

**Before a Hearings Panel appointed by  
the Otago Regional Council**

**Under**

the Resource Management Act 1991

**And**

**In the Matter**

of a submission on the proposed  
Regional Policy Statement for Otago

**Statement of Evidence of  
Blair Jeffrey Devlin  
for Glenpanel Limited Partnership**

Dated: 23 November 2022

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## INTRODUCTION

### Qualifications and Experience

1. My name is Blair Devlin. I hold the position of Senior Planner/Director at Vivian and Espie Limited (**Vivian+Espie**), a Queenstown based resource management and landscape planning consultancy. I have been in this position since September 2018.
2. I hold a Bachelor of Arts (Geography) and Masters of Regional and Resource Planning (Distinction) from the University of Otago. I have been a Full Member of the New Zealand Planning Institute since March 2006.
3. I have over 22 years' planning experience. This experience comprises thirteen years in local government in the United Kingdom and New Zealand (Dunedin City Council and the Queenstown Lakes District Council). I have also worked in Central Government as a policy analyst at the Ministry for the Environment (two years). I have worked as a senior consultant planner for seven years at private consultancies based in Queenstown. I have practised in the Queenstown Lakes district since 2007.
4. Prior to my current role with Vivian+Espie, I was employed by the Queenstown Lakes District Council (**Council**) as Manager of Planning Practice. I have also held the role of Acting Planning Policy Manager, Resource Consents Manager, and prior to that, as a Senior Policy Planner during my employment at the Council between 2011 and 2018.
5. I have been involved with several policy processes during my time at QLDC, with specific involvement as an expert planning policy witness for Environment Court hearings on Plan Change 39 (Arrowtown South Special Zone) and Plan Change 44 (Hanley Downs Special Zone). I have had a range of roles in relation to other plan change processes, including as Acting District Plan manager when the hearing on the Proposed District plan commenced.
6. During my time as Resource Consents Manager, I was frequently involved in the processing of application relating to ONLs. Applications by Kawarau Jet in relation to their consents on the Kawarau River (Outstanding Natural

Feature - **ONF**) spring to mind, as do jetties and moorings (the Frankton Arm was an ONL), as well as applications for residential dwellings.

7. As a consultant planner I have been involved in a number of residential subdivision and development projects that are relevant to ONLs including:
  - (a) RM181517 to establish a residential building platform in an area identified as outstanding natural landscape (**ONL**) on Wanaka-Mt Aspiring Road, Wanaka (notified consent application – granted).
  - (b) RM181637 to subdivide and establish a residential building platform in the ONL on the Crown Terrace, Queenstown (notified consent application – granted).
  - (c) RM220681 to establish a residential building platform on the Glenorchy Paradise Road (partly located within an ONL – awaiting decision)
  - (d) Subsequent variations to Redemption Song LLC – Subdivision and land use consent RM120007 to undertake a two-lot subdivision and construct three dwellings at Littles Road, including ecological restoration (notified consent application – granted).
8. I have also been involved in other activities in the ONF/L, with some examples as follows:
  - (a) RM210439 to undertake rock extraction in the ONL – Lovers Leap Road (located within an ONL – granted non-notified).
  - (b) RM200053 to establish a jetty and operate commercial recreational activity on the jetty (partly located within an ONL – awaiting decision).
  - (c) RM220981 to undertake gravel extraction from the dry bed of the Rees River and Precipice Creek (located within an ONL – awaiting decision)

### **Code of Conduct**

9. While this is not an Environment Court hearing, I have read and agree to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. This evidence is within my area of expertise,

except where I state that I am relying on material produced by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in my evidence.

## **SCOPE OF EVIDENCE**

10. My evidence will deal with the following:
  - (a) Background to Submission #405
  - (b) Planning and statutory framework;
  - (c) NFL-O1 – Outstanding and highly valued natural features and landscapes
  - (d) NFL-P2 – Protection of outstanding natural features and landscapes
  - (e) Assessment of efficiency and effectiveness of provisions s.32(1)(b)(ii) and s.32(2)(a);
  - (f) Conclusion
11. I have read the Section 42A Report (**S42A**) prepared by the Otago Regional Council dated 27 April 2022 and the Brief of Supplementary Evidence of Andrew MacLennan dated 11 October 2022.

