BEFORE THE QUEENSTOWN-LAKES DISTRICT COUNCIL

UNDER THE	**RESOURCE MANAGEMENT ACT 1991**
IN THE MATTER OF	**Inclusionary Housing Proposed Variation to the Proposed Queenstown-Lakes District Plan**
	OFFICE FOR MĀORI CROWN RELATIONS - TE ARAWHITI
	Submitter

STATEMENT OF EVIDENCE OF KATRINA ELLIS ON BEHALF OF OFFICE FOR MĀORI CROWN RELATIONS – TE ARAWHITI

19 December 2023

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INTRODUCTION

1. My full name is Katrina Megan Ellis.

2. I hold a Batchelor of Resource and Environmental Planning with First Class Honours from Massey University. I have approximately 12 years of planning experience in New Zealand.

3. I am the South Island Planning Manager at The Property Group, which is essentially a Senior Planner role with additional management duties. I have worked at The Property Group since 3 May 2021.

4. I am a member of New Zealand Planning Institute (which brings with it professional obligations). I have also completed the Making Good Decisions Course and am an accredited Commissioner.

5. Directly prior to joining The Property Group I was employed at the Queenstown Lakes District Council (**Council or QLDC**) from May 2016 to April 2021, where I held roles of Senior Planner, Resource Consents Team Leader (Wānaka), Resource Consents Team Leader (Queenstown) and Acting Resource Consents Manager.

6. As part of my roles at QLDC I oversaw the resource consent processing for all Wānaka resource consents (for example, Peninsula Bay and Kirimoko) and worked on numerous consent applications in the Wānaka urban area and for sites within the Outstanding Natural Landscape and Rural Character Landscape areas. My work did not include Sticky Forest.

7. I have policy experience and have recently helped lead the Gore District Plan review and produce the draft Gore District Plan. My role included determining suitable areas to change from rural zoning to an urban, settlement or rural lifestyle zone. I have had involvement in the QLDC Proposed District Plan (PDP), including being the QLDC planning officer for the Visitor Accommodation topic appeals. My experience includes addressing Māori issues as part of District Plan reviews, including involvement in district plan reviews in Tasman District for papakāinga and for Gore District the introduction of a Māori Purpose Zone.

8. Since joining The Property Group I have provided planning advice in the following planning processes relating to Sticky Forest:

   8.1 The Bunker and Rouse Proposed District Plan (**PDP**) zoning appeal to allow some residential development on non-ONL land at Sticky Forest. The Attorney-General is a s 274 party.

   8.2 The PDP landscape schedules variation in relation to the Dublin Bay ONL which includes part of Sticky Forest. The Office of Māori Crown Relations - Te Arawhiti (**Te Arawhiti**) was a submitter.

   8.3 Private Plan Change 54 to the Operative District Plan (now approved)[1] enabling access from Northlake to Sticky Forest and determining that in the Operative District Plan (**ODP**), reference to the Sticky Forest land should be "Hāwea/Wānaka Sticky Forest". Te Arawhiti was a submitter.

9. In preparing this evidence I have considered the following documents:

   9.1 The Council's proposed provisions and s32 report;

   9.2 The Council's s42A planner's report and addendum;

   9.3 Evidence of Ms King on behalf of Te Arawhiti;

   9.4 Submissions from Te Arawhiti, Aukaha Ltd and Te Ao Marama Inc for papatipu rūnanga and Te Rūnanga o Ngāi Tahu (**TRONT**), and Mr Bunker and Ms Rouse;

   9.5 The evidence lodged by Ms Pull for TRONT, Aukaha and Te Ao Marama on behalf of Ngāi Tahu and by Ms Stevens for TRONT; and

   9.6 The evidence lodged by Mr Bunker and Ms Rouse, including the evidence of Dr Terry Ryan filed in the Environment Court rezoning appeal, which is attached to their evidence.

[1] The appeal period closes on 7 February 2024.

