

Before the RPS Hearings Panel

Under the Resource Management Act 1991

In the matter of submissions on the Proposed Otago Regional Policy Statement 2021 (excluding parts determined to be a freshwater planning instrument)

Statement of Evidence of Chris Ferguson on behalf of Darby Planning LP & Others (#FS00607)

23 November 2022

Further Submitter's Solicitors:
Maree Baker-Galloway | Rosie Hill
Anderson Lloyd
Level 2, 13 Camp Street, Queenstown 9300
PO Box 201, Queenstown 9348

p + 64 3 450 0700
maree.baker-galloway@al.nz | rosie.hill@al.nz

**anderson
lloyd.**

Introduction

Qualifications and Experience

- 1 My name is Chris Ferguson. I hold the qualifications of a Bachelor of Resource and Environmental Planning (Honours) from Massey University. I hold the position of Partner with the environmental consultancy firm Boffa Miskell Limited (Boffa Miskell), based in the Queenstown office. I have been employed by Boffa Miskell since April 2015, and in 2022 was appointed to the board of directors. I reside in Arrowtown and have been practicing as a planner in the Queenstown Lakes District since 2000, with some short periods overseas and in Christchurch (refer below).
- 2 I have 27 years' experience as a resource management practitioner and am a full member of the New Zealand Planning Institute. I have held positions as a Planner in both local government and private practice within Selwyn District Council, Christchurch City Council, and Queenstown Lakes District Council, as well as in London, England.
- 3 Prior to commencing employment at Boffa Miskell, I was employed by AECOM New Zealand Limited as a Principal Planner, based in Christchurch. My work experience in Queenstown has included employment with Civic Corporation Ltd from Feb 2000 to Nov 2001, planning manager at Clark Fortune McDonald & Associates Ltd from 2003 to 2010 and then as Director of planning consultancy company Ferguson Planning Ltd. My work in Christchurch has involved a secondment position with the Canterbury Earthquake Recovery Authority (CERA) providing planning support on several anchor projects as well as submissions for private clients on the proposed Replacement Christchurch District Plan.
- 4 Relevant to the matters covered within this evidence, I was involved in the appeals and subsequent Environment Court facilitated mediation on the previous 1998 review of the Otago Regional Policy Statement.
- 5 I have been involved throughout the Environment Court process and hearings related to the Topic 2 (Rural Landscapes) appeals to the proposed Queenstown Lakes District Plan, where I prepared evidence in support of an appeal by Darby Planning LP. During this process I also prepared rebuttal and supplementary statements, I participated in Court directed conferencing leading to the formulation of a Joint Witness Statement and presented these at the Court hearing. As recorded within Decision 2.2¹, my evidence was relevant to the court's findings to the effect that so-termed

¹ Decision No. [2019] NZEnvC 205

values' identification framework policies and provisions be added to the PDP (these provisions instigating a variation).

Code of Conduct for Expert Witnesses

- 6 I have read the Code of Conduct for Expert Witnesses, contained within the Environment Court Practice Note of November 2014 and I agree to comply with it in preparing this evidence. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the opinions (or evidence) of another person.

Scope of Evidence

- 7 I have been asked by Darby Planning LP to prepare this evidence in relation to the non-freshwater parts of the Proposed Otago Regional Policy Statement (**PORPS**).

- 8 This evidence addresses the following matters:

- (a) The objectives and policies relating to Outstanding Natural Features and Landscapes (**ONF/Ls**); and
- (b) The objectives and policies relating to rural land.

