

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2020-CHC-128

**I TE KŌTI TAIAO
KI ŌTAUTAHI**

UNDER the Resource Management Act 1991

IN THE MATTER of an application under section 149T of
the Act

BETWEEN **OTAGO REGIONAL COUNCIL**

Applicant

**STATEMENT OF EVIDENCE OF ALISON DEVLIN ON BEHALF OF
WILLOWRIDGE DEVELOPMENTS LIMITED**

Dated: 25 February 2022

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Introduction

- [1] My full name is Alison Devlin. I am the general manager – planning and development of Willowridge Developments Limited (**Willowridge**), a role I have been in since 2012. I have a BA_(HONS) in Environmental Planning from the University of Strathclyde (Scotland) and an MSc in Environmental Management from the University of Paisley (Scotland). I am also a member of the Royal Town Planning Institute. Prior to taking up my current position I had 14 years experience as a planner working in public and private sector roles in Scotland and New Zealand. Although I am a qualified and experienced planner, the evidence I am presenting is not expert witness evidence.
- [2] Willowridge is an Otago-based land development company which undertakes both residential and commercial subdivision work. Willowridge is also a related company (shared Director) to Orchard Road Holdings Limited and Otago Business Park Limited. Reference to Willowridge in my evidence from hereon will include work undertaken by these related companies.
- [3] In recent years Willowridge has brought, on average, between 50 – 100 residential sections to the market annually. Some examples of the recent subdivisions Willowridge has undertaken include:
- Timsfield, Lake Hawea – approximately 400 residential sections with an application being prepared for the next stage of approximately 130 lots;
 - Heathfield, Mosgiel – 124 residential sections with titles for the last stage of 28 sections issued last year;
 - West Meadows, Wanaka – approximately 160 residential sections with Stage 8 (23 section) currently under construction; and
 - Alpha Series, Wanaka – approximately 120 sections with stage 3 currently under construction.
- [4] Willowridge also has a number of new subdivisions in Wanaka, Dunedin and Hawea as well as future stages of existing subdivisions in Luggate,

Wanaka and Hawea which will be developed continually in the coming years. Total land holdings for on-going residential development are in excess of 150ha.

- [5] My role includes the preparation and lodgement of resource consent applications for Willowridge projects, as well as correspondence with District and Regional Councils in regard to these consents and attending hearings on behalf of Willowridge. I am also involved in preparing Plan Change submissions and attending hearings in relation to Plan Changes.
- [6] Recently work has also involved preparing and lodging Otago Regional Council (**ORC**) earthworks consents under the PC8 framework.

Impact of Rules 14.5.1 and 14.5.2 on Willowridge

Consenting

- [7] Since the notification of Plan Change 8 in July 2020, Willowridge has made 3 applications to the ORC for consent under Rule 14.5.2 for earthworks in the Queenstown Lakes District. Each of these activities already had land use consent granted for earthworks from the Queenstown Lakes District Council (**QLDC**) at the time of lodging the ORC applications. I anticipate this will continue to be the case as Willowridge generally produces sections with an average lot size of around 700m². Any subdivision of 4 or more lots will therefore trigger the ORC earthworks rule being an earthworks activity of more than 2,500m² in area.
- [8] The process Willowridge has generally taken has been to apply for earthworks under the QLDC rules as part of a subdivision and land use consent package or a separate bulk earthwork consent in advance of a subdivision consent. A standard condition imposed on the land use consent requires that an Environmental Management Plan (EMP) be submitted to Council at least 15 working days prior to any works commencing on site and that this document must be prepared by a Suitably Qualified and Experienced Person (SQEP). I include an example of a consent containing this condition at attachment 1 (condition 16).

