

**BEFORE THE OTAGO REGIONAL COUNCIL
INDEPENDENT HEARINGS PANEL**

IN THE MATTER of the Resource Management Act
1991 (the Act)

AND

IN THE MATTER of submissions on non-freshwater
matters of the Proposed Otago
Regional Policy Statement 2021 by
Mount Cardrona Station Limited
(Submitter 0114)

EVIDENCE IN CHIEF OF JEFFREY ANDREW BROWN – PLANNING

ON BEHALF OF MOUNT CARDRONA STATION LIMITED

CHAPTER 14: NATURAL FEATURES AND LANDSCAPES

23 November 2022

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1 Introduction

- 1.1 My name is Jeffrey Andrew Brown. I have the qualifications of Bachelor of Science with Honours and Master of Regional and Resource Planning, both from the University of Otago. I am a full member of the New Zealand Planning Institute. I am also a member of the New Zealand Resource Management Law Association. I was employed by the Queenstown Lakes District Council (**QLDC**) from 1992 – 1996, the latter half of that time as the District Planner. Since 1996 I have practiced as an independent resource management planning consultant, and I am currently a director of Brown & Company Planning Group Ltd, a consultancy with offices in Auckland and Queenstown. I have resided in Auckland since 2001.
- 1.2 **Attachment A** contains a more detailed description of my qualifications and experience.

Code of Conduct

- 1.3 I have complied with the Code of Conduct for Expert Witnesses contained in the Environment Court Consolidated Practice Note 2014. This evidence is within my area of expertise, except where I state that I am relying on another person, and I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

Documents reviewed

- 1.4 The documents I have reviewed in preparing this evidence are as follows:
- (a) The Proposed Otago Regional Policy Statement notified 26 June 2021 (**PORPS21**);
 - (b) The section 42A report on Chapter 14 – Natural Features and Landscapes, prepared by Andrew MacLennan, dated 27 April 2022 (**s42A report**);
 - (c) The supplementary planning evidence on Chapter 14 – Natural Features and Landscapes prepared by Andrew MacLennan, dated 11 October 2022 (**Supplementary Evidence**);
 - (f) The proposed amendments to the PORPS s42A and Supplementary Evidence Version dated 31 October 2022 (**s42A Version**).

Background

- 1.5 This evidence is on behalf of Mount Cardrona Station Limited (**MCSL**) (submitter 0114). MCSL owns land at Cardrona, within the Queenstown Lakes District, that includes land within an urban mixed-use residential, visitor accommodation,

commercial and recreation zoning, and land within an Outstanding Natural Landscape.

- 1.6 MCSL's submission included a range of points on several chapters. My evidence addresses the Natural Features and Landscapes (**NFL**) provisions only.
- 1.7 The relief sought in the submission on the notified NFL provisions was, in broad summary, to amend objectives and policies so that "avoidance"-type language would be suitably qualified.
- 1.8 I specifically address two provisions:
- Objective NFL-O1 – Outstanding and highly valued natural features and landscapes;
 - Policy NFL-P2 – Protection of outstanding natural features and landscapes.
- 1.9 I use the acronyms **ONL** (Outstanding Natural Landscape) and **ONF** (Outstanding Natural Feature).

2 Objective NFL-O1

- 2.1 The s42A Version of this Objective reads:

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*.**
- (3) the restoration of outstanding and *highly valued natural features and landscapes*.**

- 2.2 Limb (3) has been added as a means of retrofitting the objective for better consistency with the policies¹. I do not agree with the inclusion of limb (3), and my reasoning is as follows:

- (a) Limb (1) of the objective aligns with the obligations under s6 for ONFs and ONLs – i.e. the protection of the s6(b) landscapes; and Limb (2) aligns with

¹ Supplementary Evidence of Andrew Maclennan, paragraphs 7 – 10

the obligations under s7 for maintenance and enhancement of the quality of the environment and amenity values – i.e. s7 landscapes. Limbs (1) and (2) therefore align with the relevant statutory direction.

- (b) “Restoration” as a term does not itself feature in Part 2 of the Act; rather, it is inferred from, and would be part of actions that may be required in “protecting” or “maintaining” or “enhancing” the values of landscapes, taking into account also s5(2)(c) (avoiding, remedying or mitigating adverse effects).
- (c) The policies that flow from Objective NFL-O1 enunciate how the objective is to be achieved. “Restoration”, by way of “remedying” or “mitigating”, is inherent in limb (2) of Policy NFL-P2 which sets out the ways that “protection” is to be achieved:

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 use or development, and**
- (2) **avoiding, remedying or mitigating other adverse *effects*.**

- (d) Policy NFL-P4, for restoration, states:

NFL-P4 – Restoration

Promote restoration of the areas and values of outstanding and *highly valued natural features and landscapes* where those areas or values have been reduced or lost.

