lands and waters, and conservation interpretation, are readily apparent to visitors. Ski fields are managed in a precautionary approach in terms of new and additional structures and terrain modification. Further development of existing ski fields may occur, in preference to any new ski fields.

The Otago CMS provides the following outcome for the Remarkables – Hector area:

The outstanding natural landscapes and ecological values of The Remarkables and Tapuae-o-Uenuku/Hector Moutains are intact and enjoyed by more people. Wilding trees and feral goats are being controlled to zero density by sustained control.

A range of recreational experiences is available in The Remarkables-Hector area ranging from largely unmodified environments where a sense of solitude and remoteness can be found in a largely unmodified environment (Wye Creek valley), to The Remarkables busy ski field.

The unmodified natural character of the upper Wye Creek valley (including its alpine tarns and basins) remains free of built structures and developments. It is easily accessible by walking and people enjoy the natural quiet and the indigenous ecosystems and landscapes.

The Nevis River valley's outstanding natural landscapes, indigenous ecosystems and freshwater species, intact altitudinal sequences, and historic heritage remain. The historic significance of the Nevis Road, as an important route between Southland and Otago for Maori and early settlers, is recognised and protected. The Nevis River, protected by the Water Conservation (Kawarau) Order 1997, remains in its natural state and many people appreciate its natural and recreational values.

Regular to frequent aircraft activity is experienced at specified landing sites in northern areas, particularly the ridge line of The Remarkables and the Ben Cruachan-Doolans Creek area. Visitors to the Tapuae-o-Uenuku/Hector Mountains experience occasional to regular aircraft activity during the summer.

The highest level of recreational use occurs in and around The Remarkables ski field. The ski field road provides access to The Remarkables and Tapuae-o-Uenuku/Hector Mountains year round.

Parapenting, hang-gliding and scenic flights occur in some parts. Tramping, climbing (including ice-climbing), backcountry camping and ski touring are available in the upper Wye Creek valley, easily accessible from The Remarkables ski field. Currently two heli-biking operations, authorised by concessions, occur in the Remarkables Conservation Area over summer.

Away from the busy ski field area, and particularly in the southern Tapuae-o-Uenuku/ Hector Mountains and Nevis River valley, a sense of solitude prevails in this backcountry area.

Tramping, climbing, camping, kayaking, cross-country skiing and angling are popular activities. The historic road through the valley from Nevis Crossing to Garston is popular with four-wheel drivers.

The Remarkables, with its close proximity to Queenstown, and outstanding landscape and recreational values, is subject to many development proposals. Providing recreational and tourism opportunities for a growing number of visitors to some parts of The Remarkables, while ensuring protection of outstanding landscapes, indigenous ecosystems and natural character, is an ongoing challenge.

The key policies relating to the place direct the following:

- Allow motorised vehicle and non-motorised bike use only on tracks and roads purposely formed and maintained for vehicle use on public conservation lands and waters identified, and in accordance with any criteria in Table 2.3, and subject to Policies 3.2.1-3.2.12 and 3.3.1-3.3.12 in Part Three;[531]
- Allow aircraft access within the public conservation lands and waters, only as identified on Map 4, and in Policies 3.6.1-3.6.9 and Table 3.6.2 in Part Three; [532]
- Continue programmes aimed at controlling wilding trees;[533]
- Allow over-snow vehicle use only for the purpose of ski field management within ski field lease/licence areas subject to the provisions of the lease/licence and in accordance with Policies 3.2.12 and 3.25.6; [534]
- Not allow new permanent utilities, structures or facilities (both recreational and commercial) in the upper Wye Creek valley to protect the unmodified and high natural character of this valley; [535]
- When considering, applications for new utilities, structures or facilities throughout the Remarkables-Hector area (with the exception of the upper Wye Creek valley), should have particular regard to the potential adverse effects on: [536]
  - natural ecosystems, landscapes and natural character, particularly in areas where structures and facilities are currently absent;
  - catchment water quality and quantity, including in Lake Alta;
  - priority ecosystem units and threatened species;
  - natural quiet;

[531] Otago CMS Policy 2.3.2.
[532] Otago CMS Policy 2.3.3.
[533] Otago CMS Policy 2.3.5.
[534] Otago CMS Policy 2.3.7.
[535] Otago CMS Policy 2.3.20.
[536] Otago CMS Policy 2.3.21.

