18 August 2020

Attn: Olivia Geddes
Senior Permissions Advisor
Department of Conservation

Cc: Nicole Kunzmann, DOC Operations Manager, Hokitika;
West Coast Conservation Board

Dear Olivia,

FMC submission on concession application by Precision Helicopters Limited, 81956-AIR

We write further to our letter of 28 July 2020. (Copy enclosed).

This letter contains Federated Mountain Clubs' (*FMC's*) full submission on the concession application by Precision Helicopters Limited (*Precision*) for landing activities in the Hokitika and Whataroa backcountry (*Application*). We thank the Department of Conservation (*DOC*) again for the opportunity to submit. We repeat our wish to be heard at hearing.

In this submission, we deal with:

- Who and what FMC is;
- The implications of DOC's response to our earlier submissions re-set request;
- The indeterminacy of the effects of Application on available material;
- Our lack of confidence that the full Application materials are adequate;
- The inability to adequately mitigate effects of the large scale likely;
- The inconsistency of the Application with the West Coast Conservation Management Strategy 2010-2020 (*CMS*); and
- The relevance of carbon emissions and concessions decisions.

We wish to be heard in support of our submission

Executive Summary

FMC represents the interests of over 90 tramping and other outdoor recreational clubs, who together have over 22,000 members.

Responding to our letter of 28 July 2020 through a letter from Natasha Hayward dated 11 August 2020, DOC essentially confirmed that the publicly-available material represents the full material detail of the Application. Given this clarity on the Application material, it is now also clear that DOC is not in a position to fairly or lawfully decide the Application.

We therefore invite DOC to:

- Pause processing of the Application;
- Through the power in section 17SD of the Act, require Precision to supply further information (including an environmental impact assessment) against *every matter listed in section 17S of the Act* – this being the only rational standard of information "necessary to enable a decision to be made" on the Application;
- Publish all further information publicly for all submitters; and
- Re-set the timeframes for public response.

Despite the lack of available information and the shortcomings of that information, Precision have provided enough so that it *does* remain clear that:

- The effects of granting the Application mean the potential loss of consistent natural quiet on a massive scale across the whole lower Whitcombe Valley and vicinity;
- There are no adequate or reasonable methods for remedying, avoiding, or mitigating the adverse effects of the Application; and
- Even if it were possible, the practical reality of Precision's mitigation undertakings are that they amount to nothing – no mitigation at all.

Accordingly, the Application should be declined at least under section 17U(2)(b) of the Act for its effects on recreation. This conclusion holds also for other effects.

In addition to creating effects on recreation that could simply not be mitigated, DOC should decline the Application because it is very obviously inconsistent with the CMS, and in particular its Hokitika Place, Aircraft and Wilderness Area provisions. Indeed this is so obvious that in the event of a grant decision, we would look forward to an explanation as to how a decision *not* to simply return the Application to Precision, or to decline it outright in present form, could possibly have been rational.

The mitigation in the Application is – on the CMS's own terms – 'inadequate' with respect to Wilderness Area overflight. Only flight restrictions could be adequate. Therefore, in the event that DOC decided to grant the Application, FMC would also look forward to a condition in substance as follows:

This concession shall commence upon DOC giving notice to the Concessionaire of the successful negotiation between DOC and CAA of flightpath restrictions sufficient to avoid potential noise effects of operations:

I. *associated with the exercise of this concession; and*

II. *that are within and close to the Adams Wilderness Area.*

Finally, it would be perverse for DOC to approve the Application when its own statutory conservation mandate is compromised by the Application's core activity.

Yours sincerely,

Jan Finlayson

FMC President

FMC

Federated Mountain Clubs (*FMC*) was founded in 1931. We represent the interests of 96 tramping and other outdoor recreational clubs, who together have over 21,000 members. We are a national organisation that has a strong interest in the good governance of all public conservation land.

Re-set request

We thank DOC staff for their time for a phone call with FMC Executive Officer Danilo Hegg on 4 August 2020. In that call, DOC staff recorded that they may or may not respond to the requests in our earlier letter. Only by letter from Natasha Hayward dated 11 August 2020 did DOC formally respond. This was a full fortnight from our initial letter on the matter, which represents one half the required statutory period.

DOC's response included that:

- The published Application material is "the applicant's current application... with the exception of some documents that were considered not relevant for the public to understand the proposal." In essence, then, it appears that the publicly-available material represents the full material detail of the Application; and
- Some material was rejected for lacking detail; and
- "A decision was made under section 17S of the Conservation Act, that the application contained the information for the public to understand the proposal."

