

Before the Queenstown Lakes District Council

Under the Resource Management Act 1991

And

In the matter of **Stage 3B of the Queenstown Lakes Proposed District Plan  
- Stream 18 – Arthurs Point Rural Visitor Zone**

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**Legal Submissions on behalf of Robert Stewart**

24 July 2020

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**anderson  
lloyd.**

## May it please the Panel

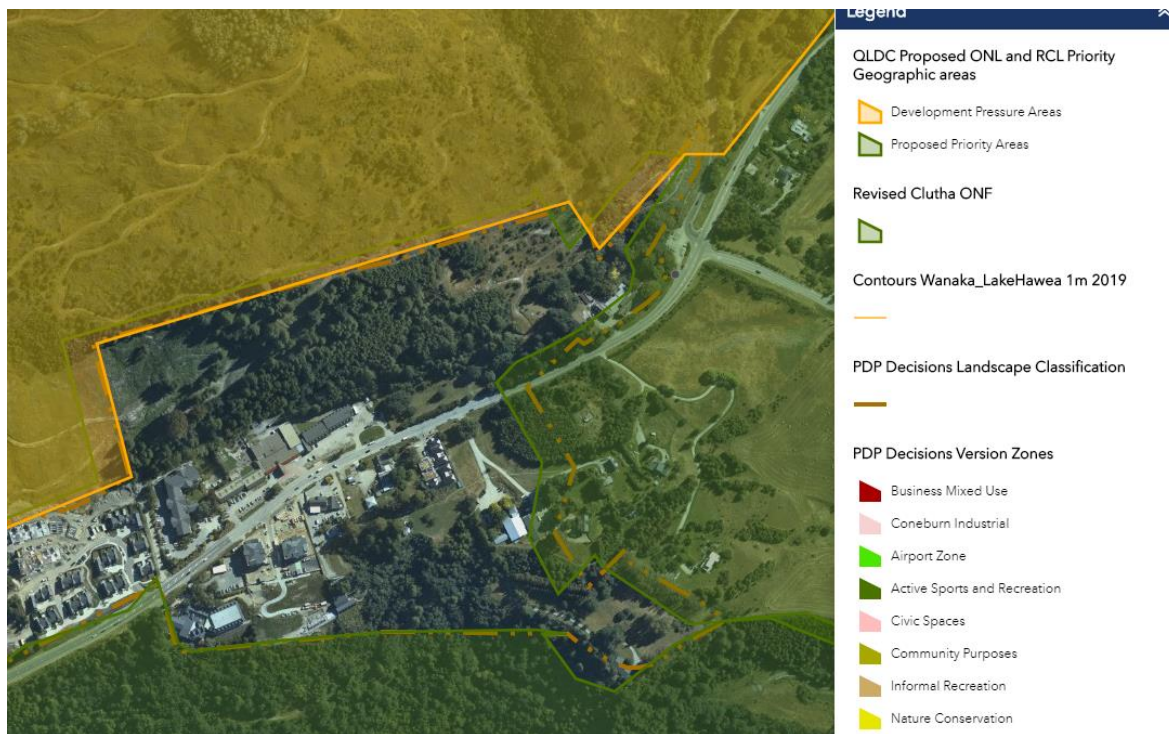
### Introduction

- 1 These legal submissions are made on behalf of Robert Stewart, submitter 31038.
- 2 Mr Stewart owns land at 201 Arthurs Point Road comprising of two lots, legally described as Lot 1 and Lot 2 DP 515200, 5.6ha in total more or less.
- 3 Mr Stewart's submission relates to the zoning of his land, the location of the Outstanding Natural Landscape (**ONL**) boundary around his land, and the classification of part of his land as ONL.
- 4 Under the Operative District Plan (**ODP**) the entirety of Mr Stewart's land was zoned Arthurs Point Rural Visitor Zone (**RVZ**). The entirety of the Arthurs Point urban area was nested within the Wakatipu Basin ONL, because there was no ONL boundary identified around Arthurs Point on ODP Appendix 8A map 1. However, it is accepted that the ONL classification did not apply to the Arthurs Point urban area as there were no objectives and policies in the ODP corresponding to activities within an ONL on non-rural land.
- 5 Mr Stewart's land was not reviewed in Stages 1 and 2 of the Proposed District Plan (**PDP**), however through Stage 1 of the PDP an ONL boundary and Urban Growth Boundary (**UGB**) were introduced around the Arthurs Point urban area. The UGB and ONL boundary followed the cadastral boundaries of Mr Stewart's land, including it in the UGB and excluding it from the ONL.
- 6 It is relevant to the Panel as a point of interest that Mr Stewart's land has been included as a "Priority Area" by the council, as part of ongoing work on Topic 2 (Rural Landscapes) of the District Plan Review. In the Environment Court's interim decision on Topic 2<sup>1</sup> it directed that the council was to prepare a preliminary list of Priority Areas (to be later refined by parties and ultimately determined by the court). These areas have been determined by the council as being in proximity to 'Development Pressure Areas', for which a detailed scheduling process of landscape values is to be undertaken, to inform future development in or in proximity to ONLs and Outstanding Natural Features (**ONF**). While this process is at the early stages it is anticipated that the outcome will be a series of variations or plan changes to incorporating the schedules of landscape values into the PDP.