- current recreational uses; and
- opportunities available for such structures or developments off public conservation lands and waters.

In respect to these policy directives:

- Currently, motorised vehicle access is permitted only on the Remarkables Ski Field Access Road within the Remarkables Conservation Area. A list of motorised vehicles that will access the Doolans Basin to be authorised by the concession is provided in Section 3.6.3 of this Report. No private recreational motorised vehicles will be authorised to access the Doolans Basin – the only vehicles accessing the Doolans Ski Area will be those associated with ski area activities;
- Helicopter access within the Orange Zone air access zone within the Otago CMS is proposed,[537] as described in Section 3.6.3. Helicopters will likely be utilised for construction activities. It is noted that helicopter operations are provided for where they are associated with the operation and/or maintenance of equipment or utilities authorised by DOC as (for example, avalanche control and health and safety);
- The Terrestrial Ecology Management Plan provides for weed management aimed at controlling the introduction of seeds or exotic species and the Biodiversity Compensation Project Plan will provide outcome monitoring of the results of any pest/weed control. As such, these measures assist in the control of wilding trees;
- Snow vehicle use will be for the exclusive purpose of ski field management within the lease/license area;
- No new structures are proposed in the upper Wye Creek valley; and
- The assessment contained in Section 6 of this report addresses the effects of the Project in respect of natural ecosystems, landforms, natural character, freshwater quality and quantity, threatened species, noise and recreational uses.

Policy 2.3.22 is particularly pertinent to the Project. This policy is replicated in full below:

> *May allow further development and/or expansion of The Remarkables ski field (with the exception of the upper Wye Creek valley) in accordance with Policies 3.25.1-*

[537] Noting the Otago CMS provides for Aircraft landings on Public Conservation land (without a concession) where it is required for emergency situations or search and rescue. The Table 3.6.1 spectrum does not take into account aircraft encounters associated with the construction, operation and/or maintenance of equipment or utilities authorized by DOC.

3.25.6 in Part Three, provided that adverse effects (including cumulative effects) are avoided, remedied or mitigated on the following values:

(a) the outstanding natural landscapes and ecological values of The Remarkables and the Tapuae-o-Uenuku/Hector Mountains;

(b) the landscape and ecological (including water quantity and quality) values of the priority ecosystem unit at Lake Alta;

(c) the recreational experiences of other users; and

(d) the ability of users to access the area year round.

The landscape effects of the Project, particularly in respect of the expansion into the Doolans Basin, are address in Section 6 of this report and in detail in the Landscape Effects Assessment. The landscape assessment acknowledges that the Project will have adverse effects on the values of the outstanding natural landscape that cannot be entirely avoided, remediated or mitigated – given the unmodified nature of the Doolans Basin. However, the Project area is only a very small area within the wider outstanding natural landscape. From a wider landscape perspective, it is considered preferable to utilise existing infrastructure and access as part of a ski field expansion to cater for new skiing opportunities. While this would lead to an extension of the man-made modifications and structures into a currently highly natural area (the Doolans Basin), it would maintain the wider Remarkables and Hector Mountains as largely natural conservation land with modifications clustered around the existing ski area.

In respect of recreation related effects, it is also acknowledged that the Project will result in the conversion of a back country ski area to a front country area, with the back country values being removed. The Project will result in more recreational users being able to use the Doolans Basin for ski area activities, however this will also result in the back country skiers currently utilising the area not being able to use this area for the same back country ski experience.

In respect of using the area year round, the Project will facilitate a greater number of people being access the Doolans Basin year round but with seasonal variability and peaks during the ski season.

Table 2.3 sets out where motorised vehicle access on or through public conservation lands and waters is provided for. The table includes the Remarkables Ski Field Access Road (part on public conservation lands and waters). The proposed Doolans Basin concession will be strictly limited to vehicles necessary for ski field operation and safety management including snow mobiles for ski patrol, emergency response and search and rescue activities, snow groomers for ski field preparation and maintenance, all-terrain vehicles and general operational vehicles for maintenance and servicing and helicopters for construction,

maintenance and emergency support. These vehicles are functionally necessary for the effective operation of a commercial ski field in a remote alpine environment. As such, the proposed vehicle access regime is confined, functional and linked to the ski field operation and is consistent with limiting motorised vehicle access to formed routes and authorised purposes.

