

BEFORE THE OTAGO REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Otago Regional Policy Statement 2021 –
AIR – Air and HAZ – Hazards and Risks Chapters

**REBUTTAL EVIDENCE OF LUKE PLACE ON BEHALF OF QUEENSTOWN
LAKES DISTRICT COUNCIL (138)**

14 DECEMBER 2022

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1. INTRODUCTION

- 1.1 My name is Luke Place. I am a Senior Policy Planner employed by the Queenstown Lakes District Council (**QLDC**). I have prepared evidence in chief on the AIR – Air and HAZ – Hazards and Risks chapters of the Otago Regional Council's Proposed Regional Policy Statement (**pRPS**).
- 1.2 My qualifications and experience are set out in my statement of evidence in chief dated 23 November 2022.
- 1.3 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note 2014 and that I agree to comply with it. 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 upon the evidence of another person.

2. PURPOSE AND STRUCTURE OF EVIDENCE

- 2.1 In relation to the AIR – Air chapter of the pRPS, my rebuttal evidence is provided in response to the following evidence:
- a. Paul James Freeland for Dunedin City Council;
 - b. James Taylor for Dunedin City Council; and
 - c. Susannah Vrena Tait for Fonterra Limited.
- 2.2 In relation to the HAZ – Hazards and Risks chapter of the proposed RPS, my rebuttal evidence is provided in response to the following evidence:
- a. Murray John Brass on behalf of the Director-General of Conservation / Tumuaki Ahurei;
 - b. Ainsley Jean Mcleod on Behalf of Transpower New Zealand Limited; and
 - c. Julie McMinn for Waka Kotahi NZ Transport Agency.

3. Evidence of Paul James Freeland for Dunedin City Council

3.1 Mr Paul Freeland has made a statement of evidence on behalf of Dunedin City Council. Mr Freeland makes a recommendation to amend AIR-M3 relating to territorial authority requirements. In particular, Mr Freeland recommends that AIR-M3 be amended so that a Future Development Strategy (**FDS**) under the NPS-UD implements the method, rather than district plans¹. QLDC made submissions on AIR-M3 generally supporting the notified provision.

3.2 Mr Freeland's recommendation is as follows (additions underlined and deletions ~~struck through~~):

AIR-M3 – Territorial authorities

No later than 31 December 2029, territorial authorities must prepare ~~or amend and maintain their district plans to include provisions~~ a Future Development Strategy under the NPS-UD that ~~direct~~ results in an urban form that assists in achieving good air quality by:

- (1) ~~encouraging or facilitating a~~ reducing reliance on private ~~nonelectric~~ motor vehicles (except electric vehicles and other ultra-low emissions motor vehicles) and enabling the adoption of active transport, shared transport and public transport options to assist in achieving good air quality, and
- (2) managing the spatial distribution of activities.

3.3 Mr Freeland considers this is more appropriate drafting on the basis that land use planning and public transportation planning elements will be considered at the same time when preparing an FDS, and that a FDS should set the strategic framework on the desired overall urban².

3.4 I disagree that that a specific reference to the FDS is the most effective or efficient way to draft the method. I note that not all territorial authorities are directed to prepare an FDS. Only tier 1 and 2 authorities identified in Table 1 and 2 of the Appendix to the National Policy Statement on Urban Development 2020 are required to prepare an FDS. Mr Freeland's amendment would exclude some territorial authorities within the region from this method and the RPS air

¹ Para 15, EIC of Mr Freeland

² Para 17, EIC of Mr Freeland

provisions. Further, District Plans are in my view better suited to implement the method, because District Plans contain the detailed approaches necessary to direct an urban form that achieves good air quality.

- 3.5 I acknowledge that FDS's provide critically important direction with regard to long term strategic planning, how well functioning urban environments will be achieved, how sufficient development capacity will be met and assist the integration of planning, infrastructure and funding decisions. However, in my view, the specific and more detailed actions needed to give effect to the Air provisions of the pRPS are best located in District Plans.
- 3.6 Further, I note that this approach would appear to be an anomaly within the pRPS, which focuses on amendments to District Plans in most chapters.
- 3.7 I am also unclear of Mr Freeland's understanding of the meaning of 'ultra-low emissions motor vehicles' in his recommended addition to limb (1) of AIR-M3. This term is not used elsewhere in the pRPS and in my view has a degree of ambiguity which is not desirable.

