

**Before the Hearings Panel appointed by  
the Queenstown Lakes District Council**

**Under**

the Resource Management Act  
1991

**And**

**In the Matter of**

a proposed variation to the  
Queenstown Lakes Proposed  
District Plan – Urban Intensification  
Variation

**Legal Submissions  
for John O'Shea, Helen Russell, John  
Russell and Mary-Louise Stiassny  
(Submitter 198)**

Dated: 27 August 2025

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## INTRODUCTION

1. These legal submissions are presented on behalf of John O'Shea, Helen Russell, John Russell and Mary-Louise Stiasny (**Submitters**).
2. The Submitters own a property at 3/61 Stratford Terrace, Wānaka (**Property**). The Property is within the existing Medium Density Residential Zone (**MDRZ**) of the Proposed District Plan (**PDP**). The MDRZ is subject to changes under the Intensification Variation.
3. Evidence on behalf of the Submitters has been filed by Mr Neil Thomas (Hydrogeologist) and Mr John Russell.
4. The Submitters understand and accept the overall intent of the Proposed Urban Intensification Variation (**Intensification Variation**) and recognise the need to implement the National Policy Statement on Urban Development 2020 (**NPS-UD**). Their concern relates to the groundwater implications of intensification on the land in and around the Property. This concern is founded on historical dewatering issues, previous Environment Court determinations and more recently the hydrogeological evidence of Mr Thomas.
5. These legal submissions focus on points of disagreement between the Submitters and the current version of the Intensification Variation as contained in Queenstown Lakes District Council (**Council**) Rebuttal Evidence<sup>1</sup>.
6. The original submission sought relief relating applying to the MDRZ as well as specifically to the properties adjacent to the Submitters (Lot 2 DP 18304, Lot 1 DP 18304 and Lot 3 DP 25998) and related to the need to consider impacts of the Intensification Variation on groundwater, land stability and natural hazard risk.
7. Since the filing of the original submission, and now with the benefit of Mr Thomas' evidence on the potential groundwater effects, the relief sought has been refined in extent to respond to the groundwater risk. The relief now sought applies particular matters of discretion to resource consents within an area 100m of the true right bank of Bullock Creek and 500m to the true

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<sup>1</sup> Rebuttal Evidence, Section 42A Report of Amy Bowbyes, Appendix A and B, dated 24 July 2025.

left bank. A map of this area is appended to the summary statement of Mr Thomas. We refer to this area throughout these submissions as the '**Bullock Creek Groundwater Protection Overlay**'.

## LEGAL FRAMEWORK

8. We have read and agree with aspects of the opening legal submissions made by Ms Scott for the Council including the summary of the statutory functions of Council and that there is a direction to intensify urban areas through height and density under the NPS-UD, and the legal requirements relating to scope.<sup>2</sup>
9. However, we further add to Council's legal submissions that Objective 1 and Policy 1 as well as application of the 'qualifying matters' in Clause 3.31 and 3.32 of the NPS-UD give Council support to reduce the level of intensification in particular areas with particular constraining or specific characteristics.
10. We disagree with the position of Council which rejects the Submitter's relief in the rebuttal evidence. Council concludes that groundwater effects are a matter for the Otago Regional Council (**ORC**) to regulate through the Regional Plan.<sup>3</sup> To the contrary, we consider that effects on groundwater are able to be managed through the provisions of both the district plan and the regional plan so long as the respective provisions fall within each council's functions and do not trigger section 75(4) RMA.
11. In particular, the legal framework requires that decisions on the Variation are in accordance with:
  - (a) Council's obligations under the NPS-UD;
  - (b) Council's obligations under sections 74 and 75 of the Resource Management Act 1991 (**RMA**);
  - (c) its functions under section 31 of the RMA;
  - (d) its obligations to prepare and have regard to an evaluation report in accordance with section 32 of the RMA; and
  - (e) the provisions of Part 2 of the RMA.

<sup>2</sup> Opening Legal Submissions for Queenstown Lakes District Council dated 25 July 2025.