Freshwater / Wai Māori Place

Freshwater has been designed as a Place in the Otago CMS to provide a specific overview of freshwater management issues and polices in Otago. The applicable policies are summarised, as follows:

- Raise awareness about the connection between land use activities, freshwater ecosystems and the coastal environment, to ensure: [538]
  - the stewardship, conservation, protection and enhancement of freshwater ecosystems;
  - indigenous and recreational freshwater fisheries, freshwater fish habitats and riparian ecosystems;
  - land use activities do not adversely affect freshwater ecosystems;
  - the high-quality water yield from tussocklands is retained or enhanced; and
  - the National Policy Statement for Freshwater Management (2011) is implemented.
- Prioritise the statutory advocacy for (among other matters) the protection of priority ecosystem units and threatened species; [539]
- Encourage greater public awareness of the importance of the freshwater resources to Ngāi Tahu and protection of natural, cultural and historic resources valued by Ngāi Tahu; [540]
- Investigate the maintenance and restoration of indigenous-only fishery streams; [541]
- Achieve integrated management where Crown river and lake beds extend into, or are surrounded by, conservation land; [542]

[538] Otago CMS Policy 2.10.1.
[539] Otago CMS Policy 2.10.2.
[540] Otago CMS Policy 2.10.3.
[541] Otago CMS Policy 2.10.4.
[542] Otago CMS Policy 2.10.5.

- Increase awareness of freshwater values and issues and to achieve agreed ecological flow regimes in Otago's waterways that ensure ongoing protection of freshwater species; and [543]
- Raise public awareness and appreciation of the distinctive freshwater galaxiids unique to Otago's waterways and of the ongoing threats to the survival of these and other species (including tuna/eels). [544]

The assessment of freshwater related effects in Section 6.5 of this Substantive Application confirm that the Project's effects on freshwater values can be appropriately managed, in accordance with these policy provisions.

Policy 2.10.8 seeks to encourage and, where possible, support Ngāi Tahu, the community, business or other conservation initiatives that are protecting or restoring freshwater and riparian habitats, giving priority to those that benefit priority ecosystem units or threatened species. As described, provision has been made in the proposed conditions to enable ongoing engagement with Ngāi Tahu, including in respect of biodiversity / conservation.

Part Three – Specific Policy Requirements for Otago

The policies of this section apply to all public conservation lands and waters covered by the Otago CMS.

General

The general policies of relevance to the Project require the following:

- The management of recreation opportunities, including those provided by concessionaires, in accordance with visitor management zones; [545]
- Encourage people and businesses undertaking activities on public conservation lands and waters to comply with activity-specific minimum impact codes (care codes) as notified from time to time on the Department's website; and [546]
- Provide for the integrated management of activities are on or near legal roads, and public conservation lands and waters.[547]

[543] Otago CMS Policy 2.10.6.
[544] Otago CMS Policy 2.10.7.
[545] Otago CMS Policy 3.1.5.
[546] Otago CMS Policy 3.1.7.
[547] Otago CMS Policy 3.1.8.

The Project provides for increased ski related recreational opportunities (acknowledging that there will be a loss of back country ski values within the Doolans Basin). In undertaking its existing activities, NZSki complies with the requirements of all relevant concession conditions and has the proven ability to work in alpine environments.

Authorisations (General)

This part of the Otago CMS sets out that anyone wishing to undertake an activity for specific gain or reward (including carrying out a trade, occupation or business) on public conservation lands and waters or undertake other activities such as research or collection of resources of any kind, or the construction of a structure, requires an authorisation. DOC aims to allow for a range of authorisations that are consistent with the statutory documents and protects natural resources and historic and cultural values.

The key policies relating to authorisations set out the following:

> Process authorisations in accordance with the relevant legislation, the Otago CMS and CGP (described earlier in this report); [548]

> Authorised activities should be monitored; [549]

> Authorisations should not be granted if they are inconsistent with the provisions in the Otago CMS; and [550]

> May grant authorisations for sporting events or filming activities that do not meet the limits / criteria for the applicable aircraft access zones based on their merits. [551]

This substantive application is includes seeking the necessary concessions to enable the Project. As will be discussed later in this assessment, the Project is not inconsistent with the provisions in the Otago CMS. The proposed concession conditions include measures that will ensure that ongoing effects of the Project are managed to an acceptable and monitored on an ongoing basis.