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<sup>1</sup> *Upper Clutha Environmental Society Inc. v Queenstown Lakes District Council* [2019] NZEnvC 205.

The council's proposed Priority Area covers parts of Mr Stewart's property but does not follow Ms Mellsop's proposed ONL boundary:



- 7 In Stage 3 of the PDP the following changes have been notified in respect of Mr Stewart's land:
  - (a) The location of the UGB and ONL boundary has been amended to cut through Mr Stewart's land, excluding most of the land from the UGB and including it within the ONL;
  - (b) The part of his land now within the ONL has been zoned to Rural;
  - (c) Part of his land still within the UGB has been zoned to Medium Density Residential Zone (**MDRZ**) within the Visitor Accommodation Sub-Zone (**VASZ**) (and a smaller part of this land is recommended to be zoned High Density Residential Zone (**HDRZ**) in the S42A Report); and
  - (d) Part of his land still within the UGB has been zoned to MDRZ subject to a Building Restriction Area (**BRA**).
  
- 8 Mr Stewart's submission sought either revision to the ODP position or inclusion of all of his land within the UGB and rezoning to MDRZ within the VASZ or rezoning to the PDP RVZ.

- 9 Based on the landscape evidence of Mr Espie, planning evidence of Mr Vivian, and Preliminary Geotechnical Appraisal completed by Peter Forrest (discussed below), Mr Stewart now seeks a revised position that:
- (a) the ONL boundary be amended to follow the natural topography of the site, following the division between the south/southwest facing slopes and the rounded bluff/headland (as identified by Mr Espie);
  - (b) the additional land excluded from the ONL be zoned MDRZ within the VASZ;
  - (c) the section of his land adjacent to Arthurs Point Road be zoned HDRZ in accordance with Ms Turner's s42A recommendations; and
  - (d) the BRA over the eastern part of his land zoned MDRZ be retained, but that the VASZ be applied to this land also.

### **History of the Site**

- 10 Mr Stewart has owned the property at Arthurs Point road for the last 43 years. During this period, significant time and effort has been invested in restoring the historic buildings located on the property.
- 11 Mr Stewart has worked successfully with council over time to achieve practical outcomes in relation to his land and the restoration development. He has also worked with council to achieve practical outcomes that benefit the community, examples of this include the road realignment and boundary frontage changes that he agreed to with council in order to provide council with the ability to extend the parking area at the Skippers Road/Malaghans Road intersection, the widening and straightening of Malaghans Road (where Mr Stewart gave up land) and the removal of 90 year old wilding pines from his property, a large number of which were removed above the Skippers Road/Malaghans Road carpark at council's request. Mr Stewart has also undertaken significant replanting of trees, improving the amenity and landscape values of the area for the benefit local and visitors alike.
- 12 When Mr Stewart initially purchased the property, his family undertook a complete restoration of the Jules Bordeau historic cottage and lived in this cottage. At the time the land was purchased the Ben Lomond woolshed was also in disrepair. Following the restoration of the cottage Mr Stewart considered the best way to restore and preserve the various historic buildings on the property, and in 1994 applied for consent to restore and convert the old Ben Lomond Woolshed into travellers' accommodation on the existing footprint (inside this building with one outside wall exposed is

the historic Jules Bordeau store, which is one of the oldest buildings in Queenstown. Food and provisions were packed on horse and dray to Skippers for gold miners from this store). Mr Stewart has advised that the historic 1860 store had to be brought up to current earthquake regulations without the engineering solution being obvious which, was welcomed by Heritage New Zealand.

- 13 The conversion of the woolshed to travellers' accommodation was intended to enable the life of the building to be enhanced and extended as well as providing an income to allow the maintenance and upkeep of various buildings on the property. At the time, the property was zoned Tourist Development 2 and council consented to the application. The decision noted that "the Panel favoured the proposal, and agreed that historic buildings should be retained and utilised. The proposal would maintain the special qualities of the area in accordance with objective 3.32.04 of the Plan" (RC940514).
- 14 As part of the woolshed restoration, a small shearers' accommodation cottage that was originally sited to the north of the Woolshed and was later moved to the west of the Woolshed. The cottage was to provide caretaker accommodation to the predominant travellers' accommodation. This cottage is currently used by the caretaker and family of the property. The other large sheep drying shed that was on site was upgraded (while maintaining its original form) and restored to house guest vehicles while guests stayed at the property, with a large apartment above. The restoration has been completed to hotel standards with catering kitchens and fire doors.
- 15 The significant restoration and development works that Mr Stewart has undertaken have led to Bordeau's Store and Bordeau's cottage both being listed by Heritage New Zealand and council as Category 2 historic buildings.
- 16 Although the use of the site as travellers'/visitor accommodation has not yet been required for the properties' maintenance and upkeep, our client does envisage that this use will be required in the future. Mr Stewart's intention has always been to pass the property through the generations of his family, with the property eventually being owned by an appropriate Trust to ensure it is protected and preserved in its restored state. The application made 26 years ago under RC940514 refers to the fact that a fiscal income stream to cover costs of restoration and maintenance, was a sensible and proper way to maintain the benefit of this historic property for Queenstown and its visitors. Mr Stewart also worked hard in negotiating with council to have all of his property zoned RVZ and his position has not changed. At present,