- [9] On securing the consent, Willowridge undertakes more detailed engineering design, including engaging with preferred contactors. At this stage a SQEP is engaged to prepare an EMP in consultation with the design engineers and the contractor. This is an important part of informing the EMP as the contractor has the practical knowledge and experience and will ultimately implement the EMP.
- [10] On completion of the EMP Willowridge applies to the ORC for earthworks consent, including the EMP as part of the application as the best means to address the matters of discretion in PC8 14.5.2.1. While the EMP can be submitted for QLDC approval concurrent to the ORC application the time saving is negligible given the 15 working day time limit imposed on QLDC through the condition.
- [11] The requirement to obtain the ORC consent adds both time and cost to the consenting process for Willowridge. The deposit fee¹ for the ORC earthworks is currently \$1,750.00; for Queenstown Lakes District Council it is \$4,980. Experience to date is that the ORC fees have exceeded the deposit fee with the lowest charge to date being around \$2,200 excluding GST and monitoring costs.
- [12] In my experience the ultimate outcome of the whole processes is two land use consents to undertake the same earthworks with a single EMP to manage the effects of the earthworks, which has been approved by both Councils. The time and cost to get to this point is months of time and thousands of dollars. My view is that the same outcome would be achieved through a consenting process with one authority, albeit both authorities could have the opportunity to provide approval of the EMP. This would ideally be 'prior to construction', as per the QLDC condition, to allow practical input from the contractors engaged to undertake the works. For each of the three projects where we have dual earthworks consents in the QLDC area, the ORC consent process has made no difference to how the earthworks are being managed in two projects and a small change was made to the EMP for the third (which was subsequently signed off by both Councils). My point here is that, in my

¹ The deposit fee is the initial charge payable with any additional time charged at an hourly rate.

opinion and experience to date, the QLDC consent already addresses everything the ORC requires.

Monitoring

- [13] The dual consenting process has resulted in an extensive programme of monitoring being undertaken during earthworks operations. The approved EMP is implemented on the ground and includes daily, weekly and monthly checks by the on-site environmental representative as well as regular checks by the SQEP. Checks are also required before and after rainfall events and reporting is required to both the ORC and the QLDC on a monthly basis. The EMP also includes details of testing requirements, including sediment testing.
- [14] In addition to this, regular monitoring visits of the site are undertaken by the ORC and the QLDC. Willowridge's contractors have confirmed that both Councils generally undertake inspections together.
- [15] Melanie Heather for the ORC states at sections 17 and 18 of her Statement of Evidence that PC8 makes the ORC's role in terms of monitoring easier and that there are differences between the ORC and QLDC monitoring functions.
- [16] My view is that a lot of time, effort and cost is put into preparing, approving and implementing EMPs, which are prepared and overseen by SQEPs. The whole point of this is to effectively manage and control sediment. Both the ORC and the QLDC should have faith in the EMP and the SQEP, including the monthly reporting. I don't consider it necessary that a consent should be obtained from the ORC as a means of making monitoring and enforcement easier for the ORC. Surely, if ORC wishes to be involved in the monitoring of earthworks consents, then that is something that ORC can (and should) discuss directly with QLDC.
- [17] I note that Ms Heather makes the point in section 17 of her evidence that *'I continue to witness poor practice in the management of earthworks on sites in the Queenstown-Lakes district and sediment discharges to water continue to occur in the Queenstown Lakes area despite QLDC's District Plan rules and consenting framework.'* While I do question how many of

these earthworks sites have consents that pre-date the QLDC's current rule framework (which came into practice around 2019) or how many are more current and actually have an ORC earthworks consent, I can only rely on our own experience with the rule framework. Since QLDC have required earthworks to comply with the Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland region (GD2016/005) through the EMP condition, there has been a significant improvement in site management of Willowridge sites through the preparation and implementation of EMPs. This includes the involvement of a SQEP from preparation of the EMP to the completion of the earthworks, greatly improved sediment and erosion controls and improved education and awareness of the issues for all contractors.

- [18] The introduction of the ORC rules has not had any notable effect or change on the way Willowridge manages sediment and erosion under the QLDC framework. In my view the only notable difference of the ORC requirement is the additional time and cost involved in the dual consent and monitoring process.

Alison Devlin

25th February 2022

APPENDIX 1 – UPDATED CONDITIONS OF RM191334 IN FULL.