## **BACKGROUND TO SUBMISSION #405**

12. I have been engaged to provide planning advice to Glenpanel Limited Partnership (**LP**), landowners located in Queenstown (**Submitter**). The Submitter lodged submission **#405** on the Proposed Otago Regional Policy Statement 2021 (**PORPS**).
13. I attended the pre-hearing meeting on the Natural Features and Landscapes section of the PORPS.

## **PLANNING & STATUTORY FRAMEWORK**

14. Section 5 of the RMA requires that sustainable management is promoted. This is to be achieved by enabling people and communities to provide for their social and economic well-being while achieving matters (a) – (c).

*(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

*(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*

*(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

15. The focus over the implementation of the RMA has been on the avoiding, remedying or mitigating of adverse effects.

16. Section 6(b) requires:

*the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*

17. This section of the Act has been particularly well traversed in the Queenstown Lakes District due to 97% of the district being outstanding natural landscape<sup>1</sup>. The Queenstown Lakes district is almost unique because the focus was on identifying what landscapes are not outstanding, rather than the reverse.

18. There are no national policy statements that relate to section 6(b) outstanding natural features / landscape matter, and case law from the Environment Court has informed much of the practice around what is appropriate development in the ONL.

19. There are extensive objectives and policies relating to the sustainable management of ONF/Ls in the Queenstown Lakes district, Central Otago district, and other Otago Council district plans, and these Councils and practitioners have considerable experience in implementing the section 6(b) direction from the RMA. Under the planning hierarchy of the RMA, these local district plans of course need to be consistent with the RPS, however I consider some lessons can 'feed up' to the RPS.

## **NFL-O1 – OUTSTANDING AND HIGHLY VALUED NATURAL FEATURES AND LANDSCAPES**

20. As notified NFL-O1 reads:

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<sup>1</sup> Independent Hearings Panel Report 'Hearings of Submissions on Proposed District Plan Report 3' 16 March 2018, Paragraph 358

**NFL-O1 – 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*.

- 21. The S42A report did not recommend any changes be made to the notified version above.
- 22. In the supplementary evidence of Mr MacLennan, an additional item (3) was added to the bottom of the objective, as follows:

*(3) the restoration of outstanding and highly valued natural features and landscapes.*
- 23. In my opinion the modified NFL-O1 remains too restrictive of 'appropriate' developments in and affecting ONLs, as envisaged by section 6(b), and would frustrate appropriate development proposals that are important to the social and economic well-being of the Queenstown Lakes District.
- 24. The reference to 'use and development' in NFL-O1 is weak, and must result in 'protection of the ONF/L'. This goes further than the RMA, and creates an apparent oxymoron where 'use and development' (in the first sentence of the objective) is to result in 'protection' under part (1) of the objective. The objective therefore will not be effective or efficient.
- 25. ONF/Ls must definitely be protected from *inappropriate* development, not all development, and there are plenty of examples where development in the Queenstown Lakes district has been highly scrutinised through a notified consent process and found to be 'appropriate'.
- 26. Some examples of activities that have either been granted consent in the ONL, or are provided for under the District Plan, or are operating under existing use rights are as follows:
  - (a) Skyline Gondola redevelopment up Ben Lomond (ONL) including new gondola system and associated base buildings – granted by the Environment Court via two direct referrals.

- (b) The Earnslaw steaming across Lake Wakatipu (ONL) – presumably operating under existing use rights.
- (c) Kjet / Go Orange Jet / Shotover Jet / Dart River Safaris – operating on the Kawarau, Shotover and Dart Rivers (all ONF or ONL) – all granted resource consent.
- (d) Remarkables, Coronet Peak, Cardrona, Treble Cone ski fields (all ONL) – all provided for through the Queenstown Lakes District Plan ski area sub-zones and resource consents.
- (e) Recreational trail construction, including trails located throughout the Queenstown Lakes district, and a recent example, the new consented Tucker Beach to Arthur's Point trail RM200336 partially located within the Shotover River (ONF)
- (f) Heli Skiing (ONL) – multiple consents granted.