Vehicles

The key vehicle related policies set out the following:

> Only allow motorised vehicles on roads (including identified parking areas) that are identified in the Otago CMS. [552] Where vehicles are proposed outside of these areas,

[548] Otago CMS Policy 3.1.9.
[549] Otago CMS Policy 3.1.10.
[550] Otago CMS Policy 3.1.11.
[551] Otago CMS Policy 3.1.12.
[552] Otago CMS Policy 3.2.1.

activities can be considered where such use as identified as sites listed in the Otago CMS[553] or are for construction, operation and / or maintenance of authorised utilities, farming activities and restoration activities;[554]

> Where motorised vehicle use is proposed not in accordance with the above, the Otago CMS should be reviewed and / or amended if appropriate; and [555]

> The use of over-snow vehicles associated with ski field management within ski field lease / licence areas are controlled by the provisions of the authorisation, and in accordance with Policy 3.25.6 (discussed later in this assessment).[556]

Section 3 of this substantive application provides a description of the vehicles associated with construction activities. These will be of a temporary nature, only occurring during the construction phase of the Project or for required operations or maintenance purposes. In respect to operational vehicles, private motor vehicles will be confined to car parks and the access road. Other vehicles will be associated with ski field activities and undertaken in accordance with the existing concession requirements, and with the proposed conditions contained in **Part H** of the application documents.

Biking

The Otago CMS sets out that there are range of views about mixed pedestrian and biking use of tracks, and caution is needed where visibility is restricted, and with higher-speed and higher-impact downhill biking. Where the means exist (e.g. ski field roads, helicopters, gondola/ski lifts) to easily take (shuttle) downhill bikers to higher altitudes, this can result in increased adverse effects, and more caution is required when considering this activity.

The key biking related policies only allow independent biking, and should only grant concessions for guided biking, on tracks and roads purposely formed and maintained for biking use within the areas identified the Otago CMS.[557] Where biking is allowed, bikers must remain on formed and maintained tracks or roads at all times.[558]

The adverse effects of any proposal for bike tracks, or provision for biking, must be considered (including mitigation measures), including on: [559]

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[553] Otago CMS Policy 3.2.2.
[554] Otago CMS Policy 3.2.3.
[555] Otago CMS Policy 3.2.4.
[556] Otago CMS Policy 3.2.12.
[557] Otago CMS Policy 3.3.1.
[558] Otago CMS Policy 3.3.3.
[559] Otago CMS Policy 3.3.4.

- Natural ecosystems as described in Appendix 2, geological features, landforms and landscapes including those described in Appendix 9;
- Natural character, particularly in areas where structures and facilities are currently absent;
- Species, particularly threatened species, and habitats;
- Historic and cultural values, including places of importance to Ngāi Tahu; and
- The safety and enjoyment of, including potential conflicts with, other people.

Engagement should be had with rūnaka and Ngāi Tahu to determine the nature of any specialist technical reports addressing the effects of the proposal.[560]

While no dedicated bike tracks are proposed as part of the Project, it is anticipated that bikers will be able to access the Doolan's Basin via the infrastructure to be constructed as part of the Project.

Other Forms of Transport - Aircrafts

All aircraft require a concession to land on, take off from, or hover above (collectively referred to as landings) any public conservation lands and waters that is not a certified aerodrome, other than for a number of activities (such as search and rescue). In order to manage the effects of aircraft landings, the Otago CMS identifies four different aircraft zones which reflect the different management methodologies required. The following figures show the applicable aircraft management zones:

[560] Otago CMS Policy 3.3.5.

