

From: David Owen <dowen@doc.govt.nz>
Sent: Tuesday, 11 March 2025 9:52 am
To: Arzan Irani
Subject: Lower Selwyn Huts

Hi Arzan

Hope all is well. I drafted most of the below after our last conversation – but have been very full on with other work (and working out of the Napier office), so didn't manage to finalise this. Apologies for going quiet on you.

Following on from our recent discussions, and in anticipation of further work, set out below is my understanding of the answers to the preliminary questions for the LSH applications.

Re Previous Planning Advice and s7(2) of the Conservation Amendment Act

Previous Management Planning advice (DOCCM-6412826, at para 24) points to Table 16 in the CMS as demonstrating that the section 7(2) Conservation Amendment Act 1966 exemption applied to the Huts only until 2024 – when the right of renewal expired. This may be because that was the end of the first grant of a concession for the huts after the 1996 exemption was created.

§ 9(2)(h) the s7(2) exemption applies only once. It does not apply perpetually. As such, after the s7(2) exemption is relied on for the first time, s7(2) cannot subsequently be relied upon or used as grounds for an automatic renewal.

Recent developments

The previous Management Planning advice still applies (DOCCM-6747833 and DOCCM-6412826). The contentions put forward by the Applicants' representative in the Letter of October 2024 do not materially change things from a Management Planning perspective.

As you know, the October Letter identifies various parts of the JMP which appear to contemplate the presence of the huts within the JMP area. The letter notes the JMP does not include a specific sunset clause regarding their phasing out (or identify by when huts are to be removed).

I agree with the Letter that the JMP contemplates the presence of the huts within the JMP area. The huts were in existence at the time the JMP was drafted, and the document sets out provisions relevant to their management. That is clear and uncontroversial.

Where the Letter and Management Planning advice differs is the implications of the absence of a sunset clause in the JMP, and how the statutory planning framework fits together. The Letter appears to suggest the absence of a sunset clause means the JMP contemplates (if not actually requires) an ongoing renewal of licences to occupy / concessions for the Huts.

I take a different view, as follows:

- As the Letter notes at [para 32], Section 7.2 of the JMP states the Minister should not permit any buildings for exclusive private use.... except as provided for at the Lower LSH.
- Accordingly, the Letter seems to suggest the JMP should be read as providing for the huts for an indefinite (perpetual) basis – albeit with a 20-year term sought currently being sought by some Applicants.
- In contrast, I suggest the phrase “except as provided for” is material. It is the existing lease agreements / concessions which “provide for” the huts. The lease agreements / concessions *provide authorisation until 2019*, with a further right of renewal *ending in 2024* (as noted in Table 16 of the CMS).
 - I see these lease agreement provisions as consistent with and reflective of section 7.2 of the JMP.
 - The Minister “should not permit” any buildings for exclusive private use at LSH, except as provided for in the lease agreements. And these lease agreements which do “provide for,” clearly apply only do so until 2019 / 2024.
 - The omission of a specific sunset clause in the JMP should not be confused with or interpreted as positive plan intent for the huts to remain in the medium to long term.
- If there was a specific sunset provision in the JMP, the Department would be guided by that (subject to the consistency comments below).
- In the absence of such a clause (and / or *affirmative* statements in the JMP providing for the renewal of licences / concessions for a certain period), the statutory planning framework requires that the Department still give effect to the policies in section 10 of the Conservation General Policy. Section 10 of the General Policy requires the phasing out of private accommodation on PCL.
- Indeed, I suggest that *if the JMP did* include a provision explicitly purporting to require or provide for the ongoing renewal or concessions for private accommodation on PCL, that itself would be contrary to the General Policy and overarching Conservation legislation. The JMP does not contain any such provision because to do so would be contrary to higher order planning documents and legislation. As discussed above, and in the correspondence with legal, it is a falsehood that section 7(2) of the Conservation Amendment Act 1996 enables the JMP to do so.

I suggest part of the confusion comes from a misunderstanding that the application of the JMP, CMS and GCP to the issues at hand is binary (i.e. that only one of those documents is the relevant document). That is not the case. Yes, the JMP *does* contain policies and methods applying to LSH. But this *does not* mean the CGP or CMS are automatically irrelevant in every respect.

Rather, these other statutory planning documents *can be referred to* provide guidance on issues where the JMP is silent. Similarly, substantive requirements (in these higher order documents (like Clause 10(h) of the GCP) continue to apply and guide in instances where the lower documents (such as the JMP) do not directly address them.

Accordingly, as discussed above, I consider it appropriate for the Department to be guided by s10(h) of the GCP with regard to phasing out private accommodation at LSH. As we discussed, to phase something out is to remove or stop using something gradually or in stages.

Implications for decision making

As noted in at para [16] of the 2021 Management Planning advice, in the absence of a detailed sunset or phase-out clause in the statutory planning documents, robust decision-making on the future of the huts will turn on:

- a sound understanding of the current state of the structures;
- nature of use and the effects of this use on natural resources;
- Ngāi Tahu interests and perspectives;
- historic and cultural heritage, and
- benefits and enjoyment of the public

The work undertaken by the District will be particularly important when considering the above.

The Management Planning task now is to analyse the proposed decision (to grant the leases, on a 10-year term) against the statutory planning framework. This will focus on the consistency of the proposed decision with the JMP, with recourse to the higher order planning documents where required.

I am in Napier the rest of this week and then am on leave most of next week. Depending on your timeframes for substantive assessment, the substance of the Management Planning task may be undertaken by another member of our team – with myself providing the review and key context.

Let me know when you have had a chance to consider the above, and we can go from there.

Thanks,
David

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From: Arzan Irani <airani@doc.govt.nz>
Sent: Wednesday, 26 February 2025 12:14 pm
To: David Owen <dowen@doc.govt.nz>
Subject: Regarding CAA 7(2)

The two emails attached are legally privileged, discussing 7(2).

The links below lead to email chains between DOC and Clare, discussing 7(2) in the context of public notification and whether the exemption still applies. Start at the bottom of the chain for full context.

Arzan & Clare - response to preliminary issue	Final responses to preliminary issue (chain)	Email	27/09/2024	https://doccm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7780349
Clare - response to DOC position	Discussion from Clare in response to DOC position on preliminary issue	Email	11/10/2024	https://doccm.doc.govt.nz/cwxv4/wcc/faces/wccdoc?dDocName=DOC-7780367