<sup>3</sup> Rebuttal Evidence of Rachel Morgan dated 25 July 2025 at [9.1] and [9.2]

## Application of Legal Framework

12. As part of Council's functions to give effect to the purpose of the RMA under section 31, they need to control the actual or potential effects of the use, development, or protection of land. We consider Council should manage the effects of development on groundwater through the relief sought by the Submitters. This is the most appropriate way to achieve the sustainable management purpose of the RMA in a section 32 sense.
13. The relief sought by the Submitters to manage effects on groundwater are within the ambit of Council's functions under section 31, do not conflict with ORC's functions under section 30 and are not inconsistent with the regional plan under section 75(4).
14. Under section 75, a district plan must give effect to any National Policy Statement (**NPS**), any Regional Policy Statement (**RPS**) and not be inconsistent with the regional plan. Our analysis of whether the intensification variation gives effect to the NPS and RPS is as follows:
  - (a) Under the NPS-FM, district councils must include methods in its district plan to avoid, remedy or mitigate adverse effects of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.<sup>4</sup> Mr Thomas' evidence confirms that area within the 'Bullock Creek Groundwater Protection Overlay', has a sensitive shallow groundwater environment and the intensification variation has the potential to cause adverse effects if potential effects on groundwater are not sufficiently managed. Given that, we consider that Council is not adequately giving effect to the NPS-FM due to the lack of methods to avoid adverse effects of urban development on water bodies.
  - (b) Wānaka is within the Upper Lakes Rohe under the Proposed Otago Regional Policy Statement (**PORPS**) and one of the environmental outcomes to be maintained is:

*Natural form and character – Freshwater bodies and their riparian margins, and any connected receiving environment...are able to behave in a way that reflects their natural form and character to the*

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<sup>4</sup> National Policy Statement for Freshwater Management 2020 at 3.5(4)

*greatest extent practicable, and the natural form and function of unmodified water bodies is protected.*<sup>5</sup>

15. As Mr Thomas' evidence demonstrates, likely dewatering associated with intensification within the proposed 'Bullock Creek Groundwater Protection Overlay' area can result in artificial means of maintaining downstream flows being required, and potential reduction of natural flow states upstream. We consider that failure to adequately manage these potential adverse effects would be inconsistent with the PORPS and the proposed environmental outcomes for the Upper Lakes Rohe.
16. Overall, we consider that under section 75:
  - (a) the Intensification Variation as per the s42 Report and rebuttal evidence will not give effect to the NPS-FM and the RPS but the relief sought by the Submitters through its consideration of effects on groundwater will better give effect to the NPS-FM and RPS; and
  - (b) the relief sought by the Submitters will not be inconsistent with the Regional Plan but will complement the maximum permitted dewatering rates with consideration at a district council level on the effects of intensified development on groundwater within the Bullock Creek area.

### **National Policy Statement for Urban Development**

17. We have set out the relevant provisions of the NPS-UD below which we submit allow Council to reduce the level of intensification in the area described as the 'Bullock Creek Groundwater Protection Overlay' due to its sensitive shallow groundwater environment.
18. Objective 1 and Policy 1 of the NPS-UD require that planning decisions contribute to well-functioning urban environments. We consider that the list of characteristics of a well-functioning urban environment listed in Policy 1 are not an exhaustive list and that Council are able to consider other factors. In terms of the higher order planning framework, the Otago Regional Policy Statement 2019 (**ORPS**) provides direction on factors that contribute to a well-functioning urban environment including providing for resilient communities, built form that relates well to its environment and encouraging

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<sup>5</sup> Otago Regional Council, *Proposed new rules and regulations Upper Lakes Rohe*, at page 3

the use of low impact design to reduce potential adverse environmental effects.<sup>6</sup>

19. The evidence of Mr Thomas describes the sensitive shallow groundwater environment and the potential adverse effects on groundwater and flows of Bullock Creek should effects not be sufficiently assessed and managed. We consider that adverse effects on groundwater, Bullock Creek flows and of ongoing dewatering would not contribute to a resilient community nor would they make use of low impact design techniques to avoid adverse environmental effects as directed by the ORPS, and as such would not constitute a well-functioning urban environment under the NPS-UD.
20. As such, we consider that rejecting the Submitters' relief would not be consistent with the requirement for planning decisions to contribute to well-functioning urban environments.
21. Council have sought to take guidance from the qualifying matters contained in the NPS-UD.<sup>7</sup> While the qualifying matters do not apply directly to Tier 2 councils, we consider they are able to provide direction to Council on where intensification may not be appropriate.
22. We consider that the following qualifying matters are relevant to the area proposed to be known as the 'Bullock Creek Groundwater Protection Overlay':
  - (a) Qualifying matter 3.32(1)(a) *a matter of national importance that decision-makers are required to recognise and provide for under section 6 of the Act:*