FMC remains puzzled, if only because if DOC's response is accurate, then references in the published Application material to an (un-published) AEE must in fact refer to a *non-existent* AEE. That points to a very clear shortcoming against section 17S of the Act. We are also puzzled as to why poorly-detailed material would be swapped for none at all. Or why some reference material might be provided, but other material withheld for privacy reasons. Nonetheless, we take DOC's response to be accurate, and welcome clarity on the true state of Precision's Application.

Given this clarity on the Application material, it is now clear also that DOC is not in a position to fairly or lawfully decide the Application. The Applicant has not provided material against every matter in section 17S of the Act, as is its obligation. Let alone provided such material on anything approaching a standard that will allow DOC's delegated decision-maker to make an assessment under section 17U on a lawfully adequate foundation.[1]

For just one example, the Application contains no concrete description of the effects of the proposed activity on:

- Wildlife, including effects on kea, whio, rockwren and other birds;[2]
- Recreation, in particular by effects on tranquillity and natural quiet.

By definition, "effects" includes potential effects, so it can not be enough for an applicant to merely omit robust consideration of these kinds of matters. To do so is a clear shortcoming against section 17S(c) of the Act.

It is not the role of submitters to assess and describe the effects of a proposal, or to guess at them where they are not provided by DOC in a submissions process. It is the Applicant's role to assess and describe them, and where it has decided to notify DOC's first duty to provide them to publicly.[3]

We therefore invite DOC to:

- Pause processing of the Application;
- Through the power in section 17SD of the Act, require Precision to supply further information (including an environmental impact assessment) against *every matter listed in section 17S of the Act* – this being the only rational standard of information "necessary to enable a decision to be made" on the Application;[4]
- Publish all further information publicly to all submitters;[5] and
- Re-set the timeframes for public response.[6]

The decision-maker should only consider the Application in accordance with the matters set out in section 17T.

Should Precision raise the issue, FMC is confident that a short delay would cause no obvious or reasonable 'prejudice',[7] though we would not be comfortable with that framing in any event. It cannot be that requiring an applicant to correct its own manifestly inadequate Application could be held against DOC as acting prejudicially.

Should DOC elect not to take the steps set out in our invitation, it will be processing a concession that it is very clearly not in a position to properly and lawfully decide. The decision-maker will also have placed themselves in an awkward position with respect to:

- The rationality of their *non-exercise* of section 17SA and 17SD powers; and
- Having now perhaps inadvertently cut down its ability to exercise of section 17U(2)(a) powers without creating undue applicant-side risk.

Coming very soon after issues with sufficiency of information on other applications, these ought to be striking and salutary issues for the West Coast office, if not higher levels of the Department. Ms Hayward's approach to the issue is not encouraging or legally sustainable. We can only urge a high-level visit upon these issues.

Administrative law is very clear that all statutory powers of decision *must* be decided on sufficient information.[8] In the context of concessions decisions under the Act, a lack of information on an adequate standard against every matter in section 17S, is not acceptable. In such circumstances, DOC has the power to return the application under section 17SA of the Act, or insist further information be provided through section 17SD.

In general, as in Precision's Application specifically, failure to take one of these steps where applicant information is so manifestly lacking against section 17S would likely be found to be in error under challenge.

FMC did not have confidence in the Precision material that it has not viewed

DOC's view on the sufficiency of Precision's Application material – that it is sufficient – is puzzling to the extent that we think it must be in legal error.

In the period when it appeared that DOC would ignore FMC's request for information, FMC formed a view that we did not have confidence that Precision would have provided robust material against every matter listed in section 17S of the Act. While that position is now confirmed, we set out our reasons for coming to that position for the public record.

FMC was comfortable to make conjectures about the true standard of Precision's Application material, now confirmed, for the obvious reasons that:

- Material provided as "further information" on noise abatement landing procedures accepts noise abatement as a live issue, and therefore noise issues as a relevant effect. But that information is lacking in basic detail. It provides no quantitative *or even qualitative* assessment of actual effect-mitigating potential of the procedures mentioned. Nor does it deal with whether such procedures would be 'adequate' methods of mitigation. Similarly, Precision provides no information on whether the procedures are the full extent of 'reasonable and practicable' methods of mitigation. This being 'further' information, the implication must be that the AEE itself treats *the principal effect associated with the Application* – noise – with similar lack of robustness. If this was the case for the principal effect of the Application, it was likely to be the case for the other effects listed above also. So it proves.