Code of Conduct

10. Although this is a Council hearing, I confirm I have read the Environment Court's Code of Conduct for Expert Witnesses in the Environment Court of New Zealand Practice Note 2023, and I agree to comply with it. My qualifications and experience as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

BACKGROUND

11. The Crown currently holds land in Wānaka, effectively on trust, pending transfer pursuant to the Ngāi Tahu Deed of Settlement 1997 and the Ngāi Tahu Claims Settlement Act 1998. This land is commonly called **Sticky Forest** (in this evidence I will also call it the **Hāwea / Wānaka SILNA Substitute land**). The Hāwea / Wānaka SILNA Substitute land is administered by Te Arawhiti.

12. The Hāwea / Wānaka SILNA Substitute land is currently zoned 'rural' but two of those who will receive the land on transfer (Ms Rouse and Mr Bunker) have sought that a portion of the land be re-zoned to a combination of Large Lot Residential and Low Density Residential zones. That rezoning appeal has recently been heard and I provided planning evidence for the Attorney-General. The inclusionary housing provisions, as proposed by Council, would apply to this Hāwea / Wānaka SILNA Substitute land.

13. The evidence of Ms King for Te Arawhiti explains the background and context of the Hāwea / Wānaka SILNA Substitute land.

14. Te Arawhiti lodged a submission seeking an exemption from proposed Rule 40.6.1(3) for the Hāwea / Wānaka SILNA Substitute land because that land is Treaty settlement land.

15. My evidence addresses the relief sought in Te Arawhiti's submission.

RELEVANT POLICY FRAMEWORK

16. The status of this land as SILNA Substitute land and as redress for past breaches of the Treaty of Waitangi / Te Tiriti o Waitangi is relevant to the planning consideration. It engages provisions in the Otago regional policy statements, and iwi management plans, as they relate to Māori issues and outcomes sought, and raises issues in relation to the application of Part 2 RMA.

17. In addition to the policy framework noted in Appendix 2 of the Council's s32 report and those relied upon in the s42A report, there are additional provisions in the relevant policy framework that I consider to be engaged. The provisions sit within the following documents and are discussed below:

    17.1 The Partially Operative Otago Regional Policy Statement 2019 (**POORPS 2019**);

    17.2 The Proposed Otago Regional Policy Statement 2021 (**PORPS 2021**), which is in two parts, but of relevance to these proceedings is the part known as "Non-Freshwater Parts". (As this is still proposed and progressing through the plan-making process, I acknowledge the relevant obligation is for the Panel in this Variation to have regard to the provisions of the PROPS 2021 and the Variation must give effect to the operative provisions of the POORPS 2019);

    17.3 Iwi management plans Kāi Tahu ki Otago Natural Resource Management Plan 2005 and Te Tangi a Tauira (The Cry of the People) Ngāi Tahu ki Murihiku 2008; and

    17.4 The QLDC Proposed District Plan strategic direction chapters.

18. I understand that Part 2 of the RMA is also engaged so far as the higher order policy documents and proposed district plan provisions do not 'cover the field'. I discuss Part 2 matters further below.

Regional Policy Statements

19. The provisions of the RPSs that Council considered relevant are in Appendix 2 to the s32 report. I consider the following provisions to be relevant also, which were not mentioned in the s32 or s42A reports:

POORPS 2019 and PORPS 2021

19.1 Objective 2.1 of the POORPS 2019 requires that the principles of the Te Tiriti o Waitangi are taken into account in resource management decisions. Objective MW-01 of the PORPS 2021 has a stronger requirement that the principles of Te Tiriti o Waitangi are given effect to in resource management decisions; and

19.2 Policy 2.1.2 of the POORPS 2019 requires, among other things, that District Plans give effect to the Ngāi Tahu Claims Settlement Act 1998.

20. I assess the principles of Te Tiriti o Waitangi in my Part 2 assessment below. Overall, I consider the relief sought by Te Arawhiti gives effect to the provisions in higher order planning documents regarding the Treaty principles (POORPS Objective 2.1 and PORSP Objective MW-01), whereas the Council's proposal does not.