Under section 6(a) RMA, the preservation of the natural character of rivers and their margins and the protection of them from inappropriate subdivision, use and development is a relevant matter of national importance to this situation.
  - (b) Qualifying matter 3.32(1)(b) *a matter required in order to give effect to any other National Policy Statement:*

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<sup>6</sup> Otago Regional Policy Statement 2019, Policies 4.5.3 and 4.5.4

<sup>7</sup> Opening Legal Submissions for Queenstown Lakes District Council dated 25 July 2025

In this case, we consider the National Policy Statement for Freshwater Management is relevant.

23. With regard to qualifying matter 3.32(1)(a) *a matter of national importance* and the related section 6 protection of the natural character of rivers and protection of them from inappropriate use and development, the evidence of Mr Thomas demonstrates that there are potential adverse effects on groundwater and Bullock Creek that are likely to result from the intensification of land around Bullock Creek.
24. With regard to qualifying matter 3.32(1)(b) and the consideration of matters required to give effect to any other NPS, under the NPS-FM, district councils must include methods in its district plan to avoid, remedy or mitigate adverse effects of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.<sup>8</sup> The NPS-FM applies to all freshwater including groundwater.<sup>9</sup> As Mr Thomas outlines, there are potential risks to not ensuring that effects on groundwater and Bullock Creek are adequately assessed at the time of resource consent.
25. In summary, we consider that the evidence of Mr Thomas illustrates that the Intensification Variation would not provide for the matter of national importance on protection of the natural character or rivers and protection of them from inappropriate development and would not give effect to the NPS-FM by including methods in the district plan to avoid adverse effects on Bullock Creek and related groundwater.
26. We consider the Panel should reduce the level of intensification and widen the assessment of groundwater effects in proximity to Bullock Creek to be able to make planning decisions that contribute to a well-functioning urban environment under Policy 1 and should be guided by the qualifying matters related to the matters of national importance<sup>10</sup> and other National Policy Statements.<sup>11</sup>

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<sup>8</sup> National Policy Statement for Freshwater Management 2020 at 3.5(4)

<sup>9</sup> National Policy Statement for Freshwater Management 2020 at 1.5(1)

<sup>10</sup> Clause 3.32(1)(a), NPS-UD

<sup>11</sup> Clause 3.32(1)(b), NPS-UD

## RELIEF SOUGHT

27. The Submitters seek amendments to the proposed MDRZ and subdivision rules applying to the MDRZ within the area identified by Mr Thomas as having a sensitive shallow groundwater environment to ensure that groundwater effects are brought to the attention of applicants and adequately assessed by Council at the time of consenting.

28. The Submitters now seek the following refined relief:

(a) Inclusion of new Rule 8.4.8B, requiring all new buildings within the Bullock Creek Groundwater Protection Overlay to obtain a restricted discretionary resource consent with matters of discretion including:

- (i) impacts on the groundwater table;
- (ii) land stability;
- (iii) foundation design;
- (iv) earthworks and retaining design; and
- (v) natural hazard mitigation.

(b) The inclusion of a reference to the Bullock Creek Groundwater Protection Overlay in Rule 8.5.1 to specify a maximum building height of 7 metres.

(c) The inclusion of the following as a matter of discretion in the determination of breaches of building coverage in rule 8.5.4:

*Within the Bullock Creek Groundwater Protection Overlay, impacts on the groundwater table including land stability and natural hazard risk.<sup>12</sup>*

(d) The inclusion of the following as matters of discretion for urban subdivision activities in rule 27.5.7:

*Within the Bullock Creek Groundwater Protection Overlay, impacts on the groundwater table, land stability and natural hazard risk.*

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<sup>12</sup> The inclusion of a reference to a Bullock Creek Groundwater Protection Overlay for both Rule 8.5.1 (building height) and Rule 8.5.4 (building coverage) reflects Mr Thomas' evidence that generally taller and larger buildings require deeper and more intensive foundations and subsequently more dewatering.