- Precision has also provided a statutory assessment as "further information". Yet it too is lacking in basic ways that should be familiar to any person familiar with the CMS. The material makes no attempt to engage meaningfully with the Application's consistency with the Act or CMS. Specifically, it does not engage meaningfully with the CMS's Hokitika Place Outcomes or Aircraft Objectives and Policies, or engage *at all* with its relevant Wilderness Area Objectives and Policies, insofar as these provisions deal with overflight. If it had done so, serious questions of CMS consistency would have been raised (see below). While an unbalanced treatment of relevant statutory documents can perhaps be expected from an applicant firm, such treatment does not amount to sufficiency against a legislative standard.

- Rotorcraft Helicopter Support's reference letter *is almost wholly-irrelevant* to decisions under Part 3B of the Act, and in particular the decision-making considerations permissible under section 17U. Rotorcraft's letter shows that Precision has strong standing within the aviation industry but does not address the second part of the requirement - that which indicates that operation on public conservation land involves certain unique considerations: *Your qualifications, resources, skills, and experience to adequately conduct the activity on public conservation land*. Again, it shows insufficient knowledge or care in providing DOC with relevant information for a concession application to an adequate standard. As one of few supporting documents, its presence highlights the striking absence of other necessary Application material, including material addressing potential effects on wildlife and recreation.

Effects on Recreation cannot be adequately mitigated

Despite the lack of available information and the obvious shortcomings of even that, Precision have provided enough so that it *does* remain clear that the Application should be declined. There are clearly very significant adverse effects, including potential and cumulative effects, and no adequate or reasonable methods for remedying, avoiding, or mitigating them. In particular, effects on recreation cannot be adequately mitigated. Accordingly, the Application should be declined at least under section 17U(2)(b) of the Act.

Scope and scale of noise effects

Precision can provide no concrete indication of the effects of its proposal *at all*, let alone measures to mitigate those effects. For example, supporting information provides that:

> *"The application does not propose to land at all of the above sites for the frequency outlined each day of operation. The maximum per day and year outlines the maximum use of the site. Operational factors including type of passenger and weather will govern the use of each site"*

The maximum use of each site per day is not provided by Precision. But by simple arithmetic, it is as follows:

Location	Max Landings / Day	Max Landings / Year	Max Days at Max Rate
Miserable Ridge	3	150	50
Mount Beaumont	5	300	60
Remarkable Peak	3	300	100
Prices Flat	3	300	100
Whataroa Glacier	6	100	16 2/3
Mount Greenland	4	100	25

In simple language, and for example, Precision proposes a maximum of three landings per day at Prices Flat over 100 days of the year. This also means it could operate up to two landings on 150 days. It proposes similarly at Remarkable Peak.

Allowing for the vagaries of weather and seasonal fluctuations in demand, it must be that these Prices Flat and Remarkable Peak totals would make for more than one landing at these sites on virtually every fine summer day. When combined with the permutations for the other four landing sites and the stated intention to make a flexible offering, Precision is *explicitly* offering potential effects of sporadic helicopter noise in an area including at minimum *any point* between the landing sites *at any time*.[9]

When considering Precision's base location and the realities of mountain flying, this sporadic potential over the whole realistic operations area must almost certainly rise to a *strong possibility for consistent noise on any and every fine day* over the entire Lower Hokitika and Whitcombe to Prices Flat, the Derdrichs Range, Meta Range, and entire Prices and Tuke River catchments. This puts the Application in a different category of effects than adding landings to an already-crowded flying area. Despite some indeterminacy in the available information, the picture emerging is the potential loss of consistent natural quiet on a massive scale.

Entertaining this level of cumulative effect in any area cannot be tenable. It is doubly so in this area, which is described in the CMS as New Zealand's "backcountry adventure 'capital'", and when created *by the effects of a single application*.

Yet the information provided simply fails to engage in how this kind, scope or scale of noise might effect this recreational context, let alone might be mitigated. We now know that the AEE referred to fails similarly – in that it does not seem to exist.

Inadequacy of mitigation

In a context of very significant effects, the expectation around 'adequacy' of mitigation must be that mitigation will be strong. On the other hand, the Application information fails, on a level of basic credibility, to offer up *any* real mitigation.

