

BEFORE THE QUEENSTOWN-LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Stage 3 of the Proposed Queenstown-  
Lakes District Plan

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Statement of evidence of **Andrew Maclellan** for Otago Regional Council (3342), in relation  
to the Variation to Chapter 30 Energy and Utilities

29 May 2020

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## **Statement of Professional Qualifications and Experience**

1. My full name is Andrew Cameron Maclellan. I am a Senior Resource Management Consultant at the firm Incite, which has offices in Auckland, Wellington, and Christchurch.
2. I hold a Bachelor of Science in Land Planning and Development from Otago University and a Masters in Resource and Environmental Planning, from Massey University. I am an Associate member of the New Zealand Planning Institute and a member of the Resource Management Law Association.
3. I have 8 years' planning experience working in both local government and the private sector. My experience includes both regional and district plan development, including the preparation of s32 and s42A reports. I also have experience in the preparation and processing of resource consents for territorial authorities and private clients.
4. I assisted the Otago Regional Council (ORC) with the preparation of the submission and further submission on Proposed Queenstown Lakes District Plan - Stage 3. I have been engaged by the ORC as expert planning witness on other Proposed Queenstown Lakes District Plan matters including relevantly: Chapters 3, 6, 21 and 28.

## **Code of Conduct**

5. I confirm that I have read the Hearing Commissioners minute and direction on Procedures for the Hearing of Submissions and I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note of 2014. I have complied with the Practice Note when preparing my written statement of evidence, and will do so when I give oral evidence.
6. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.

7. Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## **Scope**

8. The Otago Regional Council (ORC) submitted on the following chapters of the proposed District Plan provisions for Stage 3:

- Chapter 18A - General Industrial Zone
- Chapter 19A - Three Parks Commercial
- Chapter 20 - Settlement Zone
- Variation to Chapter 30 Energy and Utilities
- Chapter 39 - Wahi Tupuna<sup>1</sup>

9. The ORC's submission supported the majority of the provisions within the above chapters and sought that the provisions were retained as notified. This evidence does not comment on the provisions which the ORC's submission supports and the reporting officer has not recommended a change. This evidence will focus on the provisions that were not supported by the reporting officer, being:

- The natural hazard mapping within Chapter 20 - Settlement Zone
- Policy 30.2.9.3
- Policy 30.2.9.4
- Rule 30.5.1.7; and
- The activity status of Rule 30.5.1.13

## **Background**

10. The proposed Variation to Chapter 30 Energy and Utilities is of the utmost importance to the ORC's ability to effectively manage natural hazard risk within the Queenstown Lakes District. Prior to the notification of the proposed Variation to Chapter 30 Energy and Utilities, the Queenstown Lakes District Council sought informal feedback from the ORC on the drafting of the proposed variation, which

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<sup>1</sup> Separate evidence will be filed for Chapter 39 - Wahi Tupuna

was welcomed by ORC, and constructive amendments were made to the provisions during this process.

11. To highlight the importance of proposed Variation to Chapter 30 Energy and Utilities, this evidence draws on evidence from Ben Mackey, Natural Hazard Analyst at the Otago Regional Council, who has provided a snapshot of some of the real world examples of existing and potential natural hazard mitigation works that are undertaken, or may need to be undertaken, across the Queenstown Lakes District and which are located in areas identified as Outstanding Natural Features or Outstanding Natural Landscapes (ONF/L's).
12. Dr Mackey's evidence highlights that there are number of areas within the district, such as:
  - Albert Town
  - Shotover River
  - Stoney Creek Alluvial Fan located in the hills south of Wanaka township
  - Dart and Rees Rivers
  - Kawarau Gorge

where natural hazard mitigation works are required to be undertaken within areas identified as ONL/F's.

13. As Dr Mackey's evidence suggests, the dynamic nature of natural hazard mitigation projects means that structures and works often need to be replaced with alternative methods of mitigation or relocated to different locations to respond to the changing nature of the natural hazard risk. These works are always going to be captured by Rule 30.5.1.7 of the PDP, which provides for the maintenance, repair or replacement of existing structures, facilities, plant, equipment and associated works for natural hazard mitigation as a permitted activity – subject to compliance with any relevant standards.
14. When a resource consent is required to undertake new natural hazard mitigation works within an ONL/F, I consider it is important that there is a suite of objectives and policies within the PDP that bridge the gap between the landscape protection provisions within Chapter 3, 6, and 21 of the PDP and ability to provide for works

that protect people and property from the adverse effects of natural hazards, as required by the natural hazard provisions within Chapter 28 of the PDP.