- (e) Mr Thomas has identified that the sensitive groundwater environment applies to a broader scale than just the properties adjacent to the Submitters' Property. The area identified by Mr Thomas is approximately 100m from the true right bank of Bullock Creek, and 500m from the true left bank.<sup>13</sup> We consider these areas should be mapped accordingly in the District Plan and this area named the 'Bullock Creek Groundwater Protection Overlay'.
29. We consider that the above refined relief is within the scope of the relief sought in the Submitters' original submission as the Submitters sought that the application of their relief applied to not just the properties immediately adjacent to their own Property but to the MDRZ as a whole. The relief sought has now been refined to apply to the proposed Bullock Creek Groundwater Protection Overlay alone.
  30. The relief sought by the Submitters is "on" the Intensification Variation as the variation seeks to increase density and heights within the MDRZ. The evidence of Mr Thomas, as described in these submissions, demonstrates that increasing density and heights of buildings within the sensitive groundwater environment around Bullock Creek, is likely to cause adverse effects on the groundwater environment if development is not appropriately managed. The Intensification Variation has a direct link with these potential adverse effects and as such, the Submitter's relief is squarely "on" the Intensification Variation.

## HYDROGEOLOGY EVIDENCE OF MR THOMAS

31. Mr Thomas' has concluded that the intensification of development within the area proximate to Bullock Creek may have adverse effects on the sensitive shallow groundwater environment.
32. More specifically the evidence of Mr Thomas outlines the following:
  - (a) Within the Wānaka township, groundwater levels occur within 1 to 2m of the ground surface around Bullock Creek.<sup>14</sup>

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<sup>13</sup> Evidence of Neil Thomas dated 4 July 2025 at [41].

<sup>14</sup> Evidence of Neil Thomas dated 4 July 2025 at [22].

- (b) Bullock Creek is almost entirely fed by groundwater discharge and in some areas where lower permeability silts and clays are present, groundwater springs are likely to provide flow to Bullock Creek.<sup>15</sup>
- (c) Generally larger buildings require larger and/or deeper foundations to support the structure.<sup>16</sup>
- (d) Dewatering is typically required to be able to work the site in dry conditions and as foundations extend beneath the water table, more dewatering is required.<sup>17</sup>
- (e) Dewatering effects can include groundwater pressures in surrounding strata to reduce, groundwater discharges to streams and springs can reduce with associated impacts on stream ecology, and in some situations, reducing groundwater pressures can cause ground settlement.<sup>18</sup>
- (f) These effects may become more prevalent in areas where intensification is enabled.<sup>19</sup>
- (g) An example of the hydrological effects described by Mr Thomas occurred during the construction of the Belvedere Apartment block on Warren Street which caused nearby springs to reduce for a radius of at least 100-200m of the site and ongoing dewatering is required so that the basement car park remains dry.<sup>20</sup>
- (h) The ongoing dewatering at the Belvedere Apartments site has resulted in continuous depletion of flows in the nearby springs and consent conditions require the flows in the nearby springs to be augmented.<sup>21</sup>
- (i) In the case of the Belvedere Apartments, the depletion effects downstream are offset by the dewatering discharge, however this discharge does not offset effects upstream of the discharge and may result in adverse effects.<sup>22</sup>

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<sup>15</sup> Evidence of Neil Thomas dated 4 July 2025 at [23] and [24].

<sup>16</sup> Evidence of Neil Thomas dated 4 July 2025 at [27]

<sup>17</sup> Evidence of Neil Thomas dated 4 July 2025 at [27].

<sup>18</sup> Evidence of Neil Thomas dated 4 July 2025 at [28].

<sup>19</sup> Evidence of Neil Thomas dated 4 July 2025 at [29].

<sup>20</sup> Evidence of Neil Thomas dated 4 July 2025 at [30]

<sup>21</sup> Evidence of Neil Thomas dated 4 July 2025 at [30].