- 9 I have reviewed the following documents in preparing this evidence:

- (a) Section 32 Report;
- (b) Section 42A Hearing Report and supplementary evidence for Chapter 14 (natural features and landscapes):
 - (i) [S42A Report – Chapter 14](#)
 - (ii) [Supplementary Evidence 14](#)
- (c) Section 42A Hearing Report and supplementary evidence for Chapter 15 (urban form and development)
 - (i) [S42A Report – Chapter 15](#)
 - (ii) [Supplementary Evidence 15](#)

Objectives and policies relating to ONF/Ls

NFL-01

- 10 This objective is recommended to be amended from the notified version, by adding in the requirement of 'restoration' in response to submissions raised by Kai Tahu ki Otago, as follows:

NFL-01 – Outstanding and highly valued natural features and landscapes

The areas and values of Otago's outstanding and highly valued natural features and landscapes are identified, and the use and development of Otago's natural and physical resources results in:

- (1) the protection of outstanding natural features and landscapes, and*
 - (2) the maintenance or enhancement of highly valued natural features and landscapes.*
 - (3) the restoration of outstanding and highly valued natural features and landscapes.*
- 11 There is no need in my view to create an additional limb to NFL-01 to expressly provide for restoration of highly values features or landscapes.
- 12 The structure of the current objective appropriately follows the statutory direction within Part 2 of the Act: to protect outstanding natural features and landscapes (s6b); and to maintain or enhance amenity values (s7c). Restoration does not have the same statutory link.
- 13 I acknowledge that Policy NFL-P4 (restoration) should link to an objective, as it does not currently sit under or 'give effect' to any explicit higher order landscape objective relevant to restoration. The current approach to maintain or enhance highly valued landscapes within NFL-01 provides that link, as does the concept of 'protection' pertaining to outstanding natural features and landscapes. The meanings of "enhance" and "protect" encompasses restoration, together with the related concept of rehabilitation (of any part of a degraded landscapes).
- 14 Expressly recognising restoration independently through NFL-01, and in an unqualified way similar to what NFL-P4 provides, is inconsistent with the statute and an unnecessary to link to NFL-P4.
- 15 I have concerns with the structure of the objective that conflates identification of landscapes with use and development. Separating these

concepts within the objective would improve the clarity and direction being provided whilst also better linking to the attendant policies.

16 Lastly, the identification of the areas and values of landscapes within NFL-01 by itself has limited utility if that does not flow into the subsequent directives for protection, maintenance or enhancement of those landscapes. The Court of Appeal in *Man O'War Station Limited v Auckland City Council*² recognised that in the context of a regional policy statement much turns on what is to be protected. Whilst NFL-01 appropriately directs identification of the areas and values of landscapes the directives for protection, maintenance or enhancement are expressed in absolute terms. My suggested changes seek to carry through reference to the identified values to appropriately fulfil the purpose of identification.

17 On this basis, I recommend amending objective NFL-01, as follows:

NFL-01 – Outstanding and highly valued natural features and landscapes

(1) The areas and values of Otago's outstanding and highly valued natural features and landscapes are identified.

(2) The identified values of Otago's outstanding natural features and landscapes are protected.

(3) The identified values of Otago's highly valued natural features and landscapes are maintained or enhanced.

NFL-P1 – Identification

18 Policy NFL-P1 provides further direction from Objective NFL-01 in relation to the identification of the values of landscapes. It also incorporates the concept of landscape capacity. Further changes are proposed through the supplementary evidence of Mr McLellan, as follows:

NFL-P1 – Identification

In order to manage outstanding and highly valued natural features and landscapes outside the coastal environment, identify:

- (1) the areas and values of outstanding and highly valued natural features and landscapes in accordance with APP9, and*
- (2) the capacity of those natural features and landscapes to ~~accommodate~~ absorb use or development while protecting the*

² Man O'War Station Limited v Auckland City Council [2017] NZCA 24

values that contribute to the natural feature and landscape being considered outstanding or maintaining the values that contribute to the natural feature and landscape being highly valued.

(3) ...