21. Ms Pull's evidence expands on this point in relation to the PORPS. Should the additions to the PORPS proposed in the Council's s42A report for the PORPS (noted in Ms Pull's evidence) be included, then that would further support Te Arawhiti's proposed relief.

Iwi Management Plans

22. Two Iwi Management Plans are recognised by QLDC and have application in the District, being Aukaha's Kai Tahu Ki Otago Natural Resource Management Plan 2005 (**KTKO NRMP**) and Te Ao Marama Inc's (TAMI) Te Tangi a Tauira (The Cry of the People) for and by Ngāi Tahu ki Murihiku 2008 (**Te Tangi a Tauira**).

23. These iwi management plans must be taken into account under s74 of the

RMA when changing a district plan.

24. The relevant objectives of Te Tangi a Tauira relate to a requirement that the principle of tino rangatiratanga be enhanced and that plan users understand the principles of the Treaty of Waitangi.

25. The KTKO NRMP in section 4.2.5 outlines Treaty Principles, which the IMP notes are as enunciated by the Waitangi Tribunal and the courts, as:

25.1 The principle of the government's right to govern. This is recognised and acknowledged by Kāi Tahu;

25.2 The principle of tribal rakātirataka/self-regulation. That Iwi have the right to organise as Iwi and, under the law, to control and manage important resources;

25.3 The principle of partnership. That both Treaty partners will act reasonably and in the utmost good faith;

25.4 The principle of active participation in decision-making. That the Treaty partners will ascertain each other's views and be willing to accommodate them;

25.5 The principle of active protection. That the Crown will actively protect Māori in the use and management of their resources;

25.6 The principle of redress for past grievances. That the Crown will take active and positive steps to redress past grievances and will avoid actions that prevent redress.

26. The KTKO NRMP then notes "The principles as enunciated by the Courts are fluid and include the Te Rūnanga o Ngāi Tahu Principles".

27. I discuss these principles further below.

Proposed District Plan Strategic Direction

28. The s32 and s42A reports for this Variation do not reference Chapter 5 Tangata Whenua of the PDP.

29. As Ms Pull outlines in her planning evidence for TRONT, the PDP Chapter

5 incorrectly states *"The Ngāi Tahu Claims Settlement Act 1998 relates to remedying breaches of the Treaty of Waitangi and does not cover Maori Freehold and South Island Landless Natives Act lands."*

30. The Ngāi Tahu Claims Settlement Act 1998 does relate to SILNA land.

31. Chapter 5 Objective 5.3.4 is *The Sustainable Use of Māori Land.* The related policy is policy 5.4.3.1 which states: "Enable Ngāi Tahu to protect, develop and use Māori land in a way consistent with their culture and traditions, and economic, cultural and social aspirations including papakainga housing."

31.1 The QLDC PDP does not define "Māori Land". The Hāwea / Wānaka SILNA Substitute land is listed in Pātaka Whenua (previously Māori Land Online), and the owners will have the opportunity to decide whether to receive this land as Māori freehold land under the Te Ture Whenua Māori Act 1993 or as general land. Regardless, of whether the land transfers as Māori freehold, it will be held and owned for the benefit of Māori individuals in fulfilment of SILNA obligations. While the land is currently owned by the Crown, it is land which has been committed to return to Māori individuals as part of a Treaty settlement and it is not clear to me that the Plan limits 'Māori land' only to land which has the status of Māori freehold land. I consider the Hāwea / Wānaka SILNA Substitute Land to be Māori Land for the purpose of PDP Objective 5.3.4 *The Sustainable Use of Māori Land*.

31.2 I understand that the intended owners of the Hāwea / Wānaka SILNA Substitute land whakapapa in the main to Ngāi Tahu. The objectives and policies in chapter 5 refer to "Ngāi Tahu" and the introductory section discusses Ngāi Tahu generally. When provisions in chapter 5 talk about "Ngāi Tahu" I therefore understand this to include people who whakapapa to Ngāi Tahu, rather than being limited to a reference only to the iwi or hapū as a collective.