<sup>22</sup> Evidence of Neil Thomas dated 4 July 2025 at [31]

- (j) The consent conditions that apply to the Belvedere Apartments require augmentation to occur continuously through pumps that lift water to surrounding neighbouring properties' ponds but sometimes the pumps break down and this is not an effective long-term solution.<sup>23</sup>
  - (k) The potential issues associated with groundwater due to the intensification will likely affect an area approximately 100m on the true right bank and 500m on the true left bank of Bullock Creek.<sup>24</sup>
33. Mr Thomas' conclusions are supported by the evidence of Mr Russell who has personal experiences in relation to Bullock Creek and the Belvedere Apartment block. The ongoing effects on groundwater caused by the Belvedere Apartments, including the continuous pumping required to restore the pond on the Property, have directly affected Mr Russell and the Submitters since the time of construction of the Belvedere Apartments in 2005.
34. The Submitters had participated in previous Environment Court mediation which resulted in the express provision for consideration of groundwater effects in proximity to Bullock Creek within previous Queenstown Lakes District Plans. The Submitters were disappointed to learn that these provisions were not carried over into the PDP as these prior provisions demonstrate a genuine issue which was considered by the Court to be able to be addressed through District Plan provisions.

## KEY ISSUES

### Effects on groundwater and relevance to the Intensification Variation

35. As described in the evidence of Mr Thomas, the intensification of the MDRZ within the area 100m on the true right bank and 500m on the true left bank of Bullock Creek has the potential to adversely affect groundwater and flows of Bullock Creek. Without the addition of the relief sought, construction of buildings and associated dewatering would be able to proceed without adequate effects assessments or mitigation.

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<sup>23</sup> Evidence of Neil Thomas dated 4 July 2025 at [33].

<sup>24</sup> Evidence of Neil Thomas dated 4 July 2025 at [41].

36. The Intensification Variation anticipates larger buildings in the MDRZ in Wanaka which are likely to have both more intensive foundations and require more dewatering in the proposed Bullock Creek Groundwater Protection Overlay.
37. As described by Mr Thomas and through the example of the Belvedere Apartments, dewatering in proximity to Bullock Creek can result in permanent spring and stream depletion if potential dewatering effects have not been adequately assessed. The use of electric pumps to redirect flows or permanently dewater a site is not an efficient long-term solution to the shallow presence of groundwater due to the potential failure of the pumping systems.
38. For the reasons that follow, we consider that these effects on the groundwater and stream environment need to be managed by Council as part of the Intensification Variation.

### **Council's s42A Response to Relief Sought**

39. Council's s42A reporting officer has rejected the relief of the Submitters and maintained that:
  - (a) Management of groundwater and effects of development on the Wānaka Basin Cardrona Gravel Aquifer is a matter for ORC to regulate through its Regional Plan.<sup>25,26</sup>
  - (b) The PDP contains a number of existing provisions that Council consider would indirectly address groundwater effects, land stability and natural hazard risk including the consideration of stormwater related effects in the MDRZ building coverage rule,<sup>27</sup> and an urban subdivision rule which contains a matter of discretion requiring consideration of the risk of natural hazards. Council also considers that Chapter 28 – Natural Hazards which includes a policy framework to avoid natural hazards could also indirectly address the concerns of the Submitters in relation to land instability caused by dewatering.<sup>28</sup>

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<sup>25</sup> S42A Report of Corrine Frischknecht dated 6 June 2025 at [4.138]

<sup>26</sup> Rebuttal Evidence of Rachel Morgan dated 25 July 2025 at [9.1] – [9.2]

<sup>27</sup> PDP, Rule 8.5.4, Building Coverage

<sup>28</sup> S42A Report of Corrine Frischknecht dated 6 June 2025 at [4.138] - [4.140]

- (c) The PDP also contains particular rules and matters of discretion that would manage groundwater effects in Chapter 25 – Earthworks:
- (i) Rule 25.5.20 requires a restricted discretionary resource consent for earthworks undertaken below the water table of any aquifer, or that may cause artificial drainage of any aquifer;
  - (ii) Assessment matter 25.8.9.3: *Whether the earthworks and final ground levels will adversely affect an aquifer or any overland flow path or increase the potential risk of flooding within surrounding sites;*
  - (iii) Advice note at 25.3.3.1(d) setting out that some earthworks activities including those that result in the exposure of groundwater aquifers are subject to Otago Regional Council Regional Plan: Water for Otago 2004.<sup>29,30</sup>
40. The s42A Report, also considered that dewatering is indirectly addressed through the New Zealand Building Code in relation to foundation design to address stability concerns<sup>31</sup> and that a range of building typologies and densities are enabled by the MDRZ which could be designed to manage effects on groundwater with appropriate foundation design.<sup>32</sup>
41. The Submitters disagree with this position.