#### Residential examples

27. Some residential developments in the ONL that have resulted in very large-scale ecological restoration and enhancement projects that I am aware of include:

- (a) Matukituki Trust – RM030325 – located on Roys Peninsula, Lake Wanaka. The proposal included ecological restoration of Roys Peninsula made up of the following components:
  - (i) Pest control.
  - (ii) Weed control.
  - (iii) Hydrological investigation and landscape design of wetland area.
  - (iv) Initial revegetation of the site in identified key areas.
  - (v) Subsequent enrichment of these areas, once cover is established.
  - (vi) On-going enrichment over the wider block.
- (b) Emerald Bluffs – <https://www.emeraldbluffs.co.nz/> - RM041235 – as amended by Consent Order – located off West Wanaka Road. The proposal included ecological restoration and pest / predator



management of the eight lots within the Emerald Bluffs area (partly Rural ONL, partly Rural Lifestyle).

- (c) Treespace Queenstown Limited – RM181638 – Lower slopes of Mt Dewar, Coronet Peak Road. The approved proposal was to plant 79,800 beech seedlings in stages over a period of 10 years in five ‘zones’ in the backcountry. These plantings will primarily be undertaken in the form of ‘clusters’ within gullies. Once established, the gaps between these clusters will be infilled through natural seeding. The property has already been retired from pastoral grazing and the majority of the backcountry will be maintained as tussock grasslands. The application also proposes to plant 63,920 beech seedlings across the lower part of the front faces above Arthurs Point and to the west of Coronet Peak Road. A large part of this area is covered in wilding pines.
- (d) Redemption Song – RM120007 to undertake a two-lot subdivision and construct three dwellings at Littles Road, including ecological restoration. Extensive ecological restoration was undertaken as part of the proposal, including restoration, conservation and preservation of 19.7 hectares of land as follows:
  - (i) Restoring native vegetation and ecological processes on the undulating terrain of the site’s perched terraces, ledges and crevices of the western cliffs; and open tussock grassland remaining on the northern rocky outcrops.
  - (ii) Conserving 13.3 hectares of land by protecting and maintaining the diversity of habitat and niches provided on the sheer cliff face to the west.
  - (iii) Preserving the pastoral character of 17.6 hectares of land.

28. All of the above applications have been carefully considered by independent commissioners under section 6(b) provisions, and found to be appropriate. In my opinion, most people accept the above activities as part of the Queenstown Lakes district environment, and not inappropriate. The examples also illustrate that serious restoration of ONLs (as added into the third limb of the objective) is normally part of an ‘appropriate’ development proposal.

29. The Queenstown Lakes 'receiving environment' includes all the tourism related and residential activities above and many more not listed. The receiving environment is normally applied to the assessment of effects of a resource consent but in my opinion should be considered when developing objectives and policies so that they are effective and efficient.
30. I wonder if the activities I have listed that occur in the ONF/L would exist with the objective and policy framework set out in the notified RPS. For example, would a Coronet Peak or Remarkables ski field operation be deemed to achieve the objective NFL-O1? Yet I consider there are few who would think a ski field in the Queenstown Lakes District to be inappropriate.
31. I do support the addition of the third limb (c) as per Mr MacLennan's supplementary evidence regarding promotion of landscape restoration.
32. The third limb however reinforces my points above, because the reality is that the primary means of restoring a landscape, as per the third limb added by Mr MacLennan, is as part of an 'appropriate' development. In my experience, with some exceptions, ecological restoration of the ONF/L is always part of a residential dwelling or other development. For example, an appropriately sited residential dwelling in the ONL as part of a comprehensive ecological restoration project will lead to restoration of the ONL.
33. Following the pre-hearing meeting, I recommended the following change to NFL-O1 to better reflect the assessment above:

*NFL-O1 – 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 **appropriate** use and development of Otago's *natural and physical resources* results in **is enabled without compromising:**

- (1) the protection of outstanding natural features and landscapes, and
- (2) the maintenance or enhancement of *highly valued natural features and landscapes*, **and**
- (3) **promoting the restoration of the values of the outstanding and highly valued natural features and landscape.**

(Red wording from addendum evidence of Mr MacLennan, 11 October 2022).

34. On reflection, the wording above is not ideal in terms of the 'without compromising' wording, and then (c) promoting the restoration of the values of the outstanding and highly valued natural features and landscape.
35. I also consider a minor change to better align with the terminology of the following policy, NFL-P2, is prudent, which refers to the values of the ONF/L. The change is shown below to part (1) of the objective, to includes reference to the protection of the values of the ONF/L:

*NFL-O1 – 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 appropriate use and development of Otago's *natural and physical resources* results in is enabled while providing for:

- (1) the protection of the values of outstanding natural features and landscapes, and
- (2) the maintenance or enhancement of *highly valued natural features and landscapes*, while also
- (3) promoting the restoration of the values of the outstanding and highly valued natural features and landscape.