General Conditions

1. That the development must be undertaken/carried out in accordance with the plans:
 - ‘Existing Contours’ Sheet No. 101 prepared by Paterson Pitts Group and dated 16/08/2019.
 - ‘Proposed Contours’ Sheet No. 102 prepared by Paterson Pitts Group and dated 16/08/2019.
 - ‘Cut/Fill Plan’ Sheet No. 103 prepared by Paterson Pitts Group and dated 16/08/2019.
 - ‘Cross Sections’ Sheet No. 104a prepared by Paterson Pitts Group and dated 16/08/2019.
 - ‘Cross Sections - detailed’ Sheet No. 104b prepared by Paterson Pitts Group and dated 16/08/2019
 - ‘Cross Sections - detailed’ Sheet No. 104c prepared by Paterson Pitts Group and dated 16/08/2019
 - ‘Landscaping Bund Plan’ Sheet No. 105 prepared by Paterson Pitts Group and dated 16/08/2019

stamped as approved on 04 February 2020

and the application as submitted, with the exception of the amendments required by the following conditions of consent.

2. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
3. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991.

Engineering

4. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council’s policies and standards, being QLDC’s Land Development and Subdivision Code of Practice adopted on 3rd May 2018 and subsequent amendments to that document up to the date of issue of any resource consent.

Note: The current standards are available on Council’s website via the following link:
<http://www.qldc.govt.nz/planning/resource-consents/qldc-land-development-and-subdivision-code-of-practice/>

Hours of Operation – Earthworks

5. Hours of operation for earthworks, shall be:
 - Monday to Friday (inclusive): 8.00am to 5.30pm.
 - Saturdays, Sundays and Public Holidays: No Activity

In addition, no heavy vehicles are to enter or exit the site, and no machinery shall start up or operate earlier than 8.00am. All activity on the site is to cease by 6.00pm.

Noise

6. Construction sound must be measured and assessed in accordance with NZS 6803:1999 Acoustics - Construction Noise and must comply with the recommended upper limits in Tables 2 and 3 of NZS 6803.

To be completed prior to the commencement of any works on-site

7. Prior to commencing any work on the site the consent holder shall install measures to control and/or mitigate any dust, silt run-off and sedimentation that may occur, in accordance with QLDC's Land Development and Subdivision Code of Practice to ensure that neighbouring sites remain unaffected from earthworks. These measures shall be implemented **prior** to the commencement of any earthworks on site and shall remain in place for the duration of the project, until all exposed areas of earth are permanently stabilised.
8. At least 7 days prior to commencing excavations, the consent holder shall provide the Principal Resource Management Engineer at Council with the name of a suitably qualified professional as defined in Section 1.7 of QLDC's Land Development and Subdivision Code of Practice who is familiar with the Ground Consulting Ltd report (dated 2 August 2019, Ref: R5012-1A) and who shall supervise the excavation procedure and ensure compliance with the recommendations of this report. This engineer shall continually assess the condition of the excavation and shall be responsible for ensuring that temporary retaining is installed wherever necessary to avoid any potential erosion or instability.

To be monitored throughout earthworks

9. If at any time Council officers, or its elected representatives, receive justifiable complaints about or proof of effects from vibration sourced from the earthworks activities approved by this resource consent, the consent holder at the request of the Council shall cease all earthworks activities and shall engage a suitably qualified professional who shall prepare a report which assesses vibration caused by earthworks associated with this consent and what adverse effect (if any) these works are having on any other land and/or buildings beyond this site. Depending on the outcome of this report, a peer review may be required to be undertaken by another suitably qualified professional at the consent holder's expense. This report must take into consideration the standard BS 5228:1992 or a similar internationally accepted standard. Both the report and peer review (if required) shall be submitted to Council for review and certification. The Consent holder shall implement any measures proposed in the report that will mitigate any negative effects of the vibration.
10. The earthworks, batter slopes and site management shall be undertaken in accordance with the recommendations of the report by Ground Consulting Ltd (dated 2 August 2019, Ref: R5012-1A).
11. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at his/her expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.
12. No earthworks, temporary or permanent, are to breach the boundaries of the site.