### **Council's Obligations under the RMA as a Territorial Authority**

42. Council and further submissions made by the Wanaka Trust<sup>33</sup> consider that any issues relating to the effects of development on groundwater are the responsibility of the Otago Regional Council (**ORC**).<sup>34</sup>
43. We submit this is incorrect and managing these effects is a function of Council as part of their functions under section 31:

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<sup>29</sup> S42A Report of Corrine Frischknecht dated 6 June 2025 at [4.142]

<sup>30</sup> Rebuttal Evidence of Rachel Morgan dated 25 July 2025 at [9.2]

<sup>31</sup> S42A Report of Corrine Frischknecht dated 6 June 2025 at [5.97].

<sup>32</sup> Rebuttal Evidence of Rachel Morgan dated 25 July 2025 at [9.1] and [9.2]

<sup>33</sup> Further Submission of Wanaka Trust, Submitter Number 1374

<sup>34</sup> Section 42A Report of Corinne Frischknecht, dated 6 June 2025 at 4.133-4.143. Section 42A Report of Rachel Morgan, dated 6 June 2025, at 13.8-13.9. Rebuttal Evidence, Section 42A Report of Rachel Morgan, dated 25 July 2025, at 9.2. Further Submission of Wanaka Trust, Urban Intensification Variation.

(a) the establishment, implementation, and review of objectives, policies, and methods to achieve **integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:**

(aa) ...

(b) the **control of any actual or potential effects of the use, development, or protection of land**, including for the purpose of—

(i) the avoidance or mitigation of natural hazards; and

(ii) ...

44. As outlined above it is appropriate for a Regional and District Council to have overlapping rule making powers. For example, in *Re Otago Regional Council*, the Environment Court considered Plan Change 8 to the Regional Plan: Water for Otago which sought to address water quality issues in the region.<sup>35</sup> Some submitters opposed earthworks rules contained in Plan Change 8 on the basis that these rules would result in a duplication of the rules in Chapter 25 – Earthworks in the Queenstown Lakes Proposed District Plan.<sup>36</sup>
45. The Court considered that the Chapter 25 Earthworks rules fell squarely within the District Council's functions, but were also within the Regional Council's s30(1) RMA functions.<sup>37</sup> The Court further considered that the case law including *Canterbury Regional Council* did not preclude the possibility of two rule regimes applying to manage adverse effects consistent with each council's functions. The Court agreed with planning witnesses that although there were differences in rule regimes, they were not such that section 75(4) would be triggered.<sup>38</sup>
46. The Court accepted evidence that:<sup>39</sup>

*“... the focus of the PC8 provisions is focussed on water quality, whereas the PDP (and the provisions of other district plans) are wider and do not specifically focus on water quality. As such, in my opinion, district and regional provisions complement each other.*

<sup>35</sup> [2022] NZEnvC 101, [2022] ELHNZ 152.

<sup>36</sup> At [115]-[116].

<sup>37</sup> *Re Otago Regional Council* [2022] NZEnvC 101, [2022] ELHNZ 152 at [171]

<sup>38</sup> *Re Otago Regional Council* [2022] NZEnvC 101, [2022] ELHNZ 152 at [172]

<sup>39</sup> At [174].

*... the conditions of consent granted by ORC on its earthworks resource consents are predominantly focussed on water quality.*

*QLDC conditions in relation to management plans often include a wider range of matters to be addressed, including (amongst others) noise, vibration, hours of operation, damage to roads due to construction activity, cultural heritage, vegetation clearance, and waste management.”*

