

Before the RPS Hearing Panel

Under the Resource Management Act 1991

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

Synopsis of Legal Submissions on behalf of Wayfare Group Ltd (Realnz) (#0411) and Trojan Holdings Limited (#0206)

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**anderson
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May it please the Panel

- 1 These legal submissions are presented on behalf of Wayfare Group Ltd (**Realnz**) (#0411) and Trojan Holdings Limited (**Trojan**) (#0206) (collectively, **Submitters**) in relation to the non-freshwater parts of the Proposed Otago Regional Policy Statement 2021 (**pORPS**).
- 2 While these submissions are being presented during Week 5 (Energy, Infrastructure & Transport) they address the entirety of the Submitters' submissions which cover the following topics:
 - (a) Integrated Management;
 - (b) Urban Form and Development, Historical and Cultural Values;
 - (c) Energy, Infrastructure & Transport;
 - (d) Ecosystems and Indigenous Biodiversity;
 - (e) Hazards and Risks;
 - (f) Land & Freshwater;
 - (g) Natural Features and Landscapes; and
 - (h) Appendices 6 and 9.

The Submitters

- 3 Mr Norris' and Mr Anderson's evidence describe the nature and scale of their companies' operations. Mr Anderson will speak to the key points in his evidence. Mr Norris will table an updated executive summary (updated in terms of data regarding visitor numbers and trends, and GDP) and speak to key points. Key themes that we wish to address you on are:
 - (a) The diversity and importance of the tourism products provided – ski areas, transport including public transport, attractions such as TSS Earnlaw and access to visitor destinations such as Walter Peak;
 - (b) Tourism's contribution to social, cultural and economic well-being and health and safety of Otago's communities and visitors;
 - (c) Certain activities' functional need to be located in specific places;
 - (d) Natural hazards, climate change and resilience;

- (e) Opportunities for conservation, landscape and environmental restoration generally.
- 4 In terms of the tourism industry broadly, and its place in Otago's community and economy the *Description of the region* quite responsibly notes up front that *tourism also has a significant impact on the regional economy, contributing about a quarter of the region's total gross domestic product. This is the highest of any region in New Zealand, and primarily concentrated in the Queenstown Lakes District.*¹ Mr Norris and Mr Anderson provide further data, including the Benji Patterson report commissioned by the ski industry, that provide further insight into the contribution of the tourism industry generally, and ski tourism in particular, to the Queenstown Lakes District and Otago regional economy.
- 5 That significant contribution to the region, in very general terms, is made within a comparatively small physical footprint.

The Submitters' objectives and justification

Social, economic and cultural well-being and health and safety - importance of tourism industry and benefits of access to the outdoors for recreation

- 6 In terms of the "well-being" theme, there are two key sub themes of interest to the Submitters, in respect of which they are seeking better recognition of throughout the pORPS:
- (a) The tourism industry makes a significant economic contribution to the Otago economy and this, in part, justifies many of the changes sought by the Submitters that try to ensure consenting pathways are left open, particularly for "appropriate" ongoing use and development.
 - (b) The Submitters' operations enable thousands of people to access the outdoors – whether as paying clients at visitor destinations², or simply as those who get access to the outdoors (for their own private recreation) via infrastructure³, public transport services⁴ and safety services⁵ provided by the Submitters.

¹ Proposed Otago Regional Policy Statement 2021 (pORPS), 24 February 2023, page 7

² Such as ski areas, Walter Peak

³ Private roads that access Remarkable, Cardrona for example

⁴ Buses to ski areas, Te Anau and Milford, TSS Earnslaw

⁵ E.g. avalanche control, contribution to search and rescue, contribution to responses to natural hazard events

- 7 All of these "well-beings" (economic through to health and safety) fall squarely under the core part of section 5. Then there are obvious links to various section 6 matters (maintaining and enhancing access to and along water bodies, protection and preservation of other natural values from inappropriate activities,) and other relevant matters under section 7, including in particular maintaining and enhancing amenity values.
- 8 When considering how the pORPS can best provide for the section 5 well-beings, along with its related treatment of the section 6 and 7 matters, from the Submitters' point of view, a much more explicit acknowledgement of the health and safety related well-beings arising from enabling access to the outdoors (both commercially and privately) is justified.
- 9 Changes are sought to the SRMR and UFD chapters in particular, and aspects of these are subject to ongoing caucusing and additional work.

Transport

- 10 The Submitters are part of the community and part of the solution to moving people around the region and giving them access to the rivers, lakes, mountains and other wild and natural places of Otago. The Submitters are highly experienced in this regard – well placed to provide this access in way that is safer, mitigates congestion and with less of an environmental footprint than if those accessing the outdoors were in private vehicles. The Submitters' transport services benefit the public generally in terms of consolidation and optionality.
- 11 The RMA does not distinguish between public and private transport providers and nor does the Land Transport Act 1998. Given the benefits and positive effects regardless of public or private ownership, the Submitters are still seeking more explicit recognition.