As mentioned above, the information represents a clear aim to retain flexibility of landing location, timing, frequency etc. By way of mitigation, the information states an intention of "avoiding landing sites as far as practical for us".

While FMC welcomes some desire to "avoid" landing sites, the question is what is really meant by "as far as practical for us". There is only one explicit expansion on this point. It is the suggestion that "when recreational users are spotted within 1000 metres of a landing site", a landing may be avoided.

In FMC's view this undertaking is not even remotely credible mitigation from a practical perspective. It is certainly not 'adequate' mitigation – not least given that it would achieve either nothing or *a worsening* of noise effects. Instead, it is no mitigation at all.

Picturing the scene in a Precision helicopter cockpit on approach to a possible landing site, Precision's vague undertaking leaves open:

- Whether the pilot is obliged to check the nearby bush or country for recreational users *with anything other than a routine lookout*;

- Whether performing some check like that *would consistently be safe*;

- Whether doing so *would be likely to yield any sighting* except with exacting knowledge of the nearby country and a significant investment of flight time;[10]

- Whether or not such a procedure *would increase or decrease overall noise effects*;

- Even when all decisions might be safe, etc, *whether or not a no-landing decision is even realistically open to the pilot* given the commercial imperatives, including present Precision advertising or ticketing situation of the passengers on board.

Considering these questions, one can imagine the spectrum of possibilities. It could be that:

- Precision takes its undertaking very seriously. But in this case the noise effects of a short, small-area search would become worse than for a simple landing.

- A cursory procedure is undertaken, perhaps described as 'practicable' or similar. This would amount to a worst-of-both-worlds effects situation, one where helicopters alter their flight configuration, course etc close to the ground – with all the associated noise effects but no realistic increase in the likelihood of spotting and avoiding people on the ground.

- Much more likely, given the cost implications, difficulty, knowledge of lack of consistent DOC enforcement etc, the undertaking could not be taken seriously. In this case, of course, pretending to offer 'adequate' mitigation then becomes disingenuous.

- Only in cases where a recreationalist, common as they are in the area in all weathers, is spotted *by sheer luck* might a landing decision change. And in these cases, the likelihood is that the helicopter will have had to pass so close to a person as to have created a significant noise-related disturbance anyway.

The practical reality of Precision's undertaking is that it amounts to nothing – no mitigation at all.

Interaction with other concessions

Finally, Precision's material is silent on what will happen upon landing. We are aware that Precision holds other concessions, and so might seek to exercise these concessions in conjunction.

FMC has no difficulty with the right of concessionaires to exercise the privileges granted to them, and do so in combination where they are held over several concessions. But without a detailed explanation on this issue, the simple fact remains that the full cumulative effects of the Application will not have been described, let alone the potential mitigation of those effects. Here is another significant shortcoming against section 17S.

Other effects unlikely to be able to be adequately mitigated, remedied or avoided

The Application will have indeterminate effects on wildlife, including disturbance and even possibly lead-related effects on kea, whio, rockwren and other birds. These species are, respectively, threatened/nationally endangered; nationally endangered; and threatened/nationally vulnerable.

Above we mentioned that we are not confident that Precision will have dealt with these matters at all, despite their statutory obligation to deal with potential effects of their proposal. We also infer that there has been no consideration of possible mitigation of these potential effects.

FMC would welcome our being wrong on these points, and would welcome the establishment – through this process – that there will in fact be no effects on wildlife

Proposal is clearly contrary to the CMS

Despite Precision's un-balanced assertions to the contrary, the Application is, at almost every turn, clearly inconsistent with the CMS.

Consistency with Place Outcomes

Precision's statutory assessment material deals largely with the Place outcomes. It seeks to present the Application as consistent with the CMS Outcomes for the Hokitika and Te Wahi Pounamu Places.

We make only brief comment on the consistency of the Application with the relevant Place Outcomes. Only brief comment is necessary because:

- These Outcomes *simply do not contemplate* overflight and noise intrusion issues, which are the major known effects of the Application; and
- The ability to show some consistency with respect to explicit Outcomes *does not* show "consistency with the CMS". It does not negate a need to show consistency with other relevant provisions in the CMS. In particular, it does not remove a need to show consistency with the CMS Aircraft and Wilderness Objectives and Policies.

