

**BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL PROPOSED
DISTRICT PLAN HEARINGS PANEL**

IN THE MATTER of the Resource Management Act 1991

AND the proposed Queenstown Lakes District Plan
(Chapter 21 – Rural, Chapter 22 – Rural Residential
and Rural Lifestyle and Chapter 23 – Gibbston
Character Zone)

**STATEMENT OF EVIDENCE OF AINSLEY JEAN MCLEOD ON BEHALF
OF THE NEW ZEALAND FIRE SERVICE COMMISSION
(Submitter No. 438 and Further Submitter No. 1125)**

the 21st day of April 2016



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1. INTRODUCTION

- 1.1 My full name is Ainsley Jean McLeod. I hold the position of Technical Director of Planning at Beca Limited. I am engaged by the New Zealand Fire Service Commission (**the Commission**) to provide expert planning evidence in relation to the Commission's submission, and further submissions, on the Queenstown Lakes District Proposed District Plan (**proposed District Plan**).
- 1.2 This is the second statement of evidence prepared by me, and filed by the Commission, in relation to the proposed District Plan. My qualifications and relevant experience have been set out in my first statement of evidence.¹
- 1.3 My evidence specifically addresses:
- (a) the Commission's submission, and further submissions, on Chapters 21, 22 and 23 – Rural, Rural Residential and Rural Lifestyle and Gibbston Character Zone respectively; and
 - (b) the 'Section 42A Hearings Reports' dated 6 and 7 April 2016.
- 1.4 For the purposes of my evidence I rely upon the evidence of **Mr Keith McIntosh**, including his earlier evidence filed in relation to Chapter 3 – Strategic Direction. Mr McIntosh's earlier evidence details the Commission's role, responsibilities, property interests in the Queenstown Lakes District and interests in the proposed District Plan.²
- 1.5 My evidence should also be read in conjunction with my earlier evidence and, to avoid repetition, I rely on that evidence insofar as it is relevant to the Commission's submissions on Chapters 21, 22 and 23. My earlier evidence supports the inclusion of a new Objective and accompanying Policies in Chapter 3 to specifically enable emergency services.³
- 1.6 In preparing this evidence I have reviewed the following documents:
- (a) the Section 42A Hearings Reports and Section 32 Reports;

¹ A McLeod, Statement of Evidence, Chapter 3 - Strategic Direction, 26 February 2016, paragraphs 1.1 to 1.3.

² K McIntosh, Statement of Evidence, Chapter 3 – Strategic Direction, 2 March 2016.

³ A McLeod, Statement of Evidence, Chapter 3 – Strategic Direction, 26 February 2016.

- (b) the redrafted Chapters accompanying the Memorandum of Counsel on behalf of Queenstown Lakes District Council (**the Council**) dated 13 April 2016;
- (c) The Council's public notice of its "Proposal to Incorporate Material by Reference in the Proposed Queenstown Lakes District Plan (Stage 1)", dated 23 September 2015;
- (d) the operative Regional Policy Statement for Otago 1998 (**operative ORPS**);
- (e) the proposed Regional Policy Statement for Otago 2015 (**proposed ORPS**) including the associated Section 42A Report on Decisions Requested and the summary of submissions received; and
- (f) NZS PAS 4509 New Zealand Fire Service Firefighting Water Supplies Code of Practice 2008 (**Code of Practice**).⁴

2. CODE OF CONDUCT

- 2.1 In accordance with the 'Minute and Directions of Hearings Commissioners on Procedures for Hearing of Submissions' dated 25 January 2016, I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's 2014 Practice Note. I have complied with the Practice Note when preparing my written statement of evidence, and will do so when I give oral evidence before the hearings panel.
- 2.2 My qualifications as an expert are reference above. I confirm that the issues addressed in this brief of evidence are within my areas of expertise.
- 2.3 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. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

⁴ Included as Attachment B to Mr McIntosh's evidence.

3. THE COMMISSION'S SUBMISSION, AND FURTHER SUBMISSIONS, ON CHAPTERS 21, 22 AND 23

3.1 The Commission's submission seeks:

- (a) the inclusion of a Standard that requires compliance with the Code of Practice across all zones (including associated Matters of Discretion);
- (b) the retention of Objective 22.2.4; and
- (c) the retention of Rule 23.4.19.