32. I consider the relief sought by Te Arawhiti to be the best way to implement objective 5.3.4 and policy 5.4.3.1 because:

32.1 as the s42A report acknowledges in [4.19], there are costs anticipated from imposing requirements for affordable housing contributions such as additional transaction / consenting costs for those who wish to develop land for residential use, and the possibility of some housing developments being delayed, not proceeding or having to be sold at a higher price to offset increased costs;

32.2 Ms King discusses the difficulties that come with collective ownership and barriers to utilising Māori land. The costs noted in the s42A report would add a further layer of difficulty for the future owners of the Hāwea / Wānaka SILNA Substitute land;

32.3 Ms King also discusses the fact that the Hāwea / Wānaka SILNA Substitute land is Treaty redress land in fulfilment of land originally promised under the South Island Landless Natives Act to provide those who had lost the ability to support themselves with an economic base after extensive land purchases in the South Island. This land was committed for transfer to the future owners in 1997 when the Ngāi Tahu Deed of Settlement was signed. Since then, the owners have been waiting to receive their land and they have historically been deprived of the ability to utilise land because of breaches of the Treaty of Waitangi. This is an unusual context which, in my opinion, sets this land apart from land that has been purchased by a commercial developer to subdivide and develop for residential use. Imposing a requirement to contribute 5% of any development for inclusionary housing on the Hāwea / Wānaka SILNA Substitute land will likely impose the costs that the s42A report discusses onto the future owners, in addition to the existing difficulties they may encounter in using their land.

32.4 The rezoning proposal which has been pursued by Mr Bunker

and Ms Rouse in the Environment Court demonstrates that at least some of the future owners have aspirations to develop and use the Hāwea / Wānaka SILNA Substitute land for residential activities. I do not consider that this Variation will enable the development and use of the Hāwea / Wānaka SILNA Substitute land in a way consistent with those aspirations and will impose provisions that may prevent those aspirations from being achieved.

33. I acknowledge that the term 'Māori land' in the Plan may be given a narrower meaning than the one I have considered above. A court or a future council decision-maker may find that the term only relates to Māori customary land and Māori freehold land under Te Ture Whenua Māori Act 1993. Should that alternative narrower definition be applied, then Chapter 5 does not contain any guidance relating to the Hāwea / Wānaka Substitute land.

RMA Part 2 Matters

34. I understand that where the relevant District Plan and higher order planning documents do not cover the field, an assessment against Part 2 RMA is appropriate to deal with the matters not covered. Moreover, I understand that the obligation in s 8 to have regard to the principles of the Treaty of Waitangi must always be kept in mind.

35. I consider the District Plan and regional policy statements are limited in their assistance to guide decision-making in respect of the unique features of the Hāwea / Wānaka SILNA Substitute land and the unusual Treaty settlement context in play, though the regional policy statements and iwi management plans do provide some general guidance in respect of Treaty principles.

36. Aside from the incorrect reference to SILNA noted above, there is no other reference to SILNA land in PDP Chapter 5. Many of the PDP tangata whenua provisions do not appear directly relevant to this context. Chapter 3 has provisions in relation to the partnership between Council

and Ngāi Tahu and on cultural effects. None of those policies apply to this context. While I consider the Chapter 5 provisions that relate to Māori land may be able to be applied, that interpretation is not certain and it appears that neither chapter 3 nor 5 of the PDP was written with SILNA matters, or the context of the Hāwea / Wānaka Substitute Land, in mind.

37. Section 6(e) requires that decisions on the Variation must recognise and provide for "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga." I understand that it is a legal issue as to how this section applies in relation to the Hāwea / Wānaka SILNA Substitute land and I will defer to legal submissions on this point.