the restored buildings on the site are used for family, however the upkeep is costly and future generations of Mr Stewart's family or any new trust or owner may need to convert the use from current family residential to visitor accommodation to ensure the buildings can be maintained.

- 17 The consenting history of the property clearly illustrates that the buildings were restored with the intention they would be used for visitor accommodation. The only reason the property has not been utilised for visitor accommodation previously is due to Mr Stewart's hard work and ability to meet the costs of maintenance personally. In this context it is entirely unreasonable for the council to now require non-complying consent for visitor accommodation activity at the property.
- 18 Mr Stewart accepts that due to the location and historic nature of the buildings on the site, adding new buildings (to this part of the property) would be very difficult. However, the ability to use the existing buildings for visitor accommodation has always been possible and referred to throughout the property's consenting history. It is of vital importance to Mr Stewart, future owners of the property and the community that the historic buildings are given the best possible chance of being protected and preserved in their restored state. The district plan should support this approach and it is submitted that this means visitor accommodation should not become a non-complying activity on this site.

### **Relevant legislation**

#### *Resource Management Act 1991*

- 19 The relevant sections of the RMA are:

- (a) S 6 RMA matters of national importance:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(f) the protection of historic heritage from inappropriate subdivision, use, and development

(h) the management of significant risks from natural hazards.

- (b) S 7 RMA other matters:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (b) the efficient use and development of natural and physical resources;
  - (c) The maintenance and enhancement of amenity values;
  - (f) the maintenance and enhancement of the quality of the environment.
- (c) Sections 72 – 77 are relevant to the content of and changes to district plans. Of particular relevance is:
- (i) S 74 RMA which requires the council to prepare and change its district plan:
    - (A) in accordance with a national policy statement; and
    - (B) having regard to any proposed regional policy statement.
  - (ii) S 75(3) RMA which requires that a district plan must give effect to any national policy statement and any regional policy statement.

*National Policy Statement on Urban Development Capacity*

- 20 The NPS-UDC is relevant to Mr Stewart's submission because zoning is directly related to enabling residential development across District.
- 21 It is important to note that zoning should be based on effects, not on need. While the council may consider there is sufficient residential development enabled already to meet the District's needs, this should not prohibit the zoning of land for residential development where from an effects perspective it is appropriate to do so.
- 22 The additional MDR and HDR zoning proposed for Mr Stewart's land gives effect to the NPS-UDC because it is a logical and appropriate extension to the Arthurs Point urban area that is already serviced (3 waters infrastructure, public transport), will provide housing stock to meet the District's growth needs (in particular Arthurs Point growth), and will enable development that will not result in adverse effects on landscape character of visual amenity values.

23 Mr Vivian discusses the NPS-UDC at [5.6]-[5.7] of his evidence in chief.

#### *Regional Policy Statement*

24 Counsel agrees with the council's assessment of the objectives and policies of the Partially Operative Regional Policy Statement (**PORPS**) which are relevant to the submission.

25 As discussed in the council's opening legal submissions, the Operative RPS has been almost entirely replaced by the PORPS. The only unresolved provisions are not relevant to this proposal, therefore the PORPS can be treated as operative for the purposes of Mr Stewart's submission, and there is no need to look to the provisions of the Operative RPS.

26 Mr Vivian discusses the relevant provisions of the PORPS at [5.12]-[5.23] of his evidence in chief.

#### *Chapter 28 PDP*

27 On 11 June 2020 the Environment Court issued a Consent Order on the provisions of Chapter 28 (Natural Hazards) of the PDP. With the issuing of the Consent Order the appellant points on Chapter 28 are settled and the provisions are now beyond challenge.

28 The relevance of the now operative provisions of Chapter 28 to an assessment of natural hazard risk on the site are discussed later in these submissions.

29 The Chapter 28 Consent Order is attached as **Appendix A**.

#### **Receiving environment**

30 In accordance with s 32 RMA, a thorough s 32 evaluation should take into account the existing and consented developed environment on the ground, rather than providing a zone which makes that existing environment and development incongruous within the proposed zone<sup>2</sup>.

31 It is relevant to the Panel's assessment of the most appropriate zoning for the site that the site is surrounded by existing and consented development:

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<sup>2</sup> *Milford Centre v Auckland Council* [2014] NZEnvC 23 at [120]; *Shotover Park Limited v Queenstown Lakes District Council* [2013] NZHC 1712.