3.2 The Commission's further submissions:

- (a) support the primary submission made by the Ministry of Education that seeks the inclusion of Objectives, Policies and Rules to provide for community facilities and community activities in the Rural Zone;⁵ and
- (b) support the revised wording of Objective 22.2.2 promoted in the primary submission of Lake Hayes Limited.⁶

3.3 In the remainder of my evidence I specifically address the relief sought in the Commission's submissions. In this regard, the consideration included in my evidence is made in the context of the statutory framework for decisions on the proposed District Plan set out in the Resource Management Act 1991 (**RMA**) and the on-going guidance provided by the modified *Long Bay* test.⁷ I also acknowledge that the Hearings Panel is required to undertake a re-evaluation of changes to the proposal under section 32AA of the RMA and I therefore address the relevant matters in section 32(1)-(4) where appropriate to do so.

4. COMMUNITY FACILITIES AND ACTIVITIES

4.1 The Commission's further submission supports the Ministry of Education's submission seeking the inclusion of Objectives, Policies

⁵ Submission number 524.

⁶ Submission number 763.

⁷ *Long Bay – Okura Great Park Society v North Shore City Council* EnvC A078/2008, 16 July 2008, at [34], *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387 and *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC 55.

and Rules in Chapter 21 to provide for community facilities and community activities in the Rural Zone. In this regard I note that 'community activity' is defined as including 'fire stations' and, as such, is relevant to the Commission.

- 4.2 Appendix 2 to the Section 42A Report includes a recommendation that the Ministry of Education's submission point be rejected on the basis that the provisions in the plan are appropriate. The Section 42A Report concludes at paragraph 8.24 that:

"... I consider that the overall approach of the Rural Zone chapter policy framework is adequate in that it provides for farming activity while contemplating non-farming activities on a case by case basis. The requests to elevate activities such as commercial tourism ... alongside farming are not supported."

- 4.3 On this basis, the Recommended Revised Chapter⁸ makes no provision for community activities either in the objectives, policies and rules, and therefore a new fire station would require resource consent as a non-complying activity under Rule 21.4.1.

- 4.4 An application for resource consent for a new fire station under Rule 21.4.1 would be subject to the statutory test in section 104D of the RMA and, in situations where the adverse effects of a fire station are not minor, the new fire station must not be contrary to the objectives and policies of the District Plan. Given that the Objectives and Policies in Chapter 21 do not make any specific mention of community activities, but provide for a range of other non-farming activities such as commercial, retail and industrial activities in certain circumstances (Objective 21.2.9 and Policy 21.2.9.2), I consider that the provisions in Chapter 21 go beyond the case by case assessment suggested in the Section 42A Report and may effectively prevent community activities in Rural Zones by giving rise to a situation where resource consent could not be granted.

- 4.5 Further, I do not consider that the Section 42A Report has specifically considered the potential effects of community activities in the Rural Zones, particularly in comparison to commercial, retail and industrial activities that are anticipated by Objective 21.2.9 and Policy 21.2.9.2,

⁸ Included as Appendix 1 to the Section 42A Report.

such that non-complying activity status is warranted or the most appropriate way to achieve the purpose of the RMA. In terms of fire stations, it is my opinion that the building scale and potential adverse effects of a fire station in a rural setting are limited and can typically be managed by bulk and location standards that would apply to other buildings in a rural zone.

- 4.6 While, I acknowledge that none of the six existing fire stations within Queenstown Lakes District are located in the Rural Zone and I also accept the evidence given by Mr McIntosh at the Chapter 3 – Strategic Direction hearing that the Commission has no plans to build new fire stations outside of the urban areas, I consider it appropriate for the Proposed District Plan to contemplate a scenario where there might be a change in circumstances, particularly given the ‘life’ of a district plan and the current fire service review that will bring together urban and rural fire services together into one unified fire services organisation.⁹
- 4.7 I therefore support the relief sought by the Ministry of Education and consider that the inclusion of a suite of provisions that appropriately provide for community activities, and particularly emergency service facilities, in the Rural Zone better:
- (a) enables the Commission to achieve its statutory obligations under the Fire Service Act 1975 (**FSA**);
 - (b) implements Objective 3.2.6.3 (and accompanying Policies);¹⁰
 - (c) implements the proposed new Objective and Policies supported in my earlier evidence (and as amended by a Memorandum of Counsel for the Commission following the Chapter 3 hearing);
 - (d) has regard to (and in the future ‘gives effect to’) Policies 3.4.3 and 3.4.4 of the proposed ORPS;¹¹ and
 - (e) achieves the purpose of the RMA by enabling people and community to provide for their health, safety and well-being.

⁹ <https://www.dia.govt.nz/Fire-Services-Review>.

¹⁰ As included in Council’s Right of Reply dated 7 April 2016.