Our simple observation is that the Application is squarely contrary to the relevant Hokitika Place Outcome. At 4.2.6.7, the CMS provides:

> *Concessions may be granted for regular aircraft landings within the backcountry- remote zone* ***where adverse effects on conservation values, recreational users, remote or wilderness values can be avoided or otherwise minimised****."*
>
> (emphasis added)

Precision's analysis focuses essentially only on landing regularity. It says that its landing sites are suitable for 'regular' landings. It does not acknowledge that the issue of appropriate landing regularity comes only after a significant rider – the bolded text above. Against that rider, the above analyses demonstrate very clearly that the Application neither avoids nor truly mitigates or minimises *any* of its effects. On the available materials and probably the full documentation, these effects are either indeterminate or very large in scope and scale.

Precision's silence on these issues, can only speak again to an insufficient knowledge or care in sufficiently assessing relevant effects, including potential effects, of its proposals, or in applying these to relevant regulatory provisions.

In the event that DOC decided to grant the Application, for these reasons we would look forward to an explanation as to how the Application was allowed to pass the gateways in section 17SA or section 17SB of the Act – i.e. how a decision *not* to simply return the Application to Precision, or to decline it outright in present form, could possibly have been rational.

Inconsistency with Wilderness Area and Aircraft provisions

The Application is for a series of landing points adjacent to the Adams Wilderness Area, one of which is at its opposite end. Having offered sightseers "ringside seats" to the high ground of the Whitcombe/Evans and Garden of Eden/Allah areas, only a short flight time away, there is no need to pretend that Precision will only offer short flights over the Backcountry Remote Zone of the lower Whitcombe, Hokitika and Tuke areas.

The Application obviously implies frequent Wilderness Area overflight. In FMC's view, it would be implausible for a decision-maker to infer otherwise. This raises wilderness area overflight as a significant issue on the Application.

We accept that Precision seek to frame the "activity" to which its Application relates to be solely aircraft landings.[11] However, for the following reasons, it is not conceivable – on the CMS's own terms – that a balanced statutory assessment could avoid issues associated with wilderness area overflight. Yet Precision's assessment is deficient in precisely this way.

The CMS provides Objectives and Policies relating to aircraft usage. The CMS Aircraft Objective is to "optimise" available experiences, "whilst avoiding or otherwise minimising adverse effects on conservation values and conflicts with other users". On overflight, Aircraft Policies 8 and 9 provide that:

> *Policy 8: The Conservancy will liaise with relevant authorities, interest groups and operators in order to minimise the adverse effects of aircraft overflights of West Coast Te Tai o Poutini public conservation lands.*
>
> *Policy 9: The Conservancy should seek Civil Aviation Authority agreement to regulatory restrictions over airspace where implementation of Policy 8 has failed to adequately minimise the effects of aircraft overflights on West Coast Te Tai o Poutini public conservation lands.*

The CMS also provides, on gazetted Wilderness Areas, the following:

> *Objective 2: To enable people to experience extensive natural settings with diverse topography and very high levels of natural character, including natural quiet, where… **"no noise intrusion from aircraft is present"**…*
>
> *(emphasis added)*

A balanced analysis of these provisions begins with what the Aircraft Objective means to "Optimise". Optimise is a neutral and generic operator. It is neither permissive nor restrictive in general, and may mean a number of things when connected with a context. When combined with an objective of "avoiding

or otherwise mitigating" adverse effects, it is clear that this "optimising" is not operating in the abstract, but in the context putting priority on conservation and recreation.

When further combined with Wilderness Area Objective 2, the position becomes even clearer for wilderness areas. There, "optimising aircraft use" means taking steps to avoid their usage. This is the only way to ensure that there is "no noise intrusion from aircraft."[12] This is a much stronger injunction than even the general position of minimising or mitigating aircraft effects.

In simple language, then, the CMS takes a very clear Objective posture of seeking no wilderness area overflight. This is the true CMS Objective context against which the Application must be considered.

Against that context, Precision's application obviously contemplates commercial wilderness area overflights of indeterminate but potentially significant frequency. These would be the most frequent flights of that character in the area. A description of this as *other than* "obviously inconsistent" with the Objective context – the combination of the Aircraft Objective and Wilderness Area Objective 2 – is rather to strain the plain meaning of "obvious inconsistency". It cannot be right.

For these reasons again, upon a grant decision we would look forward to an explanation as to how the Application was allowed to pass the gateways in section 17SA or section 17SB of the Act.