38. Section 8 of the RMA requires, that in achieving the purpose of the RMA, the principles of the Treaty of Waitangi shall be taken into account. The POORPS 2019 objective 2.1 requires the principles of Te Tiriti o Waitangi are taken into account and requires that District Plans (policy 2.1.2) give effect to the Ngāi Tahu Claims Settlement Act 1998. The PORPS 2021 requires the principles of Te Tiriti o Waitangi are "given effect" in resource management processes and decisions.

39. My understanding of the Treaty principles as they relate to this Variation is:

    39.1 The principle of partnership imports an obligation to act reasonably and in good faith, and to keep the interests of all of the future owners in mind in considering the most appropriate planning provisions for the Hāwea / Wānaka SILNA Substitute land.

    39.2 The principles of active protection and rangātiratanga require consideration of whether the District Plan provisions relevant to the land promote the development and social and economic wellbeing of the intended owners.

    39.3 The principle of redress is relevant because of the status of the land as redress for past breaches of the Treaty of Waitangi. The

land has a unique history and status as SILNA land and the planning provisions which apply should not unduly restrict the use and development of this land.

40. I consider an exemption for the Hāwea / Wānaka Substitute Land would be more consistent with the principles articulated above. I understand this will be discussed further in legal submissions on behalf of Te Arawhiti.

RESPONSE TO S42A REPORT

41. I have read the s42A report prepared by Mr Mead for the Council.

42. Submissions form Te Arawhiti, TRONT, Aukaha Ltd and Te Ao Marama Inc, and Mr Bunker and Ms Rouse all seek that the Hāwea / Wānaka SILNA Substitute land be excluded from the inclusionary housing provisions.

43. The response to these submissions is discussed at paragraph 8.26 and 8.27 of the s42A report. In addition to the response to the s42A report in Ms Pull's planning evidence, I make the following comments.

44. The s42A officer appears to have assumed that the land referred to in Te Arawhiti's submission is held by iwi. The s42A report comments that "the relevant land will be in iwi ownership in perpetuity", and recommends that the relief sought by Te Arawhiti, TRONT, Aukaha, and Mr Bunker & Ms Rouse, is declined, but that policy 40.2.1.5 could in future be amended to reference provision for papakāinga housing.

45. The Hāwea / Wānaka SILNA Substitute land is not land owned by Te Rūnanga o Ngāi Tahu, and the future owners are a number of individuals. Further, these individuals will not necessarily want to develop the land as papakāinga. Suggesting that increased provision for papakāinga may assist does not answer the core issue raised in submissions.

46. I consider that the s42A report does not recognise that Hāwea / Wānaka SILNA Substitute land is redress land, nor that it is not owned by iwi. I consider the recommended rejection of Te Arawhiti's relief did not recognise the appropriate policy context, which I have discussed above. It does not appear that the Council has asked the experts who gave input

into the s42A Report to consider the unique and unusual situation in respect of the Hāwea / Wānaka SILNA Substitute land. I could not find any discussion in the reports attached to the s42A Report which supported Mr Mead's conclusions and recommendations in respect of Te Arawhiti's submission.

SECTION 32AA ANALYSIS IN RELATION TO EXEMPTION PROPOSED BY TE ARAWHITI

47. A further evaluation pursuant to s32AA is required for changes to the proposal since the s32 report was completed, at a level of detail that corresponds to the scale and significance of the changes.

48. The objectives of this proposal are the proposed new objectives 3.2.1.10 and 40.2.1. Those objectives are:

    48.1 to provide affordable housing choices for low to moderate income households in new residential developments so that a diverse and economically resilient community representative of all income groups is maintained into the future (objective 3.2.1.10), and

    48.2 provision of affordable housing in a way and at a rate that assists with providing a range of house types and prices in different locations so as to support social and economic wellbeing and manage natural and physical resources, in an integrated way (objective 40.2.1).