¹¹ My earlier evidence (paragraph 4.5 and 4.6) confirms that I give substantial weight to the proposed ORPS on the basis that no submissions have sought to substantially amend or ‘dilute’ the policies that relate to emergency services.

4.8 The Commission's further submission also supports the revised wording of Objective 22.2.2 that is proposed in the submission of Lake Hayes Limited in order to better express the Objective as an outcome. I note that the wording amendments proposed are included in the redrafted Chapters accompanying the 13 April 2016 Memorandum of Counsel on behalf of the Council and, as such, also respond to the matters raise in the Hearings Panel's Fourth Procedural Minute dated 8 April 2016.

5. INCLUSION OF THE NEW ZEALAND FIRE SERVICE FIREFIGHTING WATER SUPPLIES CODE OF PRACTICE

The Commission's Submission

5.1 The Commission's submission seeks the inclusion of standards requiring compliance with the Code of Practice in all zones, including an associated 'default' to requiring resource consent for a restricted discretionary activity and related 'matters of discretion'. I am not aware of any further submissions opposing the relief sought by the Commission.

Section 42A Reports - Recommendations

5.2 The Section 42A Reports for Chapters 21, 22 and 23 all address the Commission's submission. These Reports support "*the management of this issue because it is important*" but express reluctance to include the Code of Practice in the Proposed District Plan as this approach would:

- (a) rely on the Code of Practice and direct people to outside of the plan (for permitted activity status);
- (b) rely on the entire Code of Practice that provides more discretion than is considered legal, practical or fair;
- (c) require the Council to undertake a plan change if the Code of Practice is updated.

5.3 The Reports goes on to note that the Council¹² and the Commission have an agreement in relation to the standard resource consent conditions for firefighting water supply that should apply to

¹² Via Lakes Environmental Limited.

developments in non-reticulated areas and that these conditions require, amongst other matters, 20,000 litres of water for firefighting purposes rather than the 45,000 litres that is generally required by the Code of Practice.¹³ The Section 42A Report concludes that agreement “conflicts” with the Code of Practice and therefore it is not appropriate to broadly apply the Code of Practice as a rule.

5.4 The Reports conclude by recommending that:

- (a) no additional Standard is necessary in the case of the Rural, Rural Lifestyle and Gibbston Character Zones “*because there are not any permitted activity development rights for habitable buildings ...*”;
- (b) a Standard be included in 22.5 (Rural Lifestyle Zone) that requires a firefighting water supply, but does not reference the Code of Practice (except in terms of the matters of discretion); and
- (c) a new Policy be included to implement Objective 22.2.1 if the Hearings Panel do not accept the revised relief sought by the Commission in Chapter 3 – Strategic Direction.

5.5 In all, I consider the importance of firefighting water supply, and associated access, is not questioned by further submissions or the Section 42A Reports. This is consistent with the conclusions I reached in my earlier evidence in relation to Chapter 3 – Strategic Directions.¹⁴ However, the Section 42A Reports raise two issues in relation to the relief sought by the Commission as follows (and addressed in turn):

- (a) the necessity of a Standard across all relevant zones; and
- (b) the content of a firefighting water supply and access Standard.

Necessity of a Firefighting Water Supply Standard

5.6 The Section 42A Reports have concluded that a firefighting water supply standard is not necessary in the Rural, Rural Lifestyle and Gibbston Character Zones because habitable buildings cannot be developed as permitted activities.

¹³ The agreement is attached as Appendix 5 to the Chapter 21 Rural Zone Section 42A Report and is the same agreement that was briefly considered in the Chapter 3 – Strategic Direction hearing (including in my earlier evidence at paragraph 4.11).

¹⁴ A McLeod, Statement of Evidence, Chapter 3 – Strategic Directions, summarised at paragraph 4.2.

- 5.7 I do not agree with this conclusion because the Section 42A Reports do not consider how firefighting water supply might be provided for in situations where habitable buildings are developed via resource consent. That is, there is no particular guidance that firefighting water supply might be a relevant matter in situations where, for instance, Rule 21.4.5 applies to buildings for residential activities.
- 5.8 In this regard, I acknowledge that there is also no specific constraint in the Proposed District Plan to a section 104 consideration given there are few restricted discretionary or controlled activities in the Activities Tables, and similarly there is nothing preventing an agreement between the Council and the Commission in relation to consent conditions continuing into the future. However, this is not my preferred approach because I do not consider that it provides sufficient clarity and certainty to plan users.
- 5.9 Further, in my opinion the Proposed District Plan is not structured in a way that the General Standards (Table 2 in Chapter 21) apply only to the listed permitted activities (Table 1 in Chapter 21). Rather, the General Standards are explicitly stated as applying to any of the activities, including those for which resource consent would be required (such as buildings for residential activities in Rule 21.4.5).
- 5.10 I support the inclusion of firefighting water supply Standards in 21.5 (Table 2); 22.5 (Table 2) and 23.5 (Table 2) on this basis and because the inclusion of such Standards (subject to my discussion of their content):
- (a) provides greater certainty and clarity for plan users;
 - (b) is consistent with the priority given to firefighting water supply in section 14(3) of the RMA;
 - (c) is consistent with the conclusions reached in the Section 42A Reports in respect of the importance of the 'issue';
 - (d) better enables the Commission to achieve its statutory obligations under the Fire Service Act 1975;
 - (e) better implements the proposed new Objective and Policies supported in my earlier evidence (and as amended by a

