

**Before the Queenstown Lakes District Council Proposed District Plan
Hearings Panel**

Under the Resource Management Act 1991

In the matter of the Proposed Queenstown Lakes District Plan (Chapters 21 -
Rural, 22 - Rural Residential and Rural Lifestyle and 23 -
Gibbston Character Zone)

**Legal submissions on behalf of
the New Zealand Fire Service Commission
submitter # 438**

Date: 19 May 2016



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Introduction

- 1 The New Zealand Fire Service Commission (**Commission**) is a submitter and further submitter on Chapters 21, 22 and 23 of the Proposed Queenstown Lakes District Plan (**Plan**).

The Commission

- 2 The Commission is the governing body for the New Zealand Fire Service (**NZFS**) and exercises the functions of the National Rural Fire Authority. The role of the Commission is set out in more detail in the evidence of Keith McIntosh provided for the Strategic Direction Chapter, dated 2 March 2016.
- 3 The primary duty of the NZFS is to provide for the prevention, suppression and extinction of fire, and the safety of persons and property endangered by fire.
- 4 The focus of these legal submissions is on the relief sought by the Commission to include standards in all zones that require compliance with the NZFS Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 (**Code of Practice**) (and associated matters of discretion).
- 5 The other submission points are addressed in the evidence of Ainsley McLeod, dated 21 April 2016.

Operational requirements

- 6 The relief sought is driven by the need to ensure access to, and an adequate supply of, water for firefighting purposes. This is to ensure that fires are able to be controlled and extinguished. This is not generally an issue where there is a reticulated water supply, but is an issue where there is no reticulated system.
- 7 It is an issue for both rural and urban areas. The Commission is seeking a consistent approach to the issue across all areas.

8 The provision for water needs to be provided for in a strategic sense, as well as through appropriate development controls. The Code of Practice sets out what is required in terms of water supply and access and it provides flexibility to address specific cases.

Reference to a New Zealand Standard

9 The ability to include reference to documents outside of the Plan has long been recognised as appropriate. This is directly through section 75(5) of the RMA and Part 3 of Schedule 1.

10 The Code of Practice was included within the list of documents to be incorporated by reference as part of the 23 September 2015 notice.

11 There is no jurisdictional barrier to the inclusion of reference to the Code of Practice within the Plan.

12 The Code of Practice is a New Zealand Standard and it is appropriate to include reference to it within the Plan. It is also considered more appropriate to include reference to the Code of Practice as a whole, as opposed to extracts.

13 The relief sought is the inclusion of the following standard:

Table 2	General Standards	Non-compliance Status
<u>21.X.X</u>	<p><u>Firefighting water supplies and access</u></p> <p><u>Where there is no reticulated water supply, new buildings (excluding accessory buildings that are not habitable buildings) shall have sufficient water supply and access to water supplies for firefighting purposes in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.</u></p> <p><u>Discretion is restricted to all of the following matters:</u></p> <ul style="list-style-type: none"> • <u>The extent to which New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 can be met.</u> • <u>The accessibility of water supply to fire service vehicles.</u> • <u>Whether, and the extent to which, the building is assessed as a low fire hazard risk.</u> 	<u>RD</u>

Council's jurisdiction to address water supply

- 14 The supply of firefighting water and access to it is an issue that falls within the Council's jurisdiction under the District Plan.
- 15 Fire and the effects resulting from this occurring are an effect that is covered by the definition of effect in section 3 of the RMA. It is an effect that is of low probability which has a high potential impact – the potential loss of life and / or property.
- 16 The Council's functions are set out in section 31 of the RMA. As relevant, section 31(1) states:
- (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
 - (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
 - (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of -
 - (i) the avoidance or mitigation of natural hazards; ...
- 17 In addition to being an effect that the Council is able to regulate, the regulation of the provision of and access to adequate supplies of fire fighting water comes within both section 31(1)(a) of the RMA in terms of the protection of land and associated physical resources of the district, and section 31(b) of the RMA for the mitigation of natural hazards.
- 18 While the regional council's functions include the regulation of the use of water (section 30)(1)(e) and (fa) of the RMA), it is the district council's role to regulate the control of land development and effects on it.

19 Addressing the risk of fire in this way is similar to other hazard mitigation measures proposed by the Council. For example, those measures that address development in flood risk areas.

20 It is submitted therefore that it is appropriate for the Council to include rules in its Plan requiring compliance with the Code of Practice for new subdivision and development activities.