15. In my opinion the proposed variation to Chapter 30 Energy and Utilities strikes the appropriate balance between the requirement to protect outstanding natural features and landscapes from inappropriate subdivision, use, and development<sup>2</sup>, and the requirement to manage the risks from natural hazards, including the risk from significant natural hazards<sup>3</sup> as it provides a pathway for natural hazard mitigation works that have functional need to locate within sensitive environments to be established, repaired, maintained, or replaced.

### **Natural hazard mapping within Chapter 20 - Settlement Zone**

16. The ORC submission supported Rule 20.5.19, however stated the Council should consider including additional natural hazard layers and appropriate building controls based on the information included within the ORC Natural Hazard Database. No further information regarding any specific natural hazard layers was provided within the submission and as such the Reporting Officer concluded that there is insufficient detail to recommend accepting the relief sought by ORC.
17. Following feedback from the Hazards Team at the ORC I can confirm that there are no additional hazards that are sought to be added to the planning maps. As such, I support the view of the reporting officer that the hazards database should be relied on to identify natural hazard overlays as is set out with Chapter 28 of the PDP.

### **Policy 30.2.9.3**

18. The ORC submission generally supported the premise of the policy that the displacement of natural hazard risk off-site should be minimised. However, ORC considered that the drafting of the policy could be improved to clarify the intent of the policy in the context of the Chapter 30 - Energy and Utilities of the PDP.
19. The Reporting Officer (para 4.12) agrees there is merit in clarifying that this policy relates specifically to natural hazard mitigation activities undertaken as a

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<sup>2</sup> Section 6(b) of the Resource Management Act 1991

<sup>3</sup> Section 6(h) of the Resource Management Act 1991

consequence of natural hazard mitigation structures and works. He has recommended that the policy be redrafted to achieve the intent of both the ORC and Oil Companies submissions.

20. I support the amendment to Policy 30.2.9.3 as redrafted by the reporting officer.

### **Policy 30.2.9.4**

21. ORC supported the intent of Policy 30.2.9.4. However, ORC considers that the language used in the Policy could be amended to provide more certainty as to what is meant by:

*‘Encourage natural hazard mitigation structures and works that result in no or low residual risk from natural hazard.’*

22. Residual risk is the term used to define those risks that are still present after elimination or mitigation of all conceivable quantified risks have been addressed. Residual risk can also be described in terms of being “the bigger than event”. For example, if a hazard mitigation structures is designed to a 1 % AEP event scenario, then anything larger than that event (e.g. 0.2 % or 0.1 % AEP events) would be considered a residual risk. As such, to encourage natural hazard mitigation structures and works that result in no residual risk from natural hazards is impossible.

23. Given this, I suggested that the Policy 30.2.9.4 in amended as follows:

*Encourage natural hazard mitigation structures and works that result in ~~no or~~ low residual risk from natural hazards.*

### **Rule 30.5.1.7**

24. ORC’s submission noted that the Consolidated PDP version of Chapter 30 of the PDP (Dated June 19) does not contain Rule 30.5.1.e. Within Para 6.2 of the Officers Report, the reporting officer has clarified that the PDP contained an inadvertent numbering error, and the cross reference should refer to Rule 30.5.7. In my opinion this correction resolves the issue raised in the ORC submission.

### **Rule 30.5.1.13**

25. In relation to the default activity status proposed within the PDP for natural hazard mitigation works that do not meet the permitted standards, ORC considered that effects of activities that are required to protect the community from natural hazards can be adequately managed as a restricted discretionary activity, as the effects of the activity are generally well understood.
26. Within Para 6.16 of the Officers Report, the reporting officer considers the matters of discretion suggested by ORC fall short of the range of issues and matters that might need to be addressed given the broad nature of natural hazard mitigation and associated works. The officer also notes that the default activity status for flood protection works within the Decisions Version of the PDP (Rule 30.5.1.5) is discretionary, and the officer considered that it is important to retain consistency between similar rules.
27. I agree with the reporting officer that the range of issues that may wish to be considered by a Consents Officer are broader than those listed within the ORC submission. I also agree with the reporting officer that it is important to retain consistency between similar rules. As such, I support the view of the Reporting Officer that the activity status remains discretionary.

A handwritten signature in black ink, appearing to read 'Andrew MacLennan', is written over a light blue rectangular background.

Andrew MacLennan  
29 May 2020