[Footnotes omitted]

- 19 The direction within the policy to identify the areas and values of Otago's outstanding natural features and landscapes is fundamentally supported as a means of enabling communities to protect such landscapes. Value identification further underpins what is to be protected.
- 20 The addition of landscape capacity is a departure from the operative RPS, and follows similar changes made to the Proposed Queenstown Lakes District Plan. Because Landscape capacity is not a term defined within the PORPS, the policy will need to convey that direction within the text of the policy.³ It does not currently do that.
- 21 I have more fundamental issue however, with the PORPS importing landscape capacity and applying that on a regional scale. In practical terms, this would be the catalyst for a region-wide study directed towards this outcome, in addition to a study of the values of those landscapes.
- 22 The approach taken by the Environment Court through the review of the Queenstown Lakes District Plan, was to break down the landscapes of that District into priority areas that are the subject to development pressures. Not all of Otago region is facing high pressure for development within the outstanding or highly values landscapes. The exercise of identifying landscape capacity is not abstract, and to be meaningful needs to address the capacity for a specified use, such as utility structures, rural living, power generation structures, etc, against the values of that landscape.
- 23 There is no evidence of a scale of development pressure occurring at a regional scale that would justify the costs, resources and time required to identify landscape capacity for all landscapes and a full range of specified uses in a reliable way. A more efficient option in my view would be to leave

³ For reference purposes the Proposed Queenstown Lakes District Plan defines landscape capacity as:

i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means the capacity of a landscape or feature to accommodate subdivision and development without compromising its identified landscape values;

ii. in relation to a landscape character area in a Rural Character Landscape, means the capacity of the landscape character area to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values;

the identification of landscape capacity, as part of the overall suite of tools to manage effects of subdivision use and development on their landscapes to each District. The absence of regional direction on landscape capacity does not mean there is an inconsistency with what occurs at a District level, as it is just one mechanism that can be employed to manage the effects of subdivision, use and development, which can be tailored to the specific development pressures across each District.

24 On this basis, I recommend amending objective NFL-P1, as follows:

~~In order to m~~**Manage** outstanding and highly valued natural features and landscapes outside the coastal environment, **by identifying:** (1) the areas and values of outstanding and highly valued natural features and landscapes in accordance with APP9, and

~~(2) the capacity of those natural features and landscapes to accommodate absorb use or development while protecting the values that contribute to the natural feature and landscape being considered outstanding or maintaining the values that contribute to the natural feature and landscape being highly valued.~~

~~(3)...~~

NFL-P2 – Protection of outstanding natural features and landscapes

25 The recommended amendments to this policy provide:

NFL-P2 – protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes outside the coastal environment from inappropriate subdivision, use and development by:

- (1) avoiding adverse effects on the values of the natural features and landscapes where there is limited or no capacity to absorb change use or development that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding, and*
- (2) avoiding, remedying or mitigating other adverse effects.*

(3) managing the adverse effects of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13.

- 26 I am concerned with the internal contradiction set up within clause (1), where on the one hand, it seeks to 'avoid' and thereby prevent the occurrence of, while also recognising limited capacity of subdivision, use or development possible. A number of landscapes and features are currently being consulted on under the QLDC variation to introduce landscape schedule values into its PDP. Many of the landscape schedules provide for 'limited' or 'some' capacity to absorb development. In the instance where such capacity exists, I do not consider it would be appropriate to require avoidance of adverse effects on identified values of the feature or landscape.
- 27 My analysis of NFL-P1 above, finds that the introduction of landscape capacity into the RPS is inefficient and better left to the individual Districts to manage through the District Plans that can be tailored to the particular development pressures. Additionally, there is a danger that without articulating the meaning of landscape capacity there is potential for varied approaches and inconsistencies to occur.
- 28 I therefore recommend amendments to this policy as follows:

NFL-P2 – protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes outside the coastal environment from inappropriate subdivision, use and development by:

- (1) avoiding adverse effects on maintaining the values of the natural features and landscapes where there is limited or no capacity to absorb change use or development that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding, and
- (2) *avoiding, remedying or mitigating other adverse effects.*
- (3) *managing the adverse effects of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13.*

- 29 This wording also accords with the partially operative 2019 Otago RPS, which was determined following significant mediation of parties, and confirmed by Environment Court consent order:

Policy 3.2.4 Managing outstanding natural features, landscapes and seascapes

Protect, enhance or restore outstanding natural features, landscapes and seascapes, by all of the following:

- a) In the coastal environment, avoiding adverse effects on the values (even if those values are not themselves outstanding) that contribute to the natural feature, landscape or seascape being outstanding;
- b) Beyond the coastal environment, maintaining the values (even if those values are not themselves outstanding) that contribute to the natural feature, landscape or seascape being outstanding;
- c) Avoiding, remedying or mitigating other adverse effects;
- d) Encouraging enhancement of those areas and values that contribute to the significance of the natural feature, landscape or seascape.