Infrastructure

- 12 Aspects of the Submitters' operations and services fall squarely within the definition of infrastructure. The Submitters' primary focus is on the 4 major ski areas, but under this broad heading there is also the infrastructure associated with transport services (land and water based) and visitor destinations such as Walter Peak that is essentially self sufficient in many respects.
- 13 As with infrastructure in the broader sense throughout the region, the infrastructure provided by the Submitters is located in both rural and urban areas – it is an issue that is relevant throughout the region.

- 14 Ski area infrastructure, along with water storage infrastructure and NZ Defence Force facilities, were added to the definition of "specified infrastructure" in the National Policy Statement for Freshwater Management 2020 in February 2023. Specifically, this provides for a consenting pathway for works in the vicinity of wetlands, as long as the stringent thresholds set in clause 45(6) of the National Environmental Standard for Freshwater are met:
- (a) the specified infrastructure will provide significant national or regional benefits; and
 - (b) there is a functional need for the specified infrastructure in that location; and
 - (c) the effects management hierarchy is applied.
- 15 The addition of ski area infrastructure to the NPSFM definition of specified infrastructure is an acknowledgement that the provision of it generally is in the realm of regional significance.⁶

Conservation benefits

- 16 Mr Norris in particular details the conservation benefits that have been made possible by the ongoing growth and viability of Realnz and its predecessor companies. The Submitters highly value these benefits they have been enabled to provide. It is submitted that provisions should give more recognition and place more weight on the benefits of enhancing and restoring natural values, landscape values and biodiversity values in order to provide more of an incentive, and in order to ensure they are considered

⁶ Cabinet Environment, Energy and Climate Committee Paper "Essential Freshwater 2022 Amendments – seeking final agreement on wetland, technical, and stock exclusion amendments" (23 November 2022) page 17:"[33] note that additional types of infrastructure may be of significant national or regional benefit and may have a functional need to occur in a natural inland wetland area"; Ministry for the Environment *Regulatory Impact Statement: Changes to wetland regulations (inland wetlands)* (November 2022) page 3: They would better enable desirable activities to be undertaken in natural wetland areas while continuing to deliver a high level of protection for them. Page 36:

"179. This package would address all of the policy problems, by reducing uncertainties associated with the natural wetland definition, providing consent pathways for significant operations whose activities are constrained under the status quo, and extending current provisions for wetlands restoration to maintenance and biosecurity. 180. They would better enable desirable activities to be undertaken in natural wetland areas, while (through the existing gateway tests in the NPS-FM and application of the EMH) continuing to deliver a high level of protection for them."

as relevant matters in the regional and district plans, and in consenting decisions.

Landscape

- 17 With in order of 97% of the Queenstown Lakes District categorised as "outstanding", and with significant parts of the tourism offerings taking place within these outstanding natural landscapes and features, the Submitters consider it important that any directive in respect of management landscape acknowledge and provide for the fact that there are many activities that are "appropriate" in these landscapes. Such an approach is entirely consistent with section 6 (b).
- 18 Section 6 (b) does not require there be no change to the character, attributes and values of outstanding landscapes and features. It is not an unqualified "avoid adverse effects" directive. The attention is on the "appropriateness" of activities. It is submitted significant resource areas should not be "locked up" by broad objective and policy drafting. The potential unintended consequence on the ability to consent what should be appropriate activities range from significant uncertainty and unjustifiably high transaction costs, through to consent being declined for clearly "appropriate" activities (such as ski area activities, flood protection works etc).
- 19 The section 42A version of Appendix 9 has added "recreational value" to the "associated attributes" category. This is supported, and following that logic through, it should be possible, on the merits, for additional development associated with important recreational values to be considered "appropriate" within an ONL.
- 20 Also, while classified as ONLs, much of the landscape is in fact degraded and lower on the "natural" continuum, given the historic removal of indigenous vegetation over time, and introduction of exotic pasture and other introduced species, including wilding species. In the Queenstown Lakes District there are many "ONLs" with these degraded characteristics, and the assessment of what is appropriate/inappropriate should be undertaken in light of this context also.

Historic Heritage

- 21 Section 6 (f) does not require avoidance of adverse effect on historic heritage. Rather, protection of historic heritage from inappropriate activities is a matter to be recognised and provided for.