4. Evidence of James Taylor for Dunedin City Council

- 4.1 Mr James Taylor has made a statement of evidence on behalf of Dunedin City Council. Mr Taylor makes a recommendation to amend AIR-P3 – providing for discharges to air, AIR-P4 – avoiding certain discharges, and AIR-P5 – Managing certain discharges so that they facilitate discharges from Lifeline Utilities and Regionally Significant Infrastructure (with a particular focus on local authority owned or operated infrastructure) to ensure the ongoing social, environmental and cultural wellbeing outcomes they provide.
- 4.2 QLDC submitted on AIR-P3, AIR-P4 and AIR-P5 such that they be retained as notified. In my evidence in chief on the Air chapter I recommended that additional clarity be provided by amending the drafting of AIR-P4 regarding the types of discharges that do not need to be avoided using the words 'avoid unless....'³.

³ Section 5, EIC of Luke Place, Air Chapter.

- 4.3 I tend to agree that air discharges from Lifeline Utilities and Regionally Significant Infrastructure owned and operated by local authorities are important and that some form of managed discharges from these operations may be necessary to ensure the ongoing health and safety, and the social, environmental and cultural wellbeing of communities.
- 4.4 To provide for this amendment Mr Taylor recommends the following amendment to AIR-P3 (additions underlined and deletions ~~struck through~~):
- Allow discharges to air provided they do not adversely affect human health, ~~amenity values~~, mana whenua values, and the life supporting capacity of ecosystems and they minimise adverse effects on amenity values as far as practicable.
- 4.5 I do not agree with Mr Taylor's amendment in terms of its scale and extent. I do not consider that such a broad amendment is necessary to give effect to the specific intent of providing for air discharges of Lifeline Utilities and Regionally Significant Infrastructure, and this drafting may have much wider ranging effects with regard to how amenity values are to be addressed. In particular, it results in a much weaker direction than the s 42A version. In my view, managing air discharges of Lifeline Utilities and Regionally Significant Infrastructure owned and operated by local authorities can be efficiently and effectively captured in AIR-P5 – managing certain discharges.
- 4.6 In regard to AIR-P4, I recommended in my evidence in chief³ that the policy be more specific as to what sorts of offensive or objectionable discharges are to be avoided, such that the words 'avoid unless....' are applied. It is possible that this approach be used to apply to air discharges from Lifeline Utilities and Regionally Significant Infrastructure provided that they are required for the health and safety, and the ongoing social, environmental and cultural wellbeing of the communities that they are intended to serve.
- 4.7 For the reasons set out above, I also agree with Mr Taylor's amendment to AIR-P5 – Managing certain discharges. However, if the focus relates to Lifeline Utilities and Regionally Significant Infrastructure owned and operated by local authorities, this should be more specifically stated in Mr Taylor's recommended amendments as I note above in regard to AIR-P3 and AIR-P4.