- (a) The eastern edge of the site is development with the Homestead, which has numerous consents relating to visitor accommodation activities;
  - (b) To the west the Arthurs Point Woods Ltd site has consent approved for a 34 lot subdivision which allows for a maximum of 75 residential unit equivalents (RM190926), and can be developed in accordance with the proposed MDRZ to sites of 250m<sup>2</sup>;
  - (c) To the south the land owned by Arthurs Point Limited includes a hotel development; and
  - (d) To the north consent RM181638 approved a 55-lot subdivision, with the identification of thirty building platforms, to Treescape Queenstown Limited in November last year.
- 32 It is submitted that the zoning of Mr Stewart's land as primarily Rural Zone does not take into consideration the surrounding environment, and as such will not result in good visual amenity outcomes or protection of the landscape values of the ONL. It would be an inefficient use of land to retain Mr Stewart's property as Rural Zone within the ONL when the land to the north further inside the ONL has consent for a large scale development. It will also result in poor visual amenity outcomes to have a hard line of development along the western property boundary that follows a cadastral boundary not natural topography.
- 33 As discussed below, the landscape experts have reached agreement on a more appropriate ONL boundary that will enable a more logical and visually sympathetic transition from urban development to rural, and allow for a more efficient use of the Mr Stewart's land.

### **Landscape**

- 34 Mr Espie has identified five distinct landscape features within the site. His recommendation is that the ONL boundary should follow the natural division of the south/south western facing slopes of the site and rounded bluff/headland to the centre/east of the site.<sup>3</sup>
- 35 He supports the rezoning of the land outside of his proposed ONL boundary to MDRZ – VASZ, and the retention of the eastern portion of the site as ONL (aside from the section proposed to be zoned MDRZ with a BRA overlay).

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<sup>3</sup> Refer to Appendix 2 of Mr Espie's evidence in chief, dated 29 May 2020.

- 36 The proposed ONL boundary follows natural topography rather than cadastral boundaries. Allows for a landscape sensitive transition from MDRZ development to Rural/ONL.
- 37 Mr Espie considers the visual amenity values of the site will not be adversely affected by his proposed amendments. His evidence is that the south and south west facing slopes of the site will be visible, but that views from within the Arthurs Point urban area (i.e. driving along Arthurs Point Road) will be dominated by high density development (existing and proposed) in the foreground, and that viewers will experience being within the Arthurs Point urban area until adjacent to the proposed ONL boundary location.
- 38 Mr Espie's evidence is that the south and south west slopes will be partially visible from Littles Road at a distance of approximately 850m. From this distance MDRZ development on the adjacent Arthurs Point Woods Ltd site will be more visible than Mr Stewart's land. Mr Espie considers his proposed ONL boundary would result in a more sensitive transition from development to ONL than an ONL boundary following the cadastral boundary of the Arthurs Point Woods Ltd site.
- 39 Ms Mellsop generally supports Mr Espie's proposal but has suggested some minor amendments to Mr Espie's proposed ONL boundary/MDRZ boundary.<sup>4</sup> Mr Espie considers the amendments are appropriate from a landscape perspective and that he can support the refined ONL boundary.
- 40 It is submitted the landscape experts are in agreement that an ONL boundary resembling the line proposed by Mr Espie and tweaked by Ms Mellsop, and the zoning of land outside of that ONL to MRDZ, is appropriate from a landscape perspective in that it will not result in adverse landscape character and visual amenity effects.

## **Natural hazards**

### *Natural hazard risk for the site*

- 41 The key findings of the Preliminary Geotechnical Appraisal completed by Peter Forrest of Ground Consulting Limited are:<sup>5</sup>

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<sup>4</sup> Rebuttal evidence of Helen Mellsop dated 12 June 2020, Figure 1.

<sup>5</sup> Preliminary Geotechnical Appraisal for Lot 1 DP 515200, 201 Arthurs Point Road, Arthurs Point, Ground Consulting Limited, 21 May 2020, Attachment A to Carey Vivian's evidence in chief.

- (a) The site is within an active schist landslide which affects ground conditions and perceived stability;
- (b) The overall risk for the site is considered moderate to high;
- (c) Further investigation is required additional to the desk top study completed;
- (d) The geotechnical parameters and conditions of the site are likely unfavourable for standard foundation design; and
- (e) There are engineering solutions available to manage natural hazard risk on the site.