47. An example of other district plans including reference to management of effects on groundwater is in the Christchurch City District Plan where a matter of control for subdivision activities in Chapter 8 – Subdivision and Development includes “...adverse effects on the proposal on the quality of surface and groundwater...”<sup>40</sup> This demonstrates that other district councils consider that effects of development on groundwater are within their jurisdiction.
48. The situation before us is analogous with the situation in *Re Otago Regional Council* as we consider:
  - (a) The relief sought by the submitter is within the regional council’s functions under section 30(1)(c) *to control the use of land for the purpose the quantity of water in water bodies* but is also within Council’s function under section 31(1)(b) *the control of any actual or potential effects of the use, development or protection of land*.
  - (b) There are differences in the rule regime such that section 75(4) would not be triggered through any inconsistencies with the regional plan as the regional plan includes specific controls on dewatering rates as described by Mr Thomas. This demonstrates that the regional plan also looks to manage effects on groundwater.
  - (c) We consider, like the evidence in *Re Otago Regional Council*, the district and regional plans in this case complement each other; the regional council rules have specific dewatering rates that are regulated to control effects on groundwater as described in the evidence of Mr Thomas; and the Submitters’ relief proposes consideration of a broader range of effects as part of the assessment of built development not only on groundwater but also on land stability, consideration of foundation design and earthworks.

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<sup>40</sup> *Christchurch District Plan*, Chapter 8 – Subdivision and Development, Matter of Control 8.7.4.6

49. As such, we consider the Submitters' relief should be upheld by Council as the provisions sought are able to 'overlap' with provisions in the regional plan.
50. Furthermore, the Environment Court has previously made express provision for the consideration of groundwater in the Bullock Creek area in previous Queenstown District Plans. In *Kreft v Queenstown Lakes District Council* (**attached** as Appendix A to Mr Russell's evidence), the Environment Court resolved by consent order modifications to the then Partially Operative District Plan which made explicit reference to the presence of substantial groundwater and restricted development potential in response to that.<sup>41</sup>

### **Council's reliance on existing provisions in PDP and the Building Code to respond to the Submitters' relief**

51. Council argue that the PDP already addresses stormwater when considering a resource consent, implying that the consideration of stormwater effects would address the Submitters' concerns related to dewatering and land instability. Mr Thomas confirms that the issues raised by the Submitters are unrelated to stormwater and will not be captured by the consideration of stormwater effects as a matter of discretion in existing rules. Mr Thomas considers stormwater to be rapid runoff from rainfall events whereas the issues raised by the Submitter are related to shallow groundwater levels which are present regardless of short-term rainfall events.<sup>42</sup>
52. Likewise for land stability and natural hazard risk, Mr Thomas considers that the elements of the definition of 'Natural Hazards' in the PDP, for example, flooding, erosion, land instability, earthquakes and fire, relate to short-term events, whereas groundwater is a constant feature of the environment and may not be considered by Council in the processing of a resource consent application<sup>43</sup> should the focus of the processing planner be directed to 'Natural Hazards'.
53. The situation is the same for the matters of discretion in the Earthworks Chapter, which Council consider may indirectly trigger the consideration of groundwater effects. This is incorrect. As outlined in Mr Thomas' evidence,

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<sup>41</sup> *Kreft v Queenstown Lakes District Council* ENV 2007 CHC317, Schedule A. Incorporated in Rule 7.5.4 (iv), Queenstown Lakes Operative District Plan.

<sup>42</sup> Evidence of Neil Thomas dated 4 July 2025 at [45].

<sup>43</sup> Evidence of Neil Thomas dated 4 July 2025 at [46].



dewatering is a notable possibility in the area around Bullock Creek where groundwater can occur within 1 to 2m of the ground surface and may not initially be captured by earthworks rules.<sup>44</sup>

54. Council also relies on the Regional Plan to manage risks associated with the exposure of activities to groundwater aquifers however this will not capture relevant activities. The proposed Otago Land and Water Regional Plan (**LWRP**)<sup>45</sup> enables dewatering rates up to 40L/s for up to 60 days as a permitted activity provided various conditions are met<sup>46</sup>. As Mr Thomas explains, unlike the current operative rules, a typical dewatering activity for the construction of foundations would be unlikely to require resource consent under the proposed rules.<sup>47</sup> As such, there is a risk that dewatering for the construction of buildings in the MDRZ in proximity to Bullock Creek would be a permitted activity and therefore the dewatering would not be adequately managed by Otago Regional Council. The addition of rules and matters of discretion relating to dewatering in the context of built form in the MDRZ wouldn't contradict the Regional Plan in a 75(4) sense but rather would add a robustness to the management of that risk.
55. In response to Council's comments that dewatering is indirectly addressed through the New Zealand Building Code and its requirements to prevent water ingress and facilitate appropriate foundation design. The Building Act 2004 (**Building Act**) focuses on the integrity and safety of buildings wherever they are located, while the RMA promotes sustainable management of resources in a wider environmental context. As such, the RMA is generally invoked initially, with Building Act controls following as appropriate.<sup>48</sup> We consider that reliance on the Building Act will not adequately resolve the concerns about adverse effects on groundwater at a wider environment level.
56. In summary, we consider that Ms Morgan and Ms Frischknecht's inferences that adverse effects on groundwater are already indirectly managed through existing provisions in the District Plan is failure to adequately "*assess the risk of not acting*" in a section 32 sense.