- (e) I support this policy as it appropriately qualifies “restoration” by setting out the obligations for where restoration would be required.
- (f) However, limb (3) of Objective NFL-O2 does not qualify itself in the same way Policy NFL-P2 does; by simply requiring restoration as the outcome, limb (3) goes considerably further than what the policy otherwise requires. This could be problematic in a consenting situation in a location where landscape values have not been reduced or lost but the consenting authority could be obligated to require restoration regardless, because of the wording of the objective.

- (g) This could be remedied by qualifying the objective, but that could well lead to a repetition of the policy, and does not overcome my concern that the objective should align with the language of s6 and s7.

2.3 My preference therefore is for limb (3) of the objective to be deleted. This would:

- better align the objective with the statutory terminology in s6 and s7; and in so doing better align with the duties under s32(1)(a); and
- allow “restoration” as a policy means – specifically via Policy NFL-P4 and also via Policy NFL-P2, to more appropriately flow from the duty to “protect” ONLs and ONFs (and to “maintain” or “enhance” highly valued landscapes) under the objective; and in so doing be effective and efficient in achieving the objective.

3 Policy NFL-P2

3.1 The s42A Version of this policy is 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 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*.**

3.2 I consider that the following change is necessary to the policy (shown in **blue**):

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*.**

3.3 The reasons for this change are:

- (a) If there is limited capacity to absorb change, as would be identified through implementation of Policy NFL-P1(2), then avoidance of any adverse effects

on the values of the ONF or ONL is or may not be necessary in every case; there is no need for an unqualified *avoidance* policy to apply where there is limited capacity.

- (b) If there is limited capacity to absorb change, any identified adverse effects on the values of the ONF or ONL would be captured by limb (2) of the policy – the adverse effects must be avoided, remedied, or mitigated. How this is achieved would be addressed through the relevant regional and district plan provisions (objectives, policies, rules, matters of control or discretion, assessment matters) which would engage with the values of the ONF or ONL, which would be identified through Policy NFL-P1(1) (and / or through any district plan mapping and identification of the values).

- 3.4 I consider that the recommended change is therefore more consistent with s6(b) of the Act which requires the *protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development*. In achieving this, provisions in planning instruments must set out the methods for how ONFs and ONLs will be protected from *inappropriate* activities, and in the spectrum between *inappropriate* and *appropriate* lies the potential for limited use or development in a landscape with limited – but not no – capacity for such use or development.
- 3.5 Under s32, I do not anticipate any significant costs arising from my recommended change because ONL / ONF areas with limited capacity will already have been identified (through Policy NFL-(P1)(2)) and the values of the ONL / ONF will already have been identified through Policy NFL-(P1)(1), while methods for assessing the effects of a use or development on those values will be crafted through regional and district planning processes in any case. Conversely, costs would arise from not adopting my recommended change because of the loss of opportunities for legitimate use or development of ONLs or ONFs with limited capacity to absorb change.
- 3.6 For these reasons I consider that my recommended change is a more efficient and effective provision, and better achieves the purpose of the Act and its interplay between enabling and regulating use, development and protection of resources.

J A Brown
23 November 2022

Curriculum vitae – Jeffrey Brown

Professional Qualifications

1986: Bachelor of Science with Honours (Geography), University of Otago

1988: Master of Regional and Resource Planning, University of Otago

1996: Full Member of the New Zealand Planning Institute

Employment Profile

- May 05 – present: Director, Brown & Company Planning Group Ltd – resource management planning consultancy based in Queenstown and Auckland. Consultants in resource management/statutory planning, strategic planning, environmental impact assessment, and public liaison and consultation. Involved in numerous resource consent, plan preparation, changes, variations and designations on behalf of property development companies, Councils and other authorities throughout New Zealand.
- 1998 – May 2005: Director, Baxter Brown Limited – planning and design consultancy (Auckland and Queenstown, New Zealand). Consultants in resource management statutory planning, landscape architecture, urban design, strategic planning, land development, environmental impact assessment, public liaison and consultation.
- 1996-1998: Director, JBA, Queenstown – resource management consultant.
- 1989 – 1996: Resource management planner in several local government roles, including Planner (1992 – 1994) and District Planner (1994 – 96), Queenstown-Lakes District Council. Held responsibility for all policy formulation and consent administration.

Other

- Full member of the Resource Management Law Association
- New Zealand Planning Institute – presenter at *The Art of Presenting Good Planning Evidence* workshops for young planners (2016 –)
- Judge, New Zealand Planning Institute Best Practice Awards (2017 – present)