49. The proposed financial contribution would take the form of land or money, depending on whether the land is subdivided and how many lots are created. If the rezoning sought in the Environment Court is successful, it is conceivable that more than 20 lots could be created on the Hāwea / Wānaka SILNA Substitute land. That would require a contribution of land, according to the proposed standard 40.6.1. It is counterintuitive to require the individuals who will soon receive this land as a Treaty settlement asset to then give a portion of their redress land to the Council to support other social wellbeing initiatives in the district if they wish to

make use of the land for residential use or development to realise the outcomes that were promised to their ancestors under SILNA (explained by Ms King).

50. Exempting the Hāwea / Wānaka SILNA Substitute land from the requirement to provide affordable housing contributions would not hinder achievement of the objectives of this Variation – the exemption would be narrow and relates to just one block of land which has unique circumstances.

51. The second objective refers directly to supporting social and economic wellbeing and managing resources in an integrated way. The exemption for the Hāwea / Wānaka SILNA Substitute land is based on supporting the social and economic wellbeing of the future owners of the Hāwea / Wānaka SILNA Substitute land, who have been waiting for over 100 years to receive their compensation for historical Treaty breaches committed against their ancestors and acknowledged in the Ngāi Tahu Deed of Settlement. As Ms King and Ms Stevens explain, there will be barriers to using that land arising out of its collective ownership and possibly out of the status of the land. The potential costs of the affordable housing contribution could operate to disincentivise use of the land for residential activities or development.

52. If the inclusionary housing provisions apply to the Hāwea / Wānaka SILNA Substitute land, then the contributions collected from any development may have some wider benefits for the district. However, securing those potential benefits for the wider district in relation to the Hāwea / Wānaka SILNA Substitute land (assuming the imposition of the requirement to compensate did not itself deter any development) will have direct disbenefits for those future owners who are waiting to receive compensation for the historical Treaty breaches suffered by their ancestors.

53. An exemption would therefore better enable the aspirations of the future owners and would more appropriately achieve the objectives of the Variation by avoiding the costs associated with the Variation on the

Hāwea / Wānaka SILNA Substitute land. A narrow exemption for the Hāwea / Wānaka SILNA Substitute land is consistent with the second part of objective 40.2.1, as it would support the social and economic wellbeing of the future owners and will support integrated management by accounting appropriately for the Treaty settlement context of the Hāwea / Wānaka SILNA Substitute land while providing for affordable housing in the district.

54. The affordable housing objectives (and their associated district-wide benefits) can be achieved without requiring contributions from this Treaty settlement land. Exempting the Hāwea / Wānaka SILNA Substitute land will be consistent with Treaty principles (as discussed in KTKO NRMP) and the provisions in chapter 5 (assuming my interpretation of "Māori land" is correct) and/or (if my interpretation of "Māori land" is incorrect) Part 2 of the RMA.

RECOMMENDATIONS

55. I recommend that the relief sought by Te Arawhiti is granted, as per its submission:

55.1 the Hāwea / Wānaka SILNA Substitute land should be excluded from the Inclusionary Housing Variation requirements, and specific reference to this land should be included in the exemption at rule 40.6.1.

55.2 that the following be added to proposed Rule 40.6.1(3) Exemptions to provide for this relief: ***e. any residential subdivision or development on Sticky Forest as shown on the map at schedule 40.9.1.xx***

56. One further matter relates to the name "Sticky Forest". I consider that this land should be referred to in the Plan as Hāwea/Wānaka Sticky Forest. The Panel in Plan Change 54 to the ODP decided that reference to Sticky Forest should be changed to "Hāwea/Wānaka Sticky Forest".

57. I agree with Ms Pull's recommendation that the Hāwea / Wānaka SILNA

Substitute land should also be noted in policy 40.2.1.4 as land not being subject to the affordable housing contribution.

CONCLUSION

58. Overall, I consider it would be inappropriate to require a financial contribution on redress land for the proposed wider community benefit.

59. I consider the relief sought be Te Arawhiti to be the most appropriate way to achieve the purpose of the RMA, and other relevant planning documents.

Katrina Ellis

19 December 2023