5. Statement of Evidence of Susannah Vrena Tait for Fonterra Limited

- 5.1 Ms Susannah Tait has made a statement of evidence on behalf of Fonterra Limited. Ms Tait makes a recommendation supporting HortNZ's submission that a new policy be added to the Air chapter relating to reverse sensitivity effects from air discharges⁴. I acknowledge that other submitters have also supported this recommendation.
- 5.2 QLDC submitted on a range of provisions within the Air chapter of the RPS. QLDC also made further submissions opposing the impact of the proposed policy relating to the need for territorial authorities to include provisions on reverse sensitivity effects of air discharges⁵.
- 5.3 While I acknowledge that reverse sensitivity effects are a complex resource management issue that need to be managed carefully with respect to a range of activities that are likely to discharge contaminants to air, I would recommend caution in regard to the scale and extent of the effect of any new policy. In particular, with regard to a policy's application to urban industrial activities. I note that a range of industrial and service activities can often occur in close proximity to what may traditionally be considered sensitive activities, such as residential or other similar urban activities. In the Queenstown Lakes District, the industrial economy is known to comprise a range of activities that do not fit the traditional 'heavy industrial' type uses that might be present in other Districts within the region⁶. Such activities occur within industrial purpose zones in close proximity or adjacent to residential or other urban use zones without problematic adverse effects arising through the application of appropriate objectives, policies and rules within the respective zones.
- 5.4 In my view, industrial zones should not necessarily be pushed to locations that are too far away from employees and customers. This approach would not be consistent with the need to promote consolidated urban form and to deliver well-functioning urban environments as directed by the National Policy Statement on Urban Development. Further, it is known that locating industrial zones in close proximity to other similar zones within the urban environment can have a range

⁴ Para 9.28 – 9.31, EIC of Susannah Tait "Avoid locating new sensitive activities near existing activities which are permitted or consented to discharge to air"

⁵ Further submission points 00236.051 and 00236.052

⁶ Page 13, Section 2.3, Economic Assessment of Queenstown Lakes District's Industrial Zones, Stage 3 District Plan Review, May 2019

of benefits such as agglomeration benefits, the occurrence of functional amenity, greater transport efficiencies, and reducing external effects across multiple locations.⁷

6. Evidence of Murray John Brass on behalf of the Director-General of Conservation / Tumuaki Ahurei

6.1 Mr Murray Brass has made a statement of evidence on behalf of the Director-General of Conservation / Tumuaki Ahurei. Mr Brass makes a recommendation to amend Policy HAZ-NH-P7(2) – mitigating natural hazards.

6.2 The s 42A report recommended that HAZ-NH-P7 limb (1) be deleted, on the basis that limb (2) (now referred to as (1A)(a)) captures the intent of the policy. Mr Brass considers ‘it would be more appropriate to retain elements of both [Limb 1 and (2)]’⁸.

6.3 HAZ-NH-P7 limb (1), recommended to be deleted, states:

Prioritise risk (in relation to natural hazards) management approaches that reduce the need for hard protection structures or similar engineering interventions, and provide for hard protection structures only when:

(1) hard protection structures are essential to manage risk to a level the community is able to tolerate

6.4 Mr Brass’ recommendation is as follows (additions underlined and deletions ~~struck through~~)

⁷ Para 14.22, Evidence In Chief Of Natalie Dianne Hampson For Queenstown Lakes District Council Nps-Udc Capacity And Economic Matters Relating To The General Industrial And Three Parks Zones 18 March 2020

⁸ Para 214, EIC of Mr Brass.

Prioritise risk (in relation to natural hazards) management approaches that reduce the need for hard protection structures or similar engineering interventions, and provide for hard protection structures only when:

(1A) the following apply:

(a) there are no reasonable alternatives that ~~result in reducing~~ manage or reduce the risk exposure to a level the community is able to tolerate

...

6.5 The QLDC submission sought that limb (1) be deleted on the basis that limb (2) more accurately captured the intent of the policy, being that hard protection/engineering structures are a last resort. I agree with the QLDC submission. However, I also agree with Mr Brass that, on its own, limb (2) appears to set a lower standard than limb (1), in that limb (1) talks about risk the community can tolerate, while limb (2) talks about risk exposure. These may result in different outcomes.

6.6 I would however recommend an additional amendment to improve Mr Brass' wording. That would be to remove the words 'risk exposure' so that the limb simply refers to the more directive terms that are used throughout other parts of the HAZ-HN chapter, primarily being 'tolerability'. The other amendment I recommend is to take the direction set in HAZ-NH-O1 – Natural Hazards, with regard to maintaining risks where they are acceptable and managing them to ensure they do not exceed tolerable levels. In my view, these amendments would better give effect to the direction in HAZ-NH-O1.