Having established the Objective context on overflight, the next exercise is to consider how this can be put into action with respect to the Application. On this, FMC appreciates that DOC does not regulate flightpaths, and disclaims any formal ability to do so unilaterally. Yet Aircraft Policies 8 and 9 make clear that the Objectives on wilderness area overflight are not "tools without teeth", especially with respect to new concession applications. In these Policies, DOC has regulatory tools with which to make its overflight objectives "bite".

In simple language, again, the CMS takes a very clear Policy posture of co-ordinating DOC action to prevent wilderness area overflight, *absent only a direct and formal ability to do so unilaterally*. This is the true CMS Policy context against which the Application must be considered.

This leaves the overall situation of the Application with respect to the CMS overflight provisions, as follows. There is:

- A CMS Objective posture that is obviously directed to *avoiding* aircraft noise in wilderness areas, and not a lesser standard like minimisation or mitigation.
- CMS Policies containing tools with which to carry out those objectives; and
- An Application obviously implying frequent Wilderness Area overflight, offering up no mitigation on general flight noise issues, and only vague and impracticable noise minimisation procedures in and around landing areas.

Given all this, and whatever Precision's own internal view of that "adequacy" might be, it must be clear *by the fact of its making the Application* that it has no interest in the "adequate minimisation" on terms that the CMS would recognise. In other words, on the CMS's terms the mitigation in the Application *is* inadequate with respect to Wilderness Area overflight.[13]

Should it approve the Application, this could only leave the strange position of Aircraft Policy 9 being squarely engaged. To give effect to its own policy, a statutory duty, DOC would therefore need to seek Civil Aviation Authority agreement to regulatory restrictions on Precision's flight operations, in so far as they affected the Adams Wilderness Area. Perhaps more strangely still, of course, this would all have arisen not by a failure of DOC-operator korero, *but as a result of DOC's own approval decision*.

Strange as it might seem, then, in the event that DOC decided to grant the Application, FMC would also look forward to a condition in substance as follows:

> *This concession shall commence upon DOC giving notice to the Concessionaire of the successful negotiation between DOC and CAA of flightpath restrictions sufficient to avoid potential noise effects of operations:*
>
> *I. associated with the exercise of this concession; and*
>
> *II. that are within and close to the Adams Wilderness Area.*

FMC is well aware of the history of DOC-CAA negotiations on these matters. Quite aside from bringing up potential derogation-from-grant issues as between DOC and Precision, we are aware that this condition would be unacceptable to Precision.

The fact that there is a need, *on the CMS's own terms*, for a condition substantively of this form can only indicate that the Application is not consistent with the Aircraft or Wilderness Objectives and Policies of the CMS.

Consistency with section 20 of the Act

Finally, section 20 of the Act provides that authorisations for activities "on" wilderness areas unless that activity "is in conformity with the conservation management strategy or conservation management plan". We are aware of the long history of this issue, and have little doubt that DOC would assert that the word "on" in section 20 implies power to regulate of surface activities only. While we do not accept that that position is beyond argument, the place for that issue is not here. We merely note that that position does not square with Wilderness Area Policy 2 of the CMS, which uses the language of "within", or Wilderness Area Policy 4, which uses "in".

In the event of a decline decision, FMC would therefore ask that DOC consider explicitly recording that it *does not* rely on Wilderness Area Policies 2 or 4, or section 20 of the Act. This would reduce any residual risk of the decision being challenged by Precision on the basis that DOC claims a jurisdiction that it does not have.

Carbon Emissions and Concessions

It is very clear, when the effects of the Application are applied to the relevant provisions of the Act and CMS, that Precision's application should be declined.

A further factor, as yet not in outward-facing parts of the statutory guidance, but whose presence is underlying and it would be derelict to ignore, is anthropogenic climate disruption. Such disruption is inimical to conservation, the Department's primary statutory function.

Given that function, it is arguable that the Department has a mandated responsibility to seek attenuation of carbon emissions caused by concession activities undertaken on public conservation land.

FMC is aware that the Department is making laudable transitional changes to reduce its operational carbon emissions. It is also working in a context of heightened public understanding of climate disruption, an understanding that has crystallised in the Climate Change Response (Zero Carbon) Amendment Act 2019.