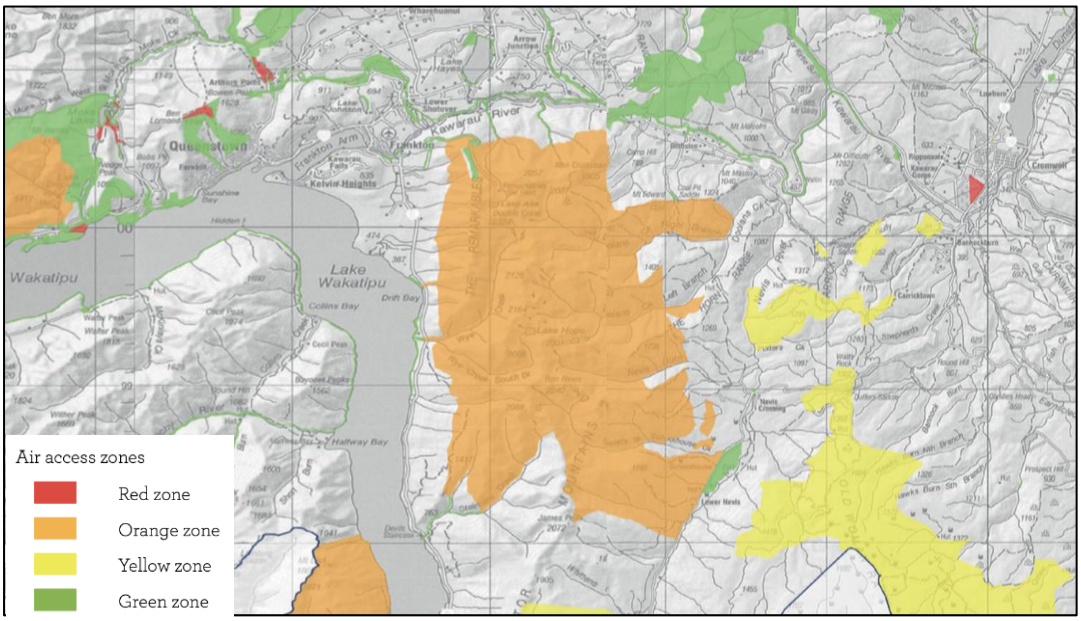

Figure 10-2: Aircraft Access Zones

Orange zones (where the Project is located) are areas where there are complex issues to be managed, which require the use of limits and / or other criteria to guide whether concessions for aircraft landings may be granted.

The only aircraft landings associated with the Project (excluding search and rescue) are proposed during the construction phase. Policy 3.6.1 provides a criteria that should apply when assessing applications for all aircraft landings, as follows:

- is consistent with the outcome and policies for the Place in which the activity is proposed to occur and Table 3.6.1 (clause (a));
- is consistent with the aircraft zoning provisions in the Otago CMS and the aircraft access zones on Map 4 (clause (b));
- is consistent with the purposes for which the lands and waters concerned are held (clause (c));
- adverse effects on conservation values including adverse effects on natural quiet are avoided, remedied or mitigated (clause (d));
- adverse effects on other visitors (taking into account the size of zone and the proximity of other ground users) are avoided, remedied or mitigated (clause (e));
- the need for monitoring the activity using global positioning systems and newer technologies (clause (f));

- landings near tracks, huts and car parks (unless otherwise specified in an outcome or policy for a Place) are avoided (clause (g)); and
- the need to hold and comply with certification in a noise management scheme approved by the Department, in specified locations (clause (h)).

While the necessity of helicopter landings to support construction activities has not been confirmed, it is likely that hovering helicopters will be used in some construction activities. Over the four-year construction period, the Construction Management Framework identifies that there may be up to 88 total helicopter days.

Policy 3.6.5 directs that DOC may grant concessions for aircraft landings in the Orange Zone that meet the criteria (a) and (c) to (h) in Policy 3.6.1 (assessed above), and as set out in Table 3.6.2 of the Otago CMS.

The following table provides the aircraft allowances for the Remarkables Conservation Area:

Remarkables Conservation Area (part), Rastus Burn Recreation Reserve and Conservation Area—Ben Nevis Scenic Reserve	For heli-skiing in part of this area For regular landings with specified daily limits per operator based on visitor management zones as follows: – For frontcountry sites, 10 per operator per day – For backcountry sites, 5 per operator per day – For remote sites, 2 per operator per day Some sites have seasonal restrictions on landings Wye Creek ice wall—for climbers' access to the ice wall only Concessionaire landing site for servicing heli-biking operations One-off landing concessions considered on a case-by-case basis NZ Ski controls aircraft access within the ski field lease area

As previously described, the only helicopter landings as part of the Project are associated with construction activities, which will occur for a four year period or alternatively for search and rescue or in emergency response situations (which does not require a concession). Within the Doolans Basin, it is not anticipated that there would be more than 5 landings per day.