Natural Hazards

- 22 The Submitters are highly experienced in managing risk and responding quickly to natural hazard events. Natural hazard events are anticipated and planned for. Based on their extensive experience, the Submitters' are concerned that the pORPS provisions take a too conservative approach that is not properly informed by the community's tolerance for risk. The direction in section 6 (h) is to recognise and provide for the management of **significant** risks from natural hazards. The implementation of the pORPS in its current form through subsequent Plans could sterilise land, and the ability to undertake appropriate activities, unnecessarily.

Outcomes sought

- 23 The Submitters' focus for today are a subset of the provisions raised in the Submissions, and in Mr Farrell's evidence. Where matters overlap with, and are more strongly relevant to the Otago Fish and Game Submission for whom Mr Farrell also prepared evidence, we will address the Panel on those provisions in April. Tabled with these submissions are the extracted provisions addressed in Mr Farrell's evidence in chief, with the provisions to be addressed at the **later date, shaded out**.

Social, economic and cultural well-being, and health and safety - importance of tourism industry and benefits of access to the outdoors for recreation

- 24 In the SRMR chapter, arising from the general relief to insert a new section to identify and discuss, in a positive way, the benefits to people's health and wellbeing, and the environment, of enabling access and use of the outdoors, Mr Farrell's evidence included examples of how to implement this theme – including a new SRMR Issue that explicitly acknowledges the importance of access to, use and associated development in the outdoors and various additional amendments throughout the SRMR chapter on this theme.
- 25 IM-LS-M12 – support addition to (3) in February 2023 version; continue to seek additional change to (3) (b) in order to promote not just legal road access, but also private easements, covenants in gross etc in order to enhance public access opportunities.
- 26 UFD-P5 – seek additional reference to "commercial recreation"
- 27 UFD-P7 – specifically seek additional references to enabling and facilitating access to outdoor recreation and visitor activities
- 28 UFD-M1

Transport

- 29 EIT-TRAN-07 – support changes made in February 2023 version
- 30 EIT-TRAN-P19 – support changes made in February 2023 version, but still seek addition of reference to "private passenger support services" in (2), and changes to (3) to ensure connectivity to key visitor destinations is explicitly provided for

Infrastructure

- 31 Continue to seek insertion of new definition "ski area infrastructure" and inclusion of the same in list of "Regionally significant infrastructure"
- 32 EIT-INF-M4 – continue to seek changes to (1) and deletion of (4)
- 33 EIT-INF-M5 – continue to seek deletion of (7)
- 34 EIT-EN-P5 – continue to seek acknowledgement that there will be circumstances when renewable generation is not practical
- 35 IM-M1 – seek new clause (7)

Conservation benefits

- 36 SRMR17 – seek additional statements
- 37 IM-P4 – seek new subpara (7)
- 38 LF-LS-P22 – support new addition (g) in February 2023 version
- 39 ECO-P8 – continue to seek new clause (4) to promote and provide incentive for activities that support positive environmental and conservation outcomes.
- 40 ECO-M5 – continue to seek addition of reference to "promoting" restoration and enhancement of habitats of indigenous flora and fauna

Landscape

- 41 SRMR-14 – seek amendment deleting reference to "natural"
- 42 NFL-O1, NFL-P4 and NFL-M1 – continue to seek changes as the Objective goes further than what is required by section 6 (b), does not clearly restrict the protections to "natural" landscapes and would unreasonably restrict appropriate activities throughout the majority of the Queenstown Lakes

District. Support reference to restoration of outstanding and highly valued natural features and landscapes.

- 43 ECO-P5 – changes continue to be sought to ensure that where there are established ski areas, visitor destinations or zoning in respect of the same, there will be times when expansion and addition of new elements is appropriate.
- 44 APP9 – amendments sought to ensure the methodology includes meaningful community input as to values, including use values, of and in the landscapes

Historic Heritage

- 45 HCV-HH-P5 and methodology in APP8 – changes continue to be sought to amend unjustifiably low and subjective thresholds

Natural Hazards

- 46 IM-P10 – support changes made in pORPS February 2023 version
- 47 IM- M2 – support reference to consultation with community
- 48 IM-M3
- 49 LF-FW-P13 – seek new clause (7)
- 50 HAZ-NH-P2 – continue to seek new reference to community scale consultation
- 51 HAZ-NH-M2
- 52 HAZ-NH-M3
- 53 HAZ-NH-M4
- 54 APP6 – changes sought to insure community input into level of tolerance for risk, and generally to provide more clarity and certainty as to matters that are relevant as to tolerance for risk

Evidence

- 55 Paul Anderson – Chief Executive of NZSki (on behalf of Trojan Holdings)
- 56 Paul Norris – Realnz's Chief Conservation Officer
- 57 Ben Farrell – independent expert planner

Dated this 17th day of March 2023

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