Rural land provisions

- 30 The Proposed Amendments PORPS – S42A & Supplementary Evidence Version provides:

UFD-04 – Development in rural areas

Development in Otago’s rural areas occurs in a way that:

- ~~(1) avoids impacts on significant values and features identified in this RPS,~~
- (2) *avoids as the first priority, highly productive land and soils identified as highly productive by LF-LS-P19 unless there is an operational need or functional need for the development to be located in rural areas,*
- (3) *only provides for urban expansion, rural lifestyle and rural residential development and the establishment of sensitive activities that are sensitive to primary production and rural industry, in locations identified through strategic planning or zoned within district plans as suitable for such development, and*
- (4) *outside of areas identified in (3), maintains and enhances provides for the ongoing use of rural areas for primary production, supported by rural industry in appropriate locations, and facilitates ensures that other activities that have an operational need or functional need to locate in rural areas, that will do not compromise the natural and physical resources that*

support the productive capacity, rural character, and long-term viability of the rural sector and rural communities., and

(4A) provides for the use and development of land in rural areas by Kāi Tahu for papakāika, kāika, nohoaka, marae, and marae related activities.

31 With respect to rural lifestyle development UFD-O4 requires that it only be established through a zone providing for such development. The intent of the objective appears to be directing a strategic approach to development through zoning within District Plans. The three particular uses of land captured by the objective are:

- (a) Urban expansion
- (b) Rural lifestyle development
- (c) Activities sensitive to primary production and rural industry

32 It is unclear from the objective what the characteristics (effects) of these three uses / activities are that demand a zoned approach to development, nor what are the common effects of particular concern to rural areas. I have a number of concerns with the current drafting of this objective:

- (a) The identification of a common issue that is being addressed through the objective, and not within any other provisions.
- (b) The broad intent of this chapter and the other objectives is to provide a suite of provisions relating to urban form and development. There is a lack of precision in the wording that captures all development, rather than the core issue for the chapter being urban development.
- (c) As currently worded any direction within the chapter could be rendered meaningless, where a District Plan “provides for” rural lifestyle development without meaning to enable this use. The purpose of a rural zone in a District Plan may not be to enable rural living activities and through activity status may seek to manage as a discretionary activity, by way of example. That is provided for but might be considered an activity lacking strategic support in the manner anticipated by UFD-04.
- (d) There are no defined terms of 'rural lifestyle' in the PORPS, therefore such development could pertain to a simple small sale subdivision or siting of new rural living, which might run contrary to this policy if it is not in a living zone or within identified for rural living in a strategic plan.

- (e) It is uncertain how these policies would fit within, specifically, the QLDC Proposed District Plan, which has an example of an 'amenity zone' containing significant opportunities for rural living and development. It is unclear to what extent such a zone is or is not a rural lifestyle zone. Similarly, there are a number of instances of already consented and approved lifestyle type developments in the Rural Zone of the QLDC PDP. Future variations, amendments or appropriate additions to those area, could run contrary to this objective.
- 33 The key protections required in respect of lifestyle development relate to landscape values, the productive potential of land, and managing reverse sensitivity effects on established rural activities.
- 34 I consider that the respective policy areas of the PORPS are better placed to control effects of amenity and productivity of soils, than the urban environment chapter, which provides direction as to future form and functioning of urban areas. On this basis, I would suggest the following remedies to the current drafting:
- (a) Framing the objective as relating to “urban” development, rather than all development
- (b) Rewording clause (3) to establish a basis for limiting urban expansion into rural areas where urban development creates adverse reverse sensitivity effects on established rural activities, including primary production and rural industry.
- (c) A consequential change is suggested to clause (4).
- 35 I therefore recommend the following amendments to this objective:

UFD-04 – Development in rural areas

Urban *Development in Otago’s rural areas occurs in a way that:*

- (1) *avoids impacts on significant values and features identified in this RPS,*
- (2) *avoids as the first priority, highly productive land,*
- (3) *~~only provides for~~ Limits urban expansion into rural areas, rural lifestyle development and the where Urban Development creates adverse reverse sensitivity effects on established rural of activities that are sensitive to including primary production and rural industry, in locations identified through strategic*

~~planning or zoned within district plans as suitable for such development,~~

(4) ~~outside of areas identified in (3), maintains and enhances provides for the ongoing use of rural areas for primary production, supported by rural industry in appropriate locations, and facilitates ensures that other activities that have an operational need or functional need to locate in rural areas, that will do not compromise the natural and physical resources that support the productive capacity, rural character, and long-term viability of the rural sector and rural communities., and~~

(4A) *provides for the use and development of land in rural areas by Kāi Tahu for papakāika, kāika, nohoaka, marae, and marae related activities.*

36 For the same reasoning as set out above in respect of UFD-O4, I also support amendment to policy UFD-P7, requiring that management of rural areas must direct rural lifestyle development to areas zoned for that purpose in accordance with UFD-P8:

UFD-P7 – Rural areas

The management of rural areas:

...

(5) *directs rural residential and rural lifestyle development to areas zoned for that purpose in accordance with UFD-P8,*

37 As set out above in relation to UFD-O4, without any related definitions of rural lifestyle development, this provision is particularly unclear in respect of providing for appropriate rural living subdivision and development outside of prescribed zones. The scope of Policy UFD-P7 comprehensively addresses a range of identified effects, including productive capacity, land based primary production, mineral and aggregate resources the use of rural land by Kai Tahu, and reverse sensitivity. There is a danger that a directive and activity based provision lacks a proper foundation for this direction, and as detailed above inadvertently captures zones where rural lifestyle development is provided for, even where that isn't the primary purpose of that zone (such as within the Wakatipu Basin).

38 For these reasons, I recommend that clause 5 of UFD-P7 be deleted:

UFD-P7 – Rural areas

The management of rural areas:

...

(5) directs rural residential and rural lifestyle development to areas zoned for that purpose in accordance with UFD-P8,

IM - Integrated management

- 39 The integrated management chapter is a new addition to the PORPS framework, compared to the partially operative 2019 Otago RPS. In particular IM-P1 provides for a tiered approach to the priorities of decision making:

IM-P1 – Integrated approach to decision-making

Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise:

(1) the life-supporting capacity and mauri of the natural environment and the health needs of people, and then

(2) the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

- 40 While I understand the intent of seeking to provide direction in the instances of conflicting policies, I consider that this will naturally occur in any assessment of weighing and balancing relevant policies in future decision making. In particular, where more directive provisions are relevant, or potentially in conflict with, more general provisions, the former will outweigh the latter. Proper drafting of the domain topics will naturally ensure which environmental aspects of concern are provided for by more directive policy drafting.
- 41 I consider that the intent of this priority of decision making is also already covered within IM-O1 and IM-P5, which provide for a closer alignment to the current balancing exercise of sustainable management under the Act. I accept that it is open to the PORPS to prescribe limits or bottom lines within that sustainable management purpose, however I consider it is appropriate to do that for particular resource issues or domains, according to potential effects or resource management issues of concern, as opposed to a default or general priority weighting, as set out in IM-P1 currently.

42 The framework of the PORPS identifies eleven of the most significant issues impacting the Otago Region with the intent being for the RPS to consider and respond to those issues in a joined-up manner as part of a complex system.⁴ In addition to the issues identified above, establishing a priority in the manner proposed through IM-P1 would be inconsistent with the intent to consider and respond to (at least) the significant resource management issues in a joined-up manner.

43 For these reasons, I would support deletion of IM-P1 in its current form.

Dated this 23rd day of November 2022



Chris Ferguson

⁴ Page 83, Proposed Otago Regional Policy Statement 2021 (supplementary evidence version)