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Report to the Rural Services and Wairarapa Committee
from Wayne O'Donnell, Manager, Biosecurity

**Appeal Against the Proposed Regional Pest Management Strategy
2001-2021**

1. Purpose

To seek approval to amend the Proposed Regional Pest Management Strategy 2001-2021 to resolve the existing appeal to the Environment Court.

2. Background

The Council approved the Proposed Regional Pest Management Strategy 2001-2021 on 23 August 2001. Public notification of the Council's decision occurred on 1 September. All submitters received an individual notification together with an explanation of Councils' decisions on points raised in their respective submissions. Under the Biosecurity Act 1993, submitters are permitted 15 working days to lodge an appeal with the Environment Court.

One appeal was lodged. This appeal has prevented implementation of the entire proposed strategy. The appeal was lodged by Safari Club International (SCI), an organisation that is associated with the hunting of wild game in New Zealand and internationally. The SCI appeal opposes the inclusion of feral deer in the site led Key Native Ecosystem (KNE) category of the proposed strategy. SCI believe that the inclusion of feral deer will have a negative effect on both recreational and commercial interests.

The KNE programme is a Council initiative to protect and enhance native flora and fauna in selected sites throughout the region. The programme was initiated in 1996 and has progressively expanded, particularly with the increase in joint funded territorial local authority operations. The future aim of the KNE programme is to include a representative range of ecosystems. All new KNE sites are required to be legally protected, thus requiring a high landowner commitment to the programme. The landowner must agree to

allow integrated pest management of all listed KNE pests. Therefore, the landowner must agree in each case to any feral deer being controlled.

3. Appellant Discussions

At the Policy and Finance Committee meeting on 11 October 2001, it was agreed that “the inclusion of feral deer in the KNE category of the KNE category be supported” and that “efforts to resolve the appeal through informal discussions or mediation with the appellant be supported”. Councillor Buchanan and the writer meet with representatives of SCI on 25 October. The SCI representatives made it quite clear that their organisation was not prepared to change its stance on the feral deer issue. They were also quite prepared to take the matter to the Environment Court and, if necessary, would challenge the validity of the entire KNE programme.

4. Future Options

Legal advice was sought regarding:

1. the likelihood of a successful Environment Court appeal;
2. the ability of SCI to appeal the entire KNE category;
3. alternative mechanisms to progressing the KNE programme, and
4. options to amend the Biosecurity Act 1993 to permit biodiversity objectives.

Advice from a solicitor who is very familiar with the Biosecurity Act indicated:

- (1) Section 76 of the Act prescribes the contents of a proposal for a regional pest management strategy. S 76(c) and (f) relate to the description of adverse effects and principal objectives *in relation to each organism or each class or description of organisms*. However, S76(l) requires an analysis of the benefits and costs of the strategy *in relation to each organism*. The opinion indicates that, as the costs and benefits of the KNE category have been considered collectively, there would be a weakness in defending the appeal in Court.
- (2) A person who made a submission on a proposed strategy may refer to the Environment Court any provision included in that strategy “*if that person referred to that provision or matter in that person’s submission*” – S79D(1). The SCI submission sought the removal of feral deer only. There was no request to remove the KNE category. Because the possible challenge to the KNE category by SCI goes beyond the scope of the original submission, the Environment Court has no jurisdiction on that issue.
- (3) The Council could legitimately remove the KNE category under S88A of the Act, because there not be any significant effect on the rights and obligations of any person. However, undertaking pest management

under another statute would create some difficulties as pest management can only be undertaken under:

- The Biosecurity Act;
- S 30 and 31 of the Wild Animal Control Act – with the consent of the Minister of Conservation;
- S77 of the Reserves Act - where the Council has entered into a conservation covenant;
- The Soil Conservation and Rivers Control Act, to prevent or stop erosion and flooding, or promote soil conservation.

The legal opinion states that the Resource Management Act does not permit the Council to undertake works and services such as pest management. While the KNE programme could be promoted as a method to achieve the objectives and policies of a regional policy statement of regional plan, the implementation of that method still depends on the Council having the legal ability under other legislation to carry out the programme.

The Resource Management Amendment Bill, currently before Parliament, proposes to add to regional council functions: “*the establishment, implementation, review of objectives, policies and methods for maintaining indigenous biological diversity*”. The legal opinion states that this Bill still does not give any additional works and services functions to regional councils.

- (4) Accordingly, it seems that if regional councils wish to protect and enhance biodiversity, then amendments to the Biosecurity Act are necessary. The issues raised as a result of this appeal could be resolved by amending S72(1)(a) of the Act to allow costs and benefits to be considered in relation to *each class or description of organism* to which the strategy would apply. A similar amendment to S71(1) would be required. However, the legal opinion indicates that it would be more appropriate to give regional councils specific powers to undertake works and services to protect biodiversity. As these powers may go beyond pest management, it may be appropriate to have amendments made to the Local Government Act and/or Resource Management Act.

This Council has clearly identified a desire to be involved in biodiversity enhancement through implementation of the Long Term Financial Strategy. It would be appropriate, therefore, to seek additional advice on specific amendments to the Biosecurity Act, the Local Government Act, and the Resource Management Act so that Council could raise this issue with the Government in due course.

In the meantime the Council needs to do something to resolve the situation over the stalled Regional Pest Management Strategy. The legal opinion is quite direct in terms of the current appeal situation. It states: “The objection raised by SCI are entirely without merit. There is no way the provisions of the proposed strategy could impinge on any legitimate interest of the referrer.

However, legally the Club is correct. This is another example of the unduly fettering nature of the Biosecurity Act.”

5. Summary

- 5.1 The current appeal by Safari Club International is preventing the implementation of the entire Proposed Regional Pest Management Strategy 2001-2021.
- 5.2 The chances of the appeal succeeding are high, given that the benefit cost analysis was not calculated specifically for feral deer in the KNE category.
- 5.3 The Environment Court would have no jurisdiction to consider removing the KNE category because it was not referred to by Safari Club International in their original submissions.
- 5.4 Pest management could not be undertaken in its entirety under any other statute.
- 5.5 It would be appropriate for the Council to pursue amendments to the Biosecurity Act 1993 to provide for site led pest management to occur, subject to proper public process.
- 5.6 For wider biodiversity management, the Council should also consider pursuing amendments to the Local Government Act and or Resource Management Act.

6. Recommendations

That the Committee recommends:

- (1) *That Feral Deer be deleted from the Key Native Ecosystem site led pest management category in the Proposed Regional Pest Management Strategy 2001-2021.*
- (2) *That the Council seeks agreement, by consent memorandum, with Safari Club International to have their appeal to the Environment Court resolved.*
- (3) *That the Council seeks further legal advice on potential amendments to the Biosecurity Act 1993, the Local Government Act 1974 and the Resource Management Act 1991, to permit biodiversity management within the Wellington Region.*

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