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<sup>44</sup> Evidence of Neil Thomas dated 4 July 2025 at [47] – [48].

<sup>45</sup> It is noted that due to the National Government's proposed new national framework on freshwater management and an amended NPS-FM, ORC has put their work on the proposed LWRP on hold.

<sup>46</sup> Proposed Otago Land and Water Regional Plan, Rule EFL-R6-PER1

<sup>47</sup> Evidence of Neil Thomas dated 4 July 2025 at [36].

<sup>48</sup> *Bay of Plenty Regional Council v Western Bay of Plenty District Council* ENC Auckland A27/02, 8 February 2002, (2002) 8 ELRNZ 97 at [81]

## Council's failure to provide a technical response to evidence

57. We consider the evidence of Mr Thomas, a qualified and experienced hydrogeologist with a record of prior analysis of the groundwater conditions in this area of Wānaka, should be preferred to planning evidence of Ms Morgan and Ms Frischknecht for Council.
58. The lack of adequate technical response to Mr Thomas' expert evidence is a failure of the s32 and s32AA reporting by QLDC and specifically a failure to adequately *"assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions."*<sup>49</sup> Without a technical response to Mr Thomas' hydrogeological evidence, QLDC has not adequately assessed their risk of not addressing the relief sought by the submitters.

## SECTION 32AA ASSESSMENT

59. In relation to Section 32AA, we submit in relation to the relief sought:
  - (a) the amendments sought by the Submitters are more efficient and effective than the notified provisions in achieving the objectives of the NPS-UD through the more effective management of groundwater issues in proximity to Bullock Creek contributing to a well-functioning urban environment under Objective 1 but also through the maintenance of the increased height and density across the rest of the MDRZ which achieves the key objective of the NPS-UD; and
  - (b) the amendments are a more appropriate outcome in the area within proximity to Bullock Creek as the Intensification Variation will still enable development across the MDRZ, but the Submitter's relief will better manage effects on groundwater and Bullock Creek.

## CONCLUSION

60. Mr Thomas' evidence identifies that the intensification variation is likely to result in more prevalent dewatering in the area in close proximity to Bullock Creek. His evidence discusses the adverse effects that dewatering can have including a reduction in groundwater pressures in surrounding strata, groundwater discharges to streams and springs can reduce with associated

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<sup>49</sup> Section 32(2)(c), Resource Management Act 1991

impacts on stream ecology, flows of Bullock Creek, and in some situations, reducing groundwater pressures can cause ground settlement.<sup>50</sup>

61. We consider that effects on groundwater and associated aspects of Bullock Creek are not solely a matter for ORC to control as we have demonstrated that the provisions sought are able to 'overlap' with provisions in the regional plan. Furthermore, Council is required to include methods in its district plan to avoid and mitigate adverse effects of urban development on water bodies under NPS-FM.<sup>51</sup>
62. The relief sought by the Submitter will ensure that effects of development on groundwater and Bullock Creek are considered and addressed through resource consenting while still ensuring Council meets their obligations under the NPS-UD. We consider that Council has an avenue to apply a bespoke application of the intensification variation through the 'well-functioning urban environment' gateway and/or through the 'qualifying matters' in clauses 3.32.
63. We submit that by making the proposed changes, the Intensification Variation will better give effect to the NPS-UD and achieve the purpose of the RMA.

**Dated** this 27<sup>th</sup> day of August 2025



**Joshua Leckie**

Counsel for John O'Shea, Helen Russell, John Russell and Mary-Louise Stiassny

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<sup>50</sup> Evidence of Neil Thomas dated 4 July 2025 at [28].

<sup>51</sup> Policy 3.5(4), NPS-FM