6.7 My recommended amendments are set out below highlighted blue (additions underlined and deletions ~~struck through~~, for clarity, Mr Brass' remaining amendments are maintained but not highlighted)

Prioritise risk (in relation to natural hazards) management approaches that reduce the need for hard protection structures or similar engineering interventions, and provide for hard protection structures only when:

(1A) the following apply:

(a) there are no reasonable alternatives that result in reducing maintain the level of risk where it is acceptable or manage the risk exposure so it does not exceed a tolerable level.

7. Evidence in Chief of Ainsley Jean McLeod on Behalf of Transpower New Zealand Limited

7.1 Ms Ainsley McLeod has made a statement of evidence on behalf of Transpower New Zealand Limited and makes a recommendation to amend HAZ-NH-P3(1) – New activities. Ms McLeod proposes amending HAZ-NH-P3(1) to enable the National Grid to be located in areas where the activity would be assessed as having significant risk.

7.2 Ms McLeod recommends that Limb (1) is amended so that ‘significant natural hazard risk’ of new activities is avoided, as opposed to avoiding ‘new activities’ in areas subject to significant natural hazard risk.

7.3 QLDC’s submission requested that the intent of HAZ-NH-P3 be retained subject to an amendment to limb (2) which has been accepted by the s 42A report author.

7.4 In my view, Ms McLeod’s amendment is altering the intent of HAZ-NH-P3(1) too far. I understand that the s 42A version of HAZ-NH-P3(1) does not contemplate new activities within areas identified as being subject to significant risk. In my view, this approach is deliberately different to the direction of limbs (2) and (3) of HAZ-NH-P3 which direct new activities to manage natural hazard risk in areas that have tolerable risk and acceptable risk. The substantive difference is that limbs (2) and (3) anticipate or provide for new activities being located within these areas. Locating new activities in areas with tolerable and acceptable risk (as opposed to significant risk) aligns with the direction of HAZ-NH-O1 and HAZ-NH-O2.

7.5 In my opinion, the approach within HAZ-NH-P3(1) also contrasts importantly with the direction in HAZ-NH-P4(3) which talks about managing existing activities in areas of significant risk. HAZ-NH-P4(3) deliberately directs the attention to managing ‘activities’ as opposed to managing the ‘level of risk’, as it

does contemplate activities (being existing activities only) being located within areas of significant risk.

- 7.6 I also note that Ms McLeod's recommendation would apply to a much wider range of activities than just 'nationally significant infrastructure that has a functional needs or operational need for its location', which I do not support.

8. Evidence in chief of Julie McMinn for Waka Kotahi NZ Transport Agency

- 8.1 Ms Julie McMinn has made a statement of evidence on behalf of Waka Kotahi NZ Transport Agency. Ms McMinn makes a recommendation to amend HAZ-NH-P3 relating to new activities to include the words (or something similar to achieve a similar outcome) “, except for nationally significant infrastructure” to recognise that state highways and other nationally significant infrastructure may have little choice but to locate in areas of natural hazard risk⁹. Ms McMinn's amendment is similar to that set out above by Ms McLeod for Transpower New Zealand Limited.

- 8.2 As above, QLDC's submission requested that the intent of HAZ-NH-P3 be retained subject to an amendment to limb (2) which has been accepted by the s 42A report author.

- 8.3 I am not of the view that nationally significant infrastructure should be provided with an unfettered ability to construct new activities within areas that are subject to significant levels of risk. I do acknowledge that, in some cases, there may be instances where State Highways or other nationally significant infrastructure may consider a need exists to traverse areas that are subject to higher levels of natural hazard risk. However, the first direction should be that any areas that have been identified as being subject to significant risk are avoided. If these State Highways or other nationally significant infrastructure were regularly subject to natural hazard events by virtue of their location in areas of significant risk, there is likely to be a range of health and safety, and social, economic and cultural adverse effects on the communities that rely on them.

- 8.4 In my view, a more nuanced approach would be necessary to manage any instances where there is no possible alternative that such infrastructure could

⁹ Para 1.2, EIC of Ms McMinn

be located outside areas of significant risk. Such an approach would necessitate the robust assessment of all alternative sites, and a requirement to reduce the risk to tolerable levels to be consistent with Objective 1.

Luke Place

14 December 2022