On completion of earthworks

13. All earthworks, geotechnical investigations and fill certification shall be carried out under the guidance of a suitably qualified and experienced geotechnical professional as described in Section 2 of the Queenstown Lakes District Council's Land Development and Subdivision Code of Practice. At the completion of onsite earthworks, the geotechnical professional shall incorporate the results of ground bearing test results regardless of whether affected by development cut and fill earthworks and include the issue of a Geotechnical Completion Report and Schedule 2A certificate covering all buildable land within the development. The Schedule 2A certification shall include a statement under Clause 3(e) covering Section 106 of the Resource Management Act 1991. In the event the Schedule 2A includes limitations or remedial works against the lot, the Schedule 2A shall include a geotechnical summary table identifying requirements against the lot for reference by future lot owners. The certificate and any supporting information shall be submitted to the Manager of Resource Management Engineering at Council. Any remedial works outlined on the Schedule 2A that requires works across lot boundaries shall be undertaken by the consent holder
14. In the event that the Schedule 2A certificate and Geotechnical Completion Report issued under Condition 13) above contains limitations or remedial works required, then a s108 covenant shall be registered on the relevant Records of Title detailing requirements for the lot owner(s).
15. On completion of the earthworks, the consent holder shall complete the following:
 - a) All earth-worked and/or exposed areas shall be top-soiled and grassed/revegetated or otherwise permanently stabilised.
 - b) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

EMOP**To be completed prior to the commencement of any works on-site:**

16. At least 15 working days prior to any works commencing on site the Consent Holder shall submit an Environmental Management Plan (EMP) to Council's Monitoring and Enforcement Team for review and acceptance **HOLD POINT 1**. This document must be prepared by a Suitably Qualified and Experienced Person. The EMP shall be in accordance with the principles and requirements of the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans* and specifically shall address the following environmental elements as specified in the guidelines:
 - a) Administrative Requirements
 - (i) Weekly site inspections
 - (ii) Monthly environmental reporting
 - (iii) Independent audit by Suitably Qualified and Experienced Person
 - (iv) Notification and management of environmental incidents
 - (v) Records and registers
 - (vi) Environmental roles and responsibilities of personnel (including nomination of Principal Contractor)
 - (vii) Site induction

b) Operational Requirements

- (i) Erosion and sedimentation (including Erosion and Sediment Control Plan to be prepared by a Suitably Qualified and Experienced Person)
- (ii) Water quality
- (iii) Dust
- (iv) Cultural heritage
- (v) Noise
- (vi) Vibration
- (vii) Contaminated sites
- (viii) Indigenous vegetation clearance
- (ix) Chemical and fuel management
- (x) Waste management

The EMP (and any sub-plans e.g. ESCP described below) shall also be consistent with any recommendations outlined in the geotechnical report prepared by Paterson Pitts Group and submitted with the application.

17. Prior to ground-disturbing activities on the initial stage of works or any subsequent new stage of works, the Consent Holder shall engage an Appropriately Qualified Person to prepare and submit an Erosion and Sediment Control Plan (ESCP) to Council's Monitoring and Enforcement Team for review and acceptance. This plan shall be a sub-plan of the overarching EMP and must be prepared in accordance with the requirements outlined on pages 13 – 18 in *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*. These plans must be updated when:
- a) The construction program moves from one Stage to another; or
 - b) Any significant changes have been made to the construction methodology since the original plan was accepted for that Stage; or
 - c) There has been an Environmental Incident and investigations have found that the management measures are inadequate.
18. Prior to commencing ground-disturbing activities, the Consent Holder shall nominate an Environmental Representative for the works program in accordance with requirements outlined on pages 9 and 10 of the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*.
19. Prior to commencing ground disturbing activities, the Consent Holder shall ensure that all staff (including all sub-contractors) involved in, or supervising, works onsite have attended an Environmental Site Induction in accordance with the requirements on page 8 of the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*.

During construction:

20. Prior to bulk earthworks operations (and vegetation clearance) for the initial stage or any subsequent new stage of works, the Consent Holder must install erosion and sediment controls in accordance with the ESCP as well as provide As-built documentation for these controls by Suitably Qualified and Experienced Person **HOLD POINT 2**. It is noted

that earthworks required to construct environmental management controls are allowed to commence once Council has provided notice that **HOLD POINT 1** has been met.