### *Chapter 28 PDP*

- 42 The amended and now operative provisions of Chapter 28 of the PDP require that where development is proposed on land potentially subject to natural hazards, the risk is managed or mitigated to a *tolerable level* and *significant* risk is avoided.
- 43 Two new policies set out the criteria for determining significant risk and risk tolerance:
  - (a) Determining the significance of natural hazard risk requires consideration of the likelihood of a hazard event, the potential consequence, and people and communities' tolerance to the risk.
  - (b) Determining tolerance of risk requires consideration of the nature and scale of the activity, existing lawfully established land use or zoning, actual and potential adverse effects of the hazard to people and communities, people and communities' awareness or experience of risk, consequences of and responses to past natural events, and effectiveness and implementation of responses, adaptations or mitigation.
- 44 The provisions of Chapter 28 do not direct that development should be avoided simply because there is a potential natural hazard risk. The focus is on the *tolerability* of that risk to people and communities. It is only significant risk that should be avoided, and even the determination of significance is relative to people's tolerance for risk.
- 45 In the present case there is no evidence to suggest that the risk at Mr Stewart's property is significant and intolerable. Given that the land is private property, Mr Stewart's tolerance of risk is most relevant. He is willing

to identify and finance appropriate engineering solutions to manage and mitigate the risk.

- 46 It is also submitted that the community has already accepted the risk to a certain degree, given that the land adjacent to Mr Stewart's property to the west and the north is subject to the same risk, and is already developed or consented for development.

*Management of natural hazard risk*

- 47 Ms Turner's position is that natural hazard risk can be considered at the stage of subdivision, and to an extent s 106 RMA can be relied on to refuse consent if there is significant risk from natural hazards, provided the rezoning does not create an unrealistic expectation for development.

- 48 As set out in the s 42A Report, Ms Turner's concern with the proposal from a natural hazards perspective was that the MDR and HDR Zones provide for a scale of development as a permitted activity, meaning there is no opportunity for decision makers to consider the appropriateness of development in light of natural hazard risk. To this end Ms Turner supports Rural zoning as it ensures decision makers have the ability to appropriately manage effects and risks of natural hazards.

- 49 It is noted that the natural hazard risk does not only apply to Mr Stewart's site – the whole of the side of Mt Dewar to the north of Arthurs Point Road sits on the landslide, and the properties adjacent to the west of Mr Stewart's property are subject to similar if not the same natural hazard risk yet are zoned MDRZ. Instead of zoning the land Rural to be less enabling of development as a method to address risk, it is more appropriate to ensure there is a mechanism in place to identify hazards, assess risk, and develop appropriate mitigation opportunities as has been done with the neighbouring developments.

- 50 To address this issue Mr Vivian has recommend a new rule 8.4.11A to apply to Lot 1 additional to rule 8.4.10, so that all buildings within the MDRZ on Lot 1 are restricted discretionary activities, with matters of discretion restricted to:

- (a) the nature and degree of risk the natural hazard(s) pose to people and property;
- (b) whether the proposal will alter the natural hazard risk to any site; and
- (c) the extent to which such risk can be avoided or sufficiently mitigated.

- 51 Ms Turner supports Rural zoning for the land because she considers it ensures all development is assessed in light of natural hazard risk and therefore natural hazard risk and effects can be managed. It is submitted that it is not the scale or nature of development proposed on this part of the site that is the issue (given both landscape experts agree landscape effects are appropriate), but the need to ensure natural hazard risk can be assessed. Mr Vivian's suggestion to require restricted discretionary consent for all development on the site is appropriate because it allows for development to MDRZ thresholds (as considered appropriate by Mr Espie and Ms Mellsop from a landscape perspective) while ensuring natural hazard risk can be considered.
- 52 As stated in her rebuttal evidence, Ms Turner remains opposed to rezoning part of the site to MDRZ on the basis that:
- (a) 'Above standard' engineering solutions will be required to address natural hazard risk, which may be 'cost prohibitive';
  - (b) Restricted discretionary activity status for buildings still gives a strong indication that development is anticipated on the site, despite the matters of discretion regarding natural hazards;
  - (c) It would be incompatible with objectives 28.3.1.2, 28.3.2.1, and 28.3.2.2 of the PDP which seek to avoid significantly increasing risks associated with natural hazards, and preclude exposing vulnerable activities to hazard risk, or creating risks to human life where this is deemed to be "intolerable", and incompatible with the PORPS which cautions against reliance on engineering solutions to natural hazards; and
  - (d) The Rural Zone is the more appropriate framework for managing natural hazard risk.
- 53 In response it is submitted that:
- (a) Management of natural hazard risk with engineering solutions as required through consent conditions at the time of subdivision is in line with the council's decisions for resource consents for development on neighbouring land<sup>6</sup>. The council has not provided

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<sup>6</sup> In RM190926 the natural hazards were considered and determined that the liquefaction risk to that subject site is considered to be nil-low risk. The geotechnical report with the application included an assessment of a "dormant pre-existing schist debris landslide" and found that this was a dormant feature and there has been no evidence of movement within the last 10,000 years. It was agreed that a consent notice be registered on each lot advising of the requirement to undertake specific foundation designs and there must not be any stormwater discharge to the ground. The application had demonstrated effects relating to natural hazards can be minimised

any evidence that engineering solutions would not be appropriate. Both engineering experts anticipate that engineering solutions are available to address natural hazards on Robert's land;