Flexible nature of standard

21 The section 42A reports are critical of the flexible nature of the Code of Practice.

22 The flexible nature of the Code of Practice acknowledges that there is more than one way to mitigate loss from fire, and that there is no one size fits all approach to that mitigation. The provision of 45,000L of water is the bare base requirement for non-sprinklered dwellings on a non-reticulated water supply but other measures, such as sprinkler systems or access to open water supplies (ie ponds), can be factored in to reduce the volume of water required.

23 In addition, the Code of Practice addresses much more than just the volumetric supply of water. It also addresses the accessibility of that water in terms of fire appliances and connections.

24 In this light it is considered to be more appropriate to include reference to the Code of Practice as a whole as opposed to setting a strict volumetric threshold.

25 If a volumetric threshold was set, this would result in a more rigid requirement than the Code of Practice provides. If the volumetric threshold is set at 45,000L developers may need resource consent because of a breach of this standard. Consent would be required even when the Commission considered that other factors present mean that a lower volume of water still complied with the Code of Practice. The cost of an unnecessarily high volume of water would also be imposed on developers. The Commission would need to be involved as a submitter

on any such resource consents to ensure an acceptable outcome was achieved.

- 26 If the volumetric threshold is set too low, development may occur in the absence of appropriate provision of water supplies which may result in unnecessary loss to property or life if a fire were to occur. A low threshold could remove the ability for the Commission to be involved in the process.
- 27 Reference to compliance with the Code of Practice allows for this flexibility to be realised by the Council and developers.
- 28 This is not the case where the permitted activity standard results in uncertainty as to whether an activity is permitted or not.
- 29 The requirement of compliance with the Code of Practice is clear. If the Code of Practice is complied with (ie by providing 45,000L or an alternative amount approved by NZFS), the activity will be permitted. If not complied with, resource consent will be required. It is sufficiently certain to be understandable and functional.¹
- 30 The manner in which compliance with the Code of Practice is satisfied is either by meeting the volumetric requirements in Table 2 or by approval from NZFS to a different amount. This is set out in the Code of Practice itself (refer paragraphs 4.3 and 4.4 of the Code of Practice, page 18). This is no different to other permitted activities where written approvals or concessions are required.
- 31 For example, Rule 21.5.25.1 allows as a permitted activity on public conservation and crown pastoral land, informal airports where they are operating in accordance with a concession issued pursuant to section 12 of the Conservation Act 1987.

¹ *A R and M C McLeod Holdings Ltd v Countdown Properties Ltd* (1990) 14 NZTPA 362, at p 28.

32 Other rules such as Rule 8.5.2 require certificates to be provided stating compliance with certain standards (in that case noise insulation), for an activity to be permitted.

33 It is submitted that there is no difficulty from a legal perspective of including the Code of Practice as sought within the Plan.

Memorandum of Understanding

34 The section 42A reports for the Rural and Gibbston Character Zone Chapters attached the existing MOU in place between the Council and the Commission. The existence of the MOU has already been discussed with the Panel at the Strategic Direction Chapter hearing.

35 The Commission submits that the existence of the MOU does not prevent the need to include reference to the Code of Practice in the Plan, or detract from the appropriateness to do so.

36 The Commission has a history of working with district councils throughout the country, including QLDC, to address concerns with fire fighting water supplies. As part of that process MOUs are often entered into in order to practically address an absence of other available mechanisms. This is particularly so where the issue is not dealt with in district plans and where there is no proposed upcoming plan review.

37 Sometimes the MOUs include reference to the 20,000L concession as pragmatic response for particular types of buildings in particular locations. While it is considered that the requirements in the MOU still result in a solution that complies the Code of Practice, compliance with the Code of Practice is preferable. This is discussed in the evidence of Keith McIntosh.

38 Nevertheless, the Commission is constantly learning about how different people interact with and implement the Code of Practice.

39 In light of those learnings and when opportunities arise, the Commission is now looking to adopt a more sophisticated approach that involves full

compliance with the Code of Practice as a requirement of district plan rules, while ensuring that its application is well understood, transparent, and that the case-specific flexibility it offers is realised.

40 The Commission expects that this approach will result in better outcomes than a blanket/one-size-fits-all volumetric limit.

41 The preference is therefore for the Plan to refer to compliance with the Code of Practice and not to other thresholds or only parts of the Code of Practice.

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