Structures and Utilities

Structures and utilities in the conservation estate can be temporary or intended for long-term use. They can share space (usually a public facility) or require exclusive occupation of space (usually a private facility). Both may be either commercial or non-commercial in nature.

The Otago CMS notes that there is a legislative expectation that the necessity for the structure / facility to be constructed within the conservation estate is established. In that

respect, the applicable policies set out a criteria that should be applied when considering applications to erect structures or utilities:[561]

- The purposes for which the lands and waters concerned are held;
- The outcomes and policies for the Places where activity is proposed to occur;
- Whether the structure could reasonably be located outside public conservation estate;
- Whether the structure could reasonably be located in another location where fewer adverse effects would result from the activity;
- Whether the structure adversely affects conservation, including recreational values;
- Whether the structure is readily available for public use;
- Whether the structure is consistent with the visitor management zone;
- Whether the activity promotes or enhances the retention of a historic structure;
- Whether the activity is an adaptive reuse of an existing structure; and
- Whether the policies for private accommodation and related facilities should be applied.

In addition to the criteria described above, Policy 3.10.2 sets out that telecommunications should be co-located to avoid proliferation.

In respect to these provisions, it is noted that:

- All structures associated with the Project are expressly for ski field activities, and to enable people to safely use the area for ski activities;
- Where technically feasible, the Project has utilised existing infrastructure and structures within the existing Remarkables Ski Area to service the ski activities proposed in the Doolans Basin;
- The proposed new structures could not be located outside of the conservation estate – ski area activities must be done in alpine locations;
- The Project has been designed to minimise effects as far as practicable;
- To minimise adverse effects, the new ski area in the Doolans Basin is directly adjacent to the existing ski area (in preference to developing an entirely new, separate ski area);

[561] Otago CMS Policy 3.10.1.

- All structures associated with the Project are to enable ski related recreational activities;
- Provision for public toilet facilities will be enabled as part of the Project; and
- The design of the Project has prioritised the co-location of facilities / infrastructure / roading to minimise adverse effects.

Private Accommodation and Related Facilities

The Otago CMS notes that existing structures on public conservation lands and waters include some private accommodation and related facilities that are not available for use by the general public. Some have been authorised; others have been erected and used unlawfully. Under the CGP, the use of private accommodation and related facilities, including encampments solely for private purposes, is to be phased out, except where specifically provided for or allowed in legislation.

All facilities proposed as part of the Project are for ski area activities which will be able to be used by visitors to the ski area. Provision will be made for the toilet facilities to be utilised outside of the ski season, consistent with the private accommodation related provisions.

Commercial Filming and Photography

The Otago CMS sets out that, for the purposes of the plan, commercial filming and photography (filming activity – including for feature films, documentaries, television commercials or television series) is any photography or filming undertaken on public conservation lands and waters for any specific gain or reward. Filming activities can include some or all of the following-cast, crew, film equipment, vehicles, aircraft, animals, sets and special effects.

Any commercial filming associated with the Project will be confided to that associated with ski area activities and undertaken by NZSki.

Sporting and Other Competitive Events[562]

No sporting or other competitive events are proposed within the Doolans Concession area.

Fire Management

The key policies relating to fire management set out the following:

[562] Competitive sporting events are those that are advertised to the general public (as distinct from closed club events or activities involving small groups) or may involve large numbers of people and spectators or have the potential to have significant adverse effects on conservation values, including effects on other people and other recreational opportunities.

- Work cooperatively with the Otago and Southern Enlarged Rural Fire Authority, New Zealand Fire Service, landowners and communities to increase awareness of rural fire risks and mitigate them; [563]
- May undertake actions (assessments and implement) to reduce fire fuels, including by mowing, clearing bare-earth fire breaks or small-scale prescribed burning; and[564]
- Should require fire safety contingencies when authorising gatherings of large numbers of people, such as for sporting events, in high fire risk areas; such contingencies may include event permits being withdrawn at short notice. [565]

While these provisions are not directly relevant to the Project, it is noted that the Water Concept Report includes information in respect of the provision for water for firefighting purposes.