- (b) What is cost prohibitive is relative and depends on the individual circumstances of the developer and the benefits of the development;
- (c) While restricted discretionary activity status suggests to plan users that development is anticipated, the matters of discretion make it clear that natural hazard risk needs to be considered and that development will be inappropriate where natural hazard risk cannot be avoided or sufficiently mitigated. Fundamentally, restricted discretionary activity status allows the council to decline consent where necessary.
- (d) Before the risk can be written off as significant, an assessment of people and communities' tolerance to the risk in accordance with policy 28.3.1.2 is required. It is submitted that the level of existing and consented development surrounding Mr Stewart's property and within the natural hazard risk area is evidence that the Arthurs Point community is tolerant to the risk;
- (e) In regards to consent for subdivision, the council retains discretion under s 106 RMA to decline consent where there is significant risk from natural hazards.

### **Other planning matters**

#### *High Density Residential Zone*

- 54 Ms Turner in her S42A Report recommends a portion of the site and neighbouring sites to the west adjacent to Arthurs Point Road should be rezoned to HDRZ.
- 55 This proposal is supported because a strip of HDR zoning will enable the logical extension of existing development along Arthurs Point Road of the same scale and nature, restricted to the flat section of Mr Stewart's land where development as anticipated in the HDRZ will not result in any adverse landscape effects. This rezoning will result in efficient use of land and achieve the purpose of the RMA because HDR zoning enables diversity of development to meet social, economic and cultural needs.

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and mitigated, and based on this the natural hazards on the development will have a no more than minor effect on the wider environment

*Building Restriction Area / Visitor Accommodation Sub-Zone over eastern portion of the site*

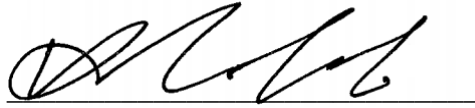
- 56 Mr Stewart accepts the retention of the BRA over the western section of the site zoned MDRZ. This portion of the site contains an existing heritage building, and it is agreed further built development would be inappropriate.
- 57 However, it is submitted the VASZ should apply to this part of the site in conjunction with the BRA. The VASZ overlay is necessary to appropriately recognise the historic and intended future use of the heritage building for visitor accommodation, as set out in the 'history of the site' section of these submissions.
- 58 Ms Turner does not support the addition of the VASZ over this part of the site on the basis the two overlays are contradictory. She considers that while visitor accommodation activities may be compatible in the existing building on the site, the intention of the BRA is to restrict development of buildings while the intention of the VASZ is to enable visitor accommodation activities.
- 59 This argument is illogical. There is no justifiable reason that the BRA and VASZ cannot both apply to an area of land, particularly this part of Mr Stewart's land which has both historic and visitor accommodation components that need to be retained
- (a) The VASZ would not change the fact that new buildings within a BRA are non-complying activities. There is no dispute that within the BRA visitor accommodation activities can only occur within the existing building.
  - (b) Visitor accommodation activities in MDRZ – VASZ are restricted discretionary activities. Council retains the discretion to decline consent for visitor accommodation activities in the existing heritage building if the activity is inappropriate in nature and scale.
  - (c) If this part of the site is zoned MDRZ but is not within the VASZ, visitor accommodation activities would require non-complying consent. It would be completely illogical to rezone the land to MDRZ but then effectively prevent the one activity that has always been contemplated to occur in the existing heritage building.

**Evidence to be presented by submitter**

- 60 Landscape evidence from Ben Espie
- 61 Planning evidence from Carey Vivian

62 Peter Forest – Ground Consulting Limited will be available at the hearing for questions from the Hearings Panel.

Dated this 24<sup>th</sup> day of July 2020

A handwritten signature in black ink, appearing to read 'V. Robb', is written over a horizontal line.

Vanessa Robb  
Counsel for Robert Stewart



## Appendix A – Chapter 28 Consent Order

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991  
AND of appeals under Clause 14 of the First  
Schedule of the Act  
BETWEEN REAL JOURNEYS LIMITED  
(ENV-2018-CHC-131)  
REAL JOURNEYS LIMITED (TRADING AS  
CANYON FOOD AND BREW COMPANY)  
(ENV-2018-CHC-146)  
OTAGO REGIONAL COUNCIL  
(ENV-2018-CHC-79)  
Appellants  
AND QUEENSTOWN LAKES DISTRICT  
COUNCIL  
Respondent

Environment Judge J J M Hassan – sitting alone pursuant to s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 11 June 2020

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**CONSENT ORDER**

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A: Under s279(1)(b) of the Resource Management Act 1991, the Environment Court,  
by consent, orders that:

- (1) the appeals are allowed to the extent that the Queenstown Lakes District Council is directed to amend Chapter 28 of the Proposed Queenstown Lakes District Plan, as set out in Appendix A, attached to and forming part of this order;
- (2) the appeals otherwise remain extant.



B: Under s285 of the Resource Management Act 1991, there is no order as to costs.