**Bold underline** are my additions, and ~~strikethrough~~ are my deletions, Red wording from addendum evidence of Mr MacLennan, 11 October 2022.

36. This change is important because in the Queenstown-Lakes area, the district and economy is all about 'appropriate' activities in the ONF/L and getting people out and about in the ONF/L, providing for their social well-being, as well as the economic well-being of the community through the tourism economy, upon which the district remains largely based. A clean version of the above is found in my **Appendix 1**.
37. The modified objective better achieves the purpose of the RMA, with its dual enabling and regulatory components, by enabling appropriate development while ensuring adverse effects are managed to ensure the values of ONF/Ls are not adversely affected.
38. I have provided a Section 32AA evaluation at the end of my brief of evidence.

## **NFL-P2 – PROTECTION OF OUTSTANDING NATURAL FEATURES AND LANDSCAPES**

39. As notified, NFL-P2 reads:

**NFL-P2 – Protection of outstanding natural features and landscapes**

Protect outstanding natural features and landscapes by:

- (1) avoiding adverse *effects* on the values 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*.

40. The S42A report recommended changing this to:

**NFL-P2 – Protection of outstanding natural features and landscapes**

Protect outstanding natural features and landscapes by:

- (1) avoiding adverse *effects* on the values of the natural features and landscapes where there is limited or no capacity to absorb change<sup>110</sup> that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding, and

[...]

41. I am concerned the S42A version of this policy does not read well. However, the supplementary statement of Mr MacLennan contained an **erratum** in **Appendix 1** showing the policy as follows.

**NFL-P2 – Protection of outstanding natural features and landscapes**

Protect outstanding natural features and landscapes by:

- (4) avoiding adverse *effects* on the values of the natural features and landscapes where there is limited or no capacity to absorb change<sup>19</sup> ~~that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves~~ outstanding, and

[...]

42. Mr MacLennan then recommended further amending NFL-P2 in his paragraphs 14 and 26.

43. I note the supplementary evidence of Mr MacLennan has two different versions of the start of NFL-P2 in his paragraphs 14 and 26 as shown below:

14 And the following amendment to NFL-P2:

**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<sup>6</sup> by:

(1) ...

**NFL-P2 – Protection of outstanding natural features and landscapes**

Protect outstanding natural features and landscapes outside the coastal environment by:

- (1) avoiding adverse effects on the values of the natural features and landscapes where there is limited or no capacity to absorb use or development change<sup>14</sup> 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.

44. I am consequently unsure whether the words in blue below from paragraph 14 of the Supplementary Evidence of Mr MacLennan are included or not:

*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<sup>110</sup> 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.*

45. In the Glenpanel LP submission, it was requested that reference to protection from “inappropriate subdivision, use and development” was made.

46. I therefore support the addition of the words in blue as per Mr MacLennan’s paragraph 14. If these words are not included, I have concerns about NFL-O1, similar to those regarding NFL-O1. Without the words in blue, I consider this policy goes further than Section 6 of the RMA and does not recognise that development can be appropriate in the ONF/L. For example, the tourism

and residential examples provided earlier, as well as noting that farm buildings including farm houses can add to rural character and help farming activities continue on the land.

47. The words in blue that refer to inappropriate development are necessary as like section 6, they effectively acknowledge that some development can be appropriate, subject to meeting (1) and (2).
48. I note there is no policy framework to sit alongside the new third limb of the objective NFL-O1 that states: “*promoting the restoration of the values of the outstanding and highly valued natural features and landscape.*”
49. I propose a further change to policy NFL-P2 as follows (additions in **bold underline**):

*Protect outstanding natural features and landscapes outside the coastal environment from inappropriate subdivision, use and development<sup>2</sup> by:*

*(1) avoiding adverse effects on the values of the natural features and landscapes where there is limited or no capacity to absorb change<sup>110</sup> ~~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 **and recognising positive effects where restoration of the values of the natural features or landscapes is proposed.***

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

**Bold underline** are my additions, and underline and ~~strikethrough~~ are from Mr MacLennan’s errata, Red wording from addendum evidence of Mr MacLennan, 11 October 2022. Blue wording is from paragraph 14 of Mr MacLennan’s supplementary evidence.