Ski Fields

This section of the Otago CMS is particularly pertinent to the Project. This section of the Otago CMS sets out that the existing commercial ski fields, including The Remarkables, are popular visitor attractions and are an integral part of the tourism sector. The Otago CMS notes that the due to climate change, ski fields are becoming more reliant on snow making into the future, and "may look at expanding their winter and summer visitor activities both on the fields and nearby." The Project is to enable an expansion of the Remarkables Ski Area into the Doolans Basin to provide more reliable snow-clad facilities for ski area activities – as acknowledged by the Otago CMS.

The key policies relating to ski fields are as follows:

- May allow further development of existing authorised ski fields, where their natural values are already modified, in preference to the development of new ski fields; [566]
- Should in considering the development of new and existing authorised ski fields apply a precautionary approach to the approval of new structures, accommodation facilities and terrain modification and consider both the likely effects of water use (for snow-making), the likely longevity of the field in the face of climate change, and any appropriate land remediation and facility removal costs should the ski field cease to operate; [567]

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[563] Otago CMS Policy 3.24.1.
[564] Otago CMS Policy 3.24.2.
[565] Otago CMS Policy 3.24.3.
[566] Otago CMS Policy 3.25.1.
[567] Otago CMS Policy 3.25.2.

- Process all applications for renewals of existing authorisations for ski fields as concessions; [568]
- Where practicable, encourage non-skier and/ or non-ski season visitor use, and visitor use beyond the ski field consistent with the outcomes at Place; [569]
- Should provide opportunities for conservation education and interpretation; and[570]
- Should allow over-snow vehicle use for the purpose of ski field management within ski field lease/licence areas subject to the provisions of the lease/licence and in accordance with Policy 3.2.12. [571]

In respect to these policy directives:

- The Project has been designed to utilise infrastructure within the existing Remarkables Ski Area in preference to locating these within the Doolans Basin. While the policy acknowledges there is a preference to developing existing ski fields rather than developing new ski areas, it is again noted that the Doolans expansion represents less than 1% of the total Remarkables Conservation Area;
- A precautionary approach has been adhered to, as discussed throughout this substantive application. The Project has been designed to limit terrain modification and structures to those which are absolutely necessary to enable ski activities in the Doolans Basin;
- The Project is seeking concessions as part of this substantive application;
- The extent of non-ski season operations / activities within the Remarkables Ski Area is not changing as part of the Project (aside from where public access will need to be temporarily excluded for construction activities). The Project will not result in non-ski season restrictions in respect of public access in the Doolans Basin – it is anticipated that the roading associated with the Project will improve access to the Doolans Basin outside of the ski season;
- The Project provides opportunities for education and interpretation, similar to those currently found within the Rastus Burn regarding conservation efforts. With agreement of Kā Rūnaka, opportunities for cultural narratives will also be considered throughout the ski area; and

[568] Otago CMS Policy 3.25.3.
[569] Otago CMS Policy 3.25.4.
[570] Otago CMS Policy 3.25.5.
[571] Otago CMS Policy 3.25.6.

> The Project includes provision for vehicle use associated with ski area activities.

In respect to Policy 3.25.2 specifically, this policy states:

> *Should in considering the development of new and existing authorised ski fields apply a precautionary approach to the approval of new structures, accommodation facilities and terrain modification and consider both the likely effects of water use (for snow-making), the likely longevity of the field in the face of climate change, and any appropriate land remediation and facility removal costs should the ski field cease to operate.*

It anticipated that climate change will not render the ski field operations unviable within the 40-year term of concession sought, given the known (published) science, the aspect and elevation of the Doolans Basin and the ongoing advances in snow making technology.

The Project is designed to minimise the overall terrain modification and utilise the existing contour of the land where practicable. This has resulted in a single earth-worked ski trail and vehicle access into the Doolans Basin. While snow making facilities are proposed as part of the Project, retaining residual minimum flow within the Doolans Creek Right Branch (proposed to be secured by draft conditions of consent) will ensure sufficient water remains within the catchment for the duration of the water take consent.

As noted earlier, various remediation measures have been proposed by NZSki as conditions on its Doolans Concession (which largely mimic those of the existing Remarkables Ski Area Concession), including requirements around the removal of structures and the remediation of the land using indigenous vegetation of a similar abundance and diversity as that which existed generally in the vicinity prior to Project commencing. This is secured through NZSki's parent company, Trojan Holdings Limited, as the Grantor of the concession.