## **REASONS**

### **Introduction**

[1] This proceeding concerns appeals by Real Journeys Limited, Real Journeys Limited (trading as Canyon Food and Brew Company) and the Otago Regional Council against parts of a decision of the Queenstown Lakes District Council on Chapter 28 of the proposed Queenstown Lakes District Plan – Stage 1. In particular, it relates to Topic 12 (Natural Hazards).

[2] The court has now read and considered the consent memorandum of the parties dated 29 April 2019, which proposes to partially resolve these appeals.

### **Other relevant matters**

[3] The following parties have given notice of their intention to become a party to the parts of the appeals in Topic 12 under s274 of the Resource Management Act ('the RMA') and have signed the memorandum setting out the relief sought:

- (a) Darby Planning LP;
- (b) Otago Regional Council;
- (c) Queenstown Airport Corporation;
- (d) Queenstown Park Limited;
- (e) Real Journeys Limited;
- (f) Real Journeys Limited (trading as Go Orange Limited);
- (g) Remarkables Park Limited;
- (h) Te Anau Developments Limited; and
- (i) Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited.

### **Orders**

[4] The court makes this order under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:



- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the RMA including, in particular, pt 2.



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**J J M Hassan**  
**Environment Judge**



## 28 Natural Hazards

### 28.1 Purpose

The purpose of this chapter is to provide a policy framework to address natural hazards throughout the District. The District is recognised as being subject to multiple hazards and as such, a key issue is ensuring that when development is proposed on land potentially subject to natural hazards, the risk is managed or mitigated to tolerable levels and significant risks avoided. ~~In instances where the risk is intolerable<sup>4</sup>, natural hazards will be required to be avoided.~~ Council has a responsibility to address the developed parts of the District that are subject to natural hazard risk through a combination of mitigation measures and education, to lessen the impacts of natural hazards.

There are no rules in this chapter. It is intended to provide policy guidance on natural hazards that is factored into the consideration of land use and subdivision applications made under the rules in other chapters.

The objectives and policies in this chapter, including the concepts of tolerable risk and significant risk, shall be considered through future plan change processes as well as through applications for resource consent.

### 28.2 Natural Hazard Identification

Natural Hazards that exist in the District include:

- Flooding and inundation
- Erosion and deposition (including landslip and rockfall)
- Land instability
- Earthquakes and liquefaction
- Avalanche
- Alluvion<sup>12</sup>, avulsion<sup>23</sup>
- Subsidence
- Tsunami / seiche<sup>34</sup>
- Fire

The District is located in an inland mountainous environment and as such can also be exposed to climatic extremes in terms of temperature, rain and heavy snowfall. This is likely to increase as a result of climate change.

Council holds information in a natural hazards database which has been accumulated over a long period of time by both the Council and the Otago Regional Council. The database is continually being

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<sup>4</sup> ~~The concept of risk 'tolerability' is derived from the Otago Regional Council's Regional Policy Statement, which provides additional guidance as to the management of natural hazards.~~

<sup>21</sup> Increase in the size of a piece of land due to deposits by a river.

<sup>32</sup> Abandonment of a river channel and the formation of a new channel.

<sup>43</sup> Oscillation of water due to earthquake shaking



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updated and refined as new information is gathered. Given the ongoing updates occurring, with the exception of flooding information, which has historically been mapped, Council has decided not to map natural hazards as part of the District Plan. This decision has been made due to the fact the maps may quickly become out of date as new information becomes available. Council will rely upon the hazards database in the consideration of resource consents and building consents.

## 28.3 Objectives and Policies

**28.3.1 A Objective - The risk to people and the built environment posed by natural hazards is managed to a level tolerable to the community.**

**28.3.1 B ~~28.3.2~~ Objective - Development on land subject to natural hazards only occurs where the risks to the community and the built environment are appropriately managed.**

### Policies

#### Determining significant risk and risk tolerance

28.3.1.1 When determining the significance of the natural hazard risk the following matters shall be considered:

- a. The likelihood of the hazard event including multiple and cascading events;
- b. After taking account of existing and proposed risk reduction measures, the potential consequences including:
  - i. Whether buildings and structures, critical services and lifeline utilities would be functionally compromised in a hazard event;
  - ii. The risk to human life or safety;
  - iii. The scale of potential adverse effects;
  - iv. The displacement of risk.
- c. People's and communities' tolerance of the natural hazard risk.

28.3.1.2 When assessing tolerance of risk the following matters shall be considered:

- a. the nature and scale of the activity;
- b. existing lawfully established land use or zoning;
- c. the actual and potential adverse effects of the natural hazard on people and communities;
- d. those people's and communities' awareness or experience of the risk, including any investigations, initiatives or natural hazard risk engagement that have been undertaken;
- e. the consequences of and response to past natural hazard events;
- f. the effectiveness and implementation of responses, adaptations or mitigation measures.