50. I consider this addition is necessary to reflect the new third limb of the objective NFL-O1 which specifically recognises the positive effects of restoration.
51. Alternatively, the Panel may wish to consider a new policy recognising that activities in the ONL that do not involve permanent buildings, for example the tourism related activities I have described such as jet boating, the Earnslaw, Heli skiing etc are less of a concern that activities that involve permanent built structures.

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<sup>2</sup> Blue text from paragraph 14 of Supplementary Evidence of Mr MacLennan.

## ASSESSMENT OF EFFICIENCY AND EFFECTIVENESS OF PROVISIONS S.32(1)(B)(II) AND S.32(2)(A)

### (a) Effectiveness:

52. As outlined in the evaluation of the PORPS 2021 objective and policy above, the changes more effectively achieve section 6(b) of the RMA that specifically requires protection of ONF/Ls from inappropriate development, not all development. It will also better recognise, in the Queenstown Lakes district particularly, that Queenstown and Wanaka are both alpine lake resort towns, and activities in and on the ONF/L are part of a century plus long tradition of tourism, and are not necessarily inappropriate.
53. The proposed changes will be effective in that it will achieve the section 6(b) matter of national importance and the broader objectives of the PORPS 2021 but in a way that recognises the development that has already occurred within ONF/L or is contemplated through district plan provisions.

### (b) Efficiency

<b><i>Benefits</i></b>	<b><i>Costs</i></b>
Better recognises that development can be 'appropriate' in ONF/Ls, rather than a default setting that it is inappropriate.	None identified
Better recognises the 'receiving environment' upon which objectives and policies are applied, particularly in the Queenstown lakes district where tourism related activities in the ONF/L are part of a century plus long tradition.	
Better recognises that restoration of ONF/Ls principally occurs as part of an 'appropriate' development, for example a residential dwelling in the ONL accompanied by a comprehensive ecological management plan.	
Reduces compliance costs associated with resource consents in 97% of the ONF/L, particularly within the Queenstown Lakes district.	
Avoids the risk to ORC that plan provisions could render land incapable of reasonable use under the RMA.	
Better enables landscape maintenance through ongoing farming use by recognising farm buildings and farm houses can maintain the landscape values of ONF/Ls.	

54. Compared with the S42A version of the NFL chapter provisions, adoption of the amended provisions as shown in **Appendix 1** will be efficient as the benefits will outweigh any costs.

## CONCLUSION

### Summary of reasons for proposed provisions s.32(1)(b)(iii)

55. In my opinion, the approach in **Appendix 1** provides the most appropriate way of achieving the purpose of the RMA, section 6(b), and relevant RMA requirements of the PORPS 2021 because:
- i. It is a more pragmatic approach that better recognises that development can be 'appropriate' in ONF/Ls, rather than a default setting that it is inappropriate; and
  - ii. Better recognises that restoration of ONF/Ls principally occurs as part of a development, for example a residential dwelling in the ONL accompanied by a comprehensive ecological management plan.
  - iii. Better recognises the 'receiving environment' upon which objectives and policies are applied, particularly in the Queenstown lakes district where tourism related activities in the ONF/L are part of a century plus long tradition.
  - iv. Seeks to reduce compliance costs;



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Blair Jeffrey Devlin

23 November 2022

**Appendix 1** – Clean version of proposed NFL-O1 and NFL-P2 – Evidence of Blair Devlin



## **Appendix 1 – Clean version of proposed NFL-O1 and NFL-P2 – Evidence of Blair Devlin**

### **NFL-O1 – 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 appropriate use and development of Otago's natural and physical resources is enabled while providing for:

- (1) the protection of the values of outstanding natural features and landscapes, and
- (2) the maintenance or enhancement of highly valued natural features and landscapes, while also
- (3) promoting the restoration of the values of the outstanding and highly valued natural features and landscape.

### **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
- (2) avoiding, remedying or mitigating other adverse effects and recognising positive effects where restoration of the values of the natural features or landscapes is proposed.
- (3) managing the adverse effects of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13.