21. All works shall be undertaken in accordance with the most current version of the EMP, as accepted as suitable by Council.
22. The EMP shall be accessible on site at all times during work under this consent.
23. The Consent Holder shall establish and implement document version control. Council shall be provided with an electronic copy of the most current and complete version of the EMP at all times.
24. The Consent Holder shall develop and document a process of periodically reviewing the EMP as outlined on page 6 of the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*. No ground disturbing activities shall commence in any subsequent stage of development until an EMP has been submitted and deemed suitable by Council's Monitoring and Enforcement Team.
25. The Consent Holder shall undertake and document weekly and Pre and Post-Rain Event site inspections as outlined on pages 10 and 11 of the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*.
26. A SQEP shall monitor the site monthly to ensure that the site is complying with its EMP, identify any new environmental risks arising that could cause an environmental effect and suggest alternative solutions that will result in more effective and efficient management. This must include a specific audit by the SQEP of the effectiveness of the ESCP. The outcome of these inspections should be included in the Monthly Environmental Report referred to Condition 27 below.
27. The Consent Holder shall complete and submit exception reporting to QLDC in the form of a monthly environmental report. The monthly environmental report shall be submitted to QLDC's Regulatory Department within five (5) working days of the end of each month.
28. In accordance with page 9 of the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*, where any Environmental Incident where the EMP has failed leading to any adverse environmental effects offsite occurs the Consent Holder shall:
 - a) Report to QLDC details of any Environmental Incident within 12 hours of becoming aware of the incident.
 - b) Provide an Environmental Incident Report to QLDC within 10 working days of the incident occurring as per the requirements outlined in Section 3.3.1 of *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*.
29. Environmental records are to be collated onsite and shall be made available to QLDC upon request; immediately if the request is made by a QLDC official onsite and within 24 hours if requested by a QLDC officer offsite. Records and registers to be managed onsite shall be in accordance with the requirements outlined on page 14 of the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*.

30. Any Discharge (refer definition in the *Queenstown Lakes District Council's Guidelines for Environmental Management Plans*) that leaves the site shall comply with the Water Quality Discharge Criteria outlined on page 19 of the *Guideline*, with the exception of Total Suspended Solids which should be at a concentration of no more than 50mg/L.

Advice Note

1. Prior approval via a Connection to Council Services for a Temporary Water Take is required if Council's water supply is to be utilised for dust suppression during earthworks. This shall include the use of a backflow prevention device to prevent contamination of Council's potable water supply.
2. The consent holder is advised to undertake a pre-construction survey of neighbouring properties prior to works commencing. The extent of the pre-construction survey is related to the site and its surrounds and the associated potential risks. The existing condition of roading, landscaping and structures needs to be documented by way of photos, focusing on any damage that is already apparent. Items such as minor cracking in plaster will be very difficult to identify, and in these cases other methods would need to be employed to determine if they were formed as a result of the consented works. The survey will never cover everything but it aims to provide a record that can be reviewed in the event of a complaint or issue being raised. For consent holders the most efficient way to ensure compliance with the condition is to undertake the survey with a consent processing engineer present. Deliverable for this includes a very brief report accompanied by as many photos as are necessary to cover the potential risks, marked up photos identifying existing damage are even clearer.
3. This site may contain archaeological material. Under the Heritage New Zealand Pouhere Taonga Act 2014, the permission of the Heritage New Zealand Pouhere Taonga must be sought prior to the modification, damage or destruction of any archaeological site, whether the site is unrecorded or has been previously recorded. An archaeological site is described in the Act as a place associated with pre-1900 human activity, which may provide evidence relating to the history of New Zealand. These provisions apply regardless of whether a resource consent or building consent has been granted by Council. Should archaeological material be discovered during site works, any work affecting the material must cease and the Heritage New Zealand Pouhere Taonga must be contacted (Dunedin office phone 03 477 9871).