Memorandum of Counsel for the Commission following the Chapter 3 hearing);

- (f) better has regard to (and in the future 'gives effect to') Policies 3.2.3, 3.2.5 and 3.2.7 of the proposed ORPS;¹⁵ and
- (g) is the most appropriate way to achieve the purpose of the RMA by enabling people and community to provide for their health, safety and well-being by managing a potential adverse effect of relatively low probability but high consequence.

Content of a Firefighting Water Supply Standard

- 5.11 As set out in the Commission's submission, and confirmed in the evidence of **Mr McIntosh**,¹⁶ the Commission has a preference for a direct requirement to comply with the Code of Practice being included in the Proposed District Plan. The Section 42A Reports do not support the inclusion of direct reference to complying with the Code of Practice for the reasons summarised in Paragraphs 5.2 and 5.3 above and instead proposes a single Standard in 22.5 (Table 2) that seeks to embed existing practice through provisions that reflect, but are different to, the requirements of the Code of Practice.
- 5.12 The Section 42 Reports do not support directing plan users to a document outside of the Plan and is concerned that a plan change would be required if the Code of Practice were to change. I consider that the RMA clearly enables a New Zealand Standard to be included in a Plan, whether it may be changed in the future or not.
- 5.13 My understanding is that section 75(5) of the RMA expressly provides for the incorporation of material by reference under Part 3 of the First Schedule to the RMA and Clause 30 of the First Schedule allows for the incorporation of certain documents by reference in a plan (including Standards). It is my opinion that Clause 30 enables the inclusion of the Code of Practice given its status as a New Zealand Standard and it is also my view that the inclusion of Standards in plans in this manner is common practice.

¹⁵ My earlier evidence (paragraph 4.5 and 4.6) confirms that I give substantial weight to the proposed ORPS on the basis that no submissions have sought to substantially amend or 'dilute' the policies that relate to emergency services.

¹⁶ K McIntosh, Statement of evidence, dated 21 April, paragraphs 25 and 37.

- 5.14 I note that the Council gave public notice of its “Proposal to Incorporate Material by Reference in the Proposed Queenstown Lakes District Plan (Stage 1)” under Clause 34(2)(c) of the First Schedule to the RMA in September 2015 and this notice included the Code of Practice along with a number of other Standards that are included in the Proposed District Plan. As with the Code of Practice, any number of the documents listed in the notice could be reviewed over the ‘life’ of the District Plan, and therefore may necessitate a plan change. I do not consider the risk of review of the Code of Practice is a hurdle to its inclusion in the Proposed District Plan.
- 5.15 The further reasons for the Section 42A Reports not supporting the inclusion of direct reference to the Code of Practice relate to the ‘discretion’ included in the Code and the fact it is considered that the current consent conditions agreed between Council and the Commission ‘conflict’ with the Code.
- 5.16 In his evidence, **Mr McIntosh** sets out that requirement for the Code of Practice under the FSA and notes that its purpose is to provide direction on what constitutes a sufficient supply of water for fire fighting in urban districts and it is intended for use by territorial authorities, water supply authorities, developers and the Fire Service.
- 5.17 The Code of Practice provides techniques to define a sufficient fire fighting water supply that may vary according to the circumstances. It is based on an assessment of the minimum water supplies needed to fight a fire and to limit fire spread according to different building's fire hazards. The fire fighting water supplies required to address the fire hazard may be established by use of tables within the Code, or by calculation (and approval by the NZFS). The Code of Practice is written to deliberately provide flexibility as to how the fire fighting water supplies can be provided. It is this flexibility (expressed as ‘discretion’ in the Section 42A Reports) that is given as rationale for not including the Code of Practice in the Proposed District Plan in the Section 42A Reports.
- 5.18 However, I do not consider that the flexible means of achieving compliance with the Code of Practice results in a situation that is impracticable or unfair. Rather, this approach maximises the opportunity for plan users to develop a case specific means to

achieve compliance. Conversely, it is my opinion that the inclusion of a Rule that interprets the Code of Practice, as is proposed in the Section 42A Report, presents some risk that the provisions of the Proposed District Plan may be more prescriptive, restrictive or enabling that is intended by the Standard itself. For instance the new Standard in 22.5 (supported in the Section 42A Report) does not contemplate situations where a sprinkler system is installed or situations where a new development containing multiple habitable buildings may be more appropriately, and able to be, served by a single firefighting water supply source.