In light of the above, even when a precautionary principle is applied to the proposed Doolans Concession, the evidence and technological advances suggest that skiing within the Doolans Basin will continue to be feasible beyond the term of the proposed concession. In the context of NZSki's wider operations, it should also be noted that this particular policy, and the application of the precautionary principle, did not present any statutory barriers for the recent renewal of the Remarkables Ski Area Concession which was granted for a 38-year term.

Summary and Conclusion

It is considered that the Project aligns with the relevant provisions of the Otago CMS.

10.3 DECISION-MAKING CONSIDERATIONS FOR CONCESSIONS

Section 81 of the Act, and Clause 7 of Schedule 6, set out the matters for consideration by the panel on a concession application. These matters are summarised below:

- A panel must, for each approval sought in a substantive application, decide whether to grant the approval (and set conditions) or decline the approval;[572]
- The panel must consider the substantive application, and any advice, report comment or other information received by the panel,[573] including advice from administering agencies, local authorities, iwi authorities, treaty settlement entities, DOC and HNZPT;
- A panel may only decline the approval in accordance with section 85 of the Act, which set out where panels *must* decline approvals and where panels *may* decline an approval – if the panel forms the view that:
  - There are 1 or more adverse impacts in relation to the approval sought; and[574]
  - Those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered, even after taking into account:[575]
    - any conditions that the panel may set in relation to those adverse impacts; and[576]
    - any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.[577]
  - A panel may not form the view that an adverse impact of a project is sufficiently significant to be out of proportion to the regional or national benefits solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider;
- In its decision, the Panel must take into account, the following matters (giving greatest weight to the purpose of the Act);[578]
  - The purpose of the Act; and
  - Part 3B of the Conservation Act (which relates to concessions);
  - Any other relevant provisions in Part 3 (Conservation Areas), 4 (Specially Protected Areas), 4A (Marginal Strips), 5 (Stewardship Areas), 5B (Freshwater Fisheries) and

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572 Section 81(1) of the Act.
573 Section 81(2) of the Act.
574 Section 85(3)(a) of the Act.
575 Section 85(3)(b) of the Act.
576 Section 85(3)(b)(i) of the Act.
577 Section 85(3)(b)(ii) of the Act.
578 Clause 7 of Schedule 6 of the Act.

5C (Control of Dogs) of the Conservation Act that directs decision making in respect of Part 3B;

- The purpose for which the land is held;
- Any conservation management strategies or conservation management plans that have been co-authored, authored or approved by a Treaty settlement entity, and the views of the entity on the proposed concession;
- The status, ownership and administration of the land that would be subject to a concession;
- Whether the land is subject to any existing arrangements that create obligations in relation to the land;
- The legal and financial liabilities associated with decisions on leases, licences to occupy land and easements; and
- Any applicable provisions of a reserves management plan.

In respect to these matters:

- Sections 1 and 6.2 of this report addresses how the Project demonstrably achieves the purpose of the Act;
- Section 10.2 of this report provides an assessment of the Project against the requirements of the Conservation Act;
- Matters detailed in Part 3 (Conservation Areas), 4 (Specially Protected Areas), 4A (Marginal Strips), 5 (Stewardship Areas), 5B (Freshwater Fisheries) and 5C (Control of Dogs) of the Conservation Act are not directly relevant to the determination of this application;
- An assessment of the Project against the purpose for which the land is held is contained in Section 10.1 of this report;
- The Otago CMS is addressed in Section 10.2.2 of this report;
- Aside from the existing concessions held by NZSki, there are no existing arrangements that create obligations in relation to the land; and,
- legal and financial liabilities are expressly outlined in the conditions of the relevant Concessions.

In addition, it is noted that all persons performing and exercising functions, powers, and duties under the Act must act in a manner that is consistent with:[579]

> The obligations arising under existing treaty settlements; and

> Customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011.

Based on the assessment of the applicable treaty settlements and noting that the Project is not in a coastal environment, there are no obligations or rights that would preclude the granting of the approvals as sought by NZSki.

[579] Section 7 and Section 81(7) of the Act.