Regardless of issues raised in sections above, for the Department of Conservation to approve the Application when its own mandate is compromised by the Application's core activity, when its own conservation operational functioning has been altered to reduce conservation-inimical carbon emissions, and in a context in which pushback against carbon is both popular and statutory, would be perverse.

Footnotes

[1] While no approval could properly or lawfully be made in these circumstances, the deficiency is especially severe considered against Precision's proposed term of 10 years – incidentally, for which Precision does not appear to have given a reason.

[2] It is well-known that bird populations can be affected by mechanised overflight. For a New Zealand context, see treatment and citations in Tal 2004. In particular, given growing evidence of east coast disturbance and lead-related effects on kea, and the growing evidence of helicopter-related lead contamination in glacial ice, potential effects on kea may be significant.

[3] The standard of information provided publicly by DOC in this case is likely to breach the statutory duty in section 49 of the Act.

[4] We note that Ms Hayward's reference to a "decision under section 17S" is not a correct characterisation of procedure required from that provision.

[5] This being required by necessary implication of the statutory duty in section 49(2) of the Act to receive submissions "on a proposal".

[6] We are indeed aware of the timeframe matters raised by Ms Hayward. The Resource Legislation Amendment Act 2017 amended section 49 of the Act such that it is absolutely plain that concessions notification periods are 20 working days from notification of an Applicant's full proposal.

[7] There is, for example, no indication that Precision will incur additional capital spending or cashflow issues as a result of a short delay. A short delay is also negligible in relation to the proposed ten year term.

[8] DOC Legal will be well aware of the long run of authorities relating to these matters, with New Zealand provenance beginning in *Daganayasi v Minister of Immigration* [1980] NZLR 130 (CA).

[9] Though it is unstated, FMC presumes that Precision proposes operating only in daylight hours.

[10] FMC is well aware, and well appreciative of, the extraordinarily skilled and time-consuming flying needed to spot people in mountain SAR operations.

[11] In addition, only a non-serious decision would take this approach without any underlying analysis.

[12] These provisions also reflect DOC's Visitor Strategy 1996.

[13] We make a similar 'adequacy' analysis in relation to the Place Outcome provisions. We have not explicitly stated that full analysis because the case of inconsistency there is very clear.

Lou Sanson
Director General
Department of Conservation
DNSubmissions@doc.govt.nz

28 July 2020

Dear Lou

NOTIFICATION ISSUES – CONCESSION APPLICATION BY PRECISION HELICOPTERS LIMITED

As you know, Federated Mountain Clubs (*FMC*) was founded in 1931. We represent the interests of 96 recreational clubs, which together have over 21,000 members. On behalf of our affiliated clubs and members, FMC looks forward to submitting on the concession application by Precision Helicopters Limited (*Precision*) for landing activities in the Hokitika and Whataroa backcountry (*Application*). We thank the Department of Conservation (*DOC*) for that opportunity to submit and we wish to be heard at any hearing.

FMC wishes to make a careful submission responding to the Application. However we wish to record our concern that any submission on the Application is, at present, being called upon to respond to a very small and inadequate amount of concrete information.

Re-set required
Accordingly, FMC urges that DOC immediately:

1. Publish all Application documentation given to it by Precision, or at least information against every matter contained in section 17S of the Conservation Act (*Act*); and

2. Re-set the dates for submissions in accordance with section 49(2) of the Act.

You will also be aware that section 49(2)(c) of the Act obliges you to give people or organisations the "reasonable opportunity of appearing before [you]" where they submit on notified concession applications. FMC would therefore appreciate clarification – given our request to be heard – that a hearing will occur.

Reasons
Unfortunately, even allowing for the vagaries of helicopter operations through weather and season, it is simply not clear what Precision proposes – at least on the information available through the DOC Application web-page and associated files.[1] For example, there are clearly no concrete descriptions of the effects of the proposed activity on wildlife, tranquillity, or recreation; no AEE[2] – including assessment as to obvious potential effects on recreation; and only sparse information on measures to avoid, remedy or mitigate those effects.

This state of affairs deprives FMC and other submitters of the ability to submit meaningfully "on the proposal". It will also deprive you of the benefit of truly apposite submissions, and Precision the opportunity to have its Application fairly understood by the community. The risks, including legal risks, of this procedure are high and obvious.

While we will continue to work on a submission in the meantime, we look forward to your urgent response on these matters.

Yours sincerely

Jan Finlayson, FMC President

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1 Accessed 28 July 2020.

2 Although an AEE is referred to in available materials.