5.19 In terms of the existing agreement between Council and the Commission, **Mr McIntosh** sets out that it was entered into between the Commission and the Council in respect of single rural family dwellings. It requires either a 20,000 litre static water supply within a 30,000 litre tank or a 7,000 litre static supply where a domestic sprinkler system is installed, as provided for within the Code of Practice.¹⁷ It also requires compliance with the other provisions of the Code of Practice in terms of access and signs.

5.20 I consider that it also is relevant to consider the circumstances in which this agreement was made. In this regard, I recall that the agreement was driven by a shared aspiration for efficiency through the reduction of the number of similar submissions made by the Commission, and received by the Council, on notified applications for resource consent. At the time the agreement was reached it was understood that there was some time until the Operative District Plan would be reviewed and a Memorandum of Understanding/agreement was considered a pragmatic interim solution. A similar approach was taken in a number of jurisdictions where:

- (a) an operative district plan did not require water for firefighting purposes;
- (b) an operative district plan was not going to be reviewed for some time; and
- (c) the Commission was making a number of submissions on notified applications that were generally agreed by councils.

¹⁷ K McIntosh, Statement of evidence, dated 21 April, paragraph 35.

5.21 I do not consider that this interim arrangement precludes the Proposed District Plan applying a new standard and it is my preference to rely on the Code of Practice, as a New Zealand Standard, for the reasons set out in paragraphs 5.10 and given my understanding that the Environment Court has made it clear in *McIntyre v Christchurch City Council* [1996] NZRMA 286 that New Zealand Standards, such as the Code of Practice, are deserving of respect.

5.22 Given the above I support the inclusion of the following Standards in 21.5 (Table 2); 22.5 (Table 2) and 23.5 (Table 2), replacing the Standard recommended in the Chapter 22 Section 42A Report (paragraph 16.8, page 34):

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>

5.23 The Commission’s submission seeks the retention of Objective 22.2.4. This Objective, as amended in the Memorandum of Counsel for Council (13 April 2016), seeks that new development does not exceed available capacities for servicing and infrastructure. I acknowledge amended Objective 22.2.4 continues to achieve the relief sought by the Commission.

5.24 The Chapter 22 Section 42A Report also acknowledges that Policy 22.2.1.7 addresses the fire risk from vegetation to people and buildings and considers whether it is appropriate to modify the Policy

to include the provision of firefighting water (while noting that the Commission has not made a submission on Policy 22.2.1.7). The Report concludes that a slightly amended version of the Policy suggested in my earlier evidence would be appropriate to include in Chapter 22, unless the Hearings Panel accepts the Commission's submission in relation to Chapter 3 – Strategic Directions.

- 5.25 In this regard, I consider that the provision of sufficient firefighting water supply, and access to it, is a matter that extends beyond the ambit of Chapter 22 and I therefore continue to support the relief sought by the Commission in relation to Chapter 3 – Strategic Direction for the reasons set out in my earlier evidence and in order to appropriately provide for the health, safety and wellbeing of people and communities beyond those located in the Rural Residential and Rural Lifestyle Zones.

6. RULE 23.4.19

- 6.1 As a final matter, the Commission's submission also supports, and seeks the retention of, Rule 23.4.19 that provides for informal airports for emergency landings, rescues, firefighting activities and activities ancillary to farming activities. The Recommended Revised Chapter retains this Rule, as do Chapters 21 (subject to different conditions) and 22.
- 6.2 In my opinion, these Rules appropriately provide for firefighting and emergency response in a manner that enables the Commission to achieve its statutory obligations and its stated vision and outcomes set out in the Commission's Statement of Intent 2014 – 2018.¹⁸

¹⁸ Prepared under the Crown Entities Act 2004.

7. CONCLUSION

7.1 For the reasons set out above, it is my opinion that the relief sought by the Commission should be allowed by the Panel.

A handwritten signature in blue ink, appearing to read 'Ainsley Jean McLeod', with a long horizontal flourish extending to the right.

Ainsley Jean McLeod

21 April 2016