#### Assessment of natural hazard risk

28.3.1.3 ~~2-3~~ Ensure all proposals to subdivide or develop land that is subject to natural hazard risk ~~provide~~ include an assessment that ~~meets the following information requirements, ensuring that the level of detail of the assessment is commensurate with the level of natural hazard risk including where relevant:~~

- a. the likelihood of the natural hazard event occurring over no less than a 100 year period;



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- b. the type and scale of the natural hazard and the effects of a natural hazard on the subject land, and proposed activity or development;
- c. the effects of multiple and cascading hazards;
- d. ~~e.~~ the effects of climate change on the frequency likelihood and scale of the natural hazard;
- d. ~~the vulnerability of the activity in relation to the natural hazard~~;
- e. the potential for the activity to exacerbate the natural hazard risk both within and beyond the subject land;
- f. ~~the potential for any structures on the subject land to be relocated~~;
- f. ~~g.~~ the location, design and construction of buildings and structures to mitigate the effects of natural hazards, such as the raising of floor levels, or relocation of buildings and structures;
- ~~g.~~ ~~h.~~ management techniques that avoid or manage natural hazard risk to a tolerable level, including with respect to ingress and egress of both residents and emergency services during a natural hazard event.

### Advice Note:

Council's natural hazards database identifies land that is affected by, or potentially affected by, natural hazards. The database contains natural hazard information that has been developed at different scales and this should be taken into account when assessing potential natural hazard risk. It is highly likely that for those hazards that have been identified at a 'district wide' level, further detailed analysis will be required.

### Management of natural hazard risks

~~28.3.2.1~~ ~~—————~~ ~~Avoid significantly increasing natural hazard risk.~~

28.3.1.4 Avoid activities that result in significant risk from natural hazard.

28.3.1.5 Recognise that some areas that are already developed are now known to be subject to natural hazard risk and minimise such risk as far as practicable while acknowledging that the community may be prepared to tolerate a level of risk.

28.3.1.6 ~~2-2~~ Not preclude subdivision and development of land subject to natural hazards which ~~where the proposed activity~~ does not:

- a. accelerate or worsen the natural hazard risk to an intolerable level;
- b. expose vulnerable activities to intolerable natural hazard risk;
- c. create an intolerable risk to human life;
- d. increase the natural hazard risk to other properties to an intolerable level;
- e. require additional works and costs including remedial and maintenance works, that would be borne by the public.



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- ~~28.3.1.7~~ Except as provided for in Policy 28.3.1.6, restrict activities where the natural hazard risk is intolerable to people and the community (Policy 28.3.1.2).
- 28.3.1.81 Ensure assets and ~~or~~ infrastructure are constructed and located ~~so as~~ to avoid or mitigate:
- the potential for natural hazard risk to human life to be exacerbated; and
  - the potential risk of damage to property and infrastructural networks from natural hazards to the extent practicable, including consideration of the functional needs ~~locational, technical and operational requirements~~ of regionally significant infrastructure.
- ~~28.3.1.9~~ Where a natural hazard has been identified, but the natural hazard risk to people and communities is unknown, but potentially significant, apply a precautionary approach.
- ~~28.3.1.2~~ Restrict the establishment of activities which significantly increase natural hazard risk, including where they will have an intolerable impact upon the community and built environment.
- 28.3.1.104 Enable Otago Regional Council and the Council exercising their statutory powers to undertake ~~permanent~~ physical works for the purposes of natural hazard risk mitigation while recognising the need to mitigate potential adverse effects that may result from those works
- ~~28.3.1.11 2.4~~ Where practicable, ~~p~~Promote the use of natural features, buffers and appropriate risk management approaches in preference to hard engineering solutions in mitigating natural hazard risk.

### **28.3.23 Objective - The community's awareness and understanding of the natural hazard risk in the District is continually enhanced.**

#### **Policies**

- 28.3.23.1 Continually develop and refine a natural hazards database in conjunction with the Otago Regional Council.
- 28.3.23.2 When considering resource consent applications or plan changes, the Council will have regard to the natural hazards database.
- 28.3.23.3 Ensure the community has access to the most up-to-date natural hazard information available.
- 28.3.23.4 Increase the community awareness of the potential risk of natural hazards, and the necessary emergency responses to natural hazard events.
- 28.3.23.5 Monitor natural hazard trends and changes in risk and ~~consider~~ identify actions, including the use of an adaptive management approach, should natural hazard risk become intolerable.





## 28.4 Other Relevant Provisions

### 28.4.2 District Wide Rules

Attention is drawn to the following District Wide chapters.

1 Introduction	2 Definitions	3 Strategic Direction
4 Urban Development	5 Tangata Whenua	6 Landscapes and Rural Character
25 Earthworks	26 Historic Heritage	27 Subdivision
29 Transport	30 Energy and Utilities	31 Signs
32 Protected Trees	33 Indigenous Vegetation	34 Wilding Exotic Trees
35 Temporary Activities and Relocated Buildings	36 Noise	37 Designations
Planning Maps		

