

**Amy Bowbyes for QLDC – Summary of Evidence, 13 March 2017**

**Chapter 28 Natural Hazards – Hearing Stream 10**

1. Chapter 28 provides a policy framework for the management of natural hazard risk throughout the District. It introduces a 'risk-based' framework to planning for natural hazards, which seeks to ensure that the response to any particular hazard is commensurate to the level of risk posed.
2. Notably, Chapter 28 outlines the information requirements for natural hazard assessments, confirms that 'tolerance' to natural hazard risk is a consideration when determining whether the level of risk is appropriate, and it provides guidance for applicants and decision-makers when determining whether a proposal for development on land subject to natural hazard risk should be approved.
3. I recommend that the framework and the structure of Chapter 28 should be retained as notified. However, I do recommend a number of changes to the provisions, shown in the redrafted chapter attached at **Appendix 1** to my s42A report. The changes I recommend refine the relevant objectives and policies rather than fundamentally alter the approach of the notified provisions. Of note, I now recommend:
  - (a) increasing the consistency of the language used throughout the notified suite of objectives and policies, such as use of the concepts of 'tolerance', and 'significant risk' to reduce uncertainty as to how the policies would be applied and to increase consistency between policies;
  - (b) acknowledging that regionally significant infrastructure has locational, technical and operational requirements, which may require a more flexible approach to the consideration of natural hazard risk;
  - (c) ensuring that the level of detail in hazards assessments is commensurate to the level of risk; and
  - (d) opportunities to increase alignment with the Otago Proposed Regional Policy Statement decisions version (**PRPS**), bearing in mind the uncertainty over the PRPS due to the current appeal process that is underway.

4. Three statements of evidence have been filed relating to Chapter 28, which I wish to briefly comment on, noting that I reserve my opportunity to respond in further detail, in the Council's right of reply.
5. Ms Black for Real Journeys Limited (621) supports the Chapter 28 policies that allow existing activities to continue in areas subject to natural hazard risk and that provide for development to occur where and when the natural hazard risk is not significantly increased. No further relief is sought by Ms Black.
6. Mr Williams for Queenstown Park Limited (806 and FS1097) and Remarkables Park Limited (FS117) generally supports the changes recommended in the s 42A Report, with two further elements of relief sought (which I support). These are:
  - (a) that the words "or mitigated" are removed from Objective 28.3.2 to avoid confusion as to whether 'risk management' and 'risk mitigation' are mutually exclusive concepts;<sup>1</sup> and
  - (b) that the words "of damage" in Policy 28.3.1.1 are moved to sit after the words "human life."<sup>2</sup> In my view this is a minor non-substantive change that would improve the wording of the redrafted policy.
7. Mr Hanley for Otago Regional Council (**ORC**) (798 and FS1160) is supportive of the direction of the changes recommended in the s 42A Report. Helpfully, Mr Hanley has provided the ORC's position on each of the individual provisions in the redrafted chapter, and he has briefly noted some further changes that the ORC are pursuing. My view on the further relief sought by Mr Hanley is as follows:
  - (a) **Objective 28.3.1:** Mr Hanley points out that the use of "minimised" in the PRPS is subject to appeals. He requests that the PDP use whatever term is resolved through the PRPS process. I refer to Council's legal submissions, where I understand that the correct legal test for the application of the PRPS is still 'to have regard to'. In the context of the correct legal test and the present uncertainty on account of appeals, I recommend that no amendment is made at this stage.
  - (b) **Policy 28.3.1.3:** I agree that it would be appropriate to replace the word "*landowner*" with the word "*community*" and I agree that this change

---

<sup>1</sup> See Mr William's paragraph 6.4.

<sup>2</sup> See Mr William's paragraph 6.4.

would reinforce that 'tolerance' is assessed at a community level rather than at an individual level.

- (c) **Policy 28.3.2.1:** I support amending the policy to state "*avoid significantly increasing risk*" as this change would increase consistency with the PRPS and would still enable flexibility for redevelopment to occur in areas where natural hazard risk is present. If my recommendation to include the word *increasing* in the policy is accepted then I also recommend accepting deletion of the words "*acknowledging that this will not always be practicable in developed areas*", given the shift in focus of the policy from "*avoiding significant risk*" to "*avoiding significantly increasing risk*." I consider that these changes remain consistent with the approach outlined in paragraph 9.15 of my s 42A Report, and remain consistent with the approach supported by Ms Black.
- (d) **Policy 28.3.2.2:** I recommend accepting replacement of the word "*unacceptable*" with "*intolerable*." I accept that using the word *intolerable* will increase consistency of the terms used in Chapter 28 and increase alignment with the PRPS. I also accept the change sought to amend the final bullet point of the policy to include the words "*remedial works*". I consider this to be a minor change to increase alignment with the language used in the PRPS.
- (e) **Policy 28.3.2.3:** I recommend accepting the reinstatement of the word "*avoid*" in the final bullet point of the policy. I agree that if risk cannot be managed to a tolerable level then avoidance should occur. This is consistent with part of the relief sought by other submitters.<sup>3</sup> Furthermore, consistent with the relief sought by Mr Williams in respect of Objective 28.3.2 (refer paragraph 6(a) above), I consider that it would also be appropriate to amend the policy to remove the words "*or mitigate*".
- (f) **Policy 28.3.2.4:** I agree that the notified policy does not give full effect to PRPS Policy 4.1.10, which provides a more directive framework for the consideration of hard protection structures, noting however that the correct legal test at this stage is to 'have regard to' rather than 'give effect to' the PRPS. In my view it is questionable as to whether the ORC's

---

<sup>3</sup> Real Journeys Limited (621.110), Burgess (669.24) and Bobs Cove Developments (712.18).

submission provides sufficient scope to make the requested change. I intend to interrogate the issue of scope and provide a recommendation in respect of the relief sought in the right of reply.

- (g) **Objective 28.3.3:** Mr Hanley requests that this objective is amended to give effect to Policy 4.1.2 of the PRPS, which requires that assessment of risk likelihood must cover no less than a 100 year period. If such relief were to be accepted, in my view it would be more appropriate to incorporate it into Policy 28.3.2.3 (which lists the matters to be addressed in natural hazard assessments), rather than Objective 28.3.3 as sought by Mr Hanley. It would be my preference to hear Mr Hanley speak before forming a final view on the merits of this aspect of relief.
- (h) **Policy 28.3.3.4:** I recommend accepting the replacement of the word "*unacceptable*" with "*intolerable*". Consistent with my recommendation regarding the relief sought for Policy 28.3.2.2 (refer paragraph 7(d) above), I accept that using the word intolerable will increase consistency of the terms used in Chapter 28 and increase alignment with the PRPS.