

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under clause 14 of Schedule 1 of the Act

BETWEEN **UPPER CLUTHA ENVIRONMENTAL SOCIETY INCORPORATED** and all other appellants concerning Topic 2 of Stage 1 of the Proposed Queenstown Lakes District Plan

Appellants

AND **QUEENSTOWN LAKES DISTRICT COUNCIL**

Respondent

**MEMORANDUM OF COUNSEL FOR QUEENSTOWN LAKES DISTRICT COUNCIL
ACCOMPANYING COMPREHENSIVE SET OF PROVISIONS FOR CHAPTERS 3
AND 6**

TOPIC 2: RURAL LANDSCAPES

16 JUNE 2021

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MAY IT PLEASE THE COURT

Introduction

1. Further to the directions issued in Decision 2.7 (**Decision 2.7**),¹ and Council's interim Topic 2 reporting memorandum dated 28 May 2021, this memorandum:
 - a. attaches a comprehensive set of all Chapter 3 and 6 provisions; and
 - b. advises of potentially anomalous drafting for the Court's consideration ahead of the final approval of the Chapter 3 and 6 provisions.

Comprehensive set of all Chapter 3 and 6 provisions

2. The interim decisions which made either provisional or final determinations on the Chapter 3 and 6 provisions allocated to Topic 2 are as follows:
 - a. Decision 2.2, which provided provisional drafting for the Chapter 3 and 6 provisions allocated to Topic 2;²
 - b. Decision 2.4, which concerned revisions to Strategic Objective (**SO**) 3.2.1.7 and Strategic Policy (**SP**) 3.3.20;³
 - c. Decision 2.6, which confirmed the drafting of provisions related to the Exception Zone Framework and SOs 3.2.5.xxx and 3.2.5.1A;⁴ and
 - d. Decision 2.7, which confirmed the drafting for the Chapter 3 and 6 provisions allocated to Topic 2.⁵
3. Council has reviewed the above decisions, and annexures to those decisions, as part of preparing the comprehensive Chapter 3 and 6 provisions attached as **Appendix A**.
4. Appendix A comprises, for the most part, a clean and renumbered version of the provisions, which updates all internal cross-referencing with reference to the renumbered provisions.

1 [2021] NZEnvC 60, at [226], [228] and [240].

2 [2019] NZEnvC 205.

3 [2020] NZEnvC 157.

4 [2020] NZEnvC 159.

5 [2021] NZEnvC 60.

5. Where provisions are subject to the Regionally Significant Infrastructure appeal topics (Topics 1, 2 and 17), they have been shaded grey and not amended or updated, other than renumbering. Policy 6.3.3.3 has been left blank as a result of the pending section 293 process.
6. For the Court, and parties benefit, the Chapter 3 provisions have been renumbered as follows:

Decisions version	Interim decision numbering	Comprehensive provisions (16 June 2021)
-	3.2.5.x	3.2.5.1
-	3.2.5.xx	3.2.5.2
-	3.2.5.xxx	3.2.5.3
-	3.2.5.1A	3.2.5.4
-	3.2.5.2	3.2.5.5
-	3.2.5.iv	3.2.5.6
-	3.2.5.v	3.2.5.7
-	3.2.5.1A	3.3.2
3.3.2	-	3.3.3
3.3.3	-	3.3.4
3.3.4	-	3.3.5
3.3.5	-	3.3.6
3.3.6	-	3.3.7
3.3.7	-	3.3.8
3.3.8	-	3.3.9
3.3.9	-	3.3.10
3.3.10	-	3.3.11
3.3.11	-	3.3.12
3.3.12	-	3.3.13
3.3.13	-	3.3.14
3.3.14	-	3.3.15
3.3.15	-	3.3.16
3.3.16	-	3.3.17
3.3.17	-	3.3.18
3.3.18	-	3.3.19
3.3.19	-	3.3.20
3.3.20	-	3.3.21
3.3.22	-	3.3.22
3.3.24	-	3.3.23
3.3.25	-	3.3.24
3.3.26	-	3.3.25
3.3.27	-	3.3.26
3.3.28	-	3.3.27
3.3.29	-	3.3.28

-	3.3.29x	3.3.29
-	-	3.3.30
-	3.3.30x	3.3.31
3.3.32	-	3.3.32
-	3.3.31X	3.3.33
-	3.3.32x	3.3.34
-	3.3.32y	3.3.35
-	XA1	3.3.36
	XA2	3.3.37
	XA2A	3.3.38
	XA4	3.3.39
	XA5	3.3.40
	XA2A	3.3.41
	XA[xxx]	3.3.42
	XXX	3.3.43
	XA7	3.3.44
	XB1	3.3.45
	XB2	3.3.46
	XC1	3.3.47
	XC2	3.3.48
3.3.33		3.3.49
3.3.34		3.3.50
3.3.35		3.3.51

Drafting refinements / potential anomalies

7. Where minor / technical drafting (tidy ups) have been identified by Council (which are considered to be refinements to the provisions⁶), these have been shown as track changes (underline and ~~strike through~~). Alongside those drafting edits are comments, which explain the reason why Council has suggested the relevant refinement.

8. Council has not shown through track changes any other potential drafting anomalies, which may be of a more substantive nature. Instead, Council has identified those potential anomalies⁷ by way of a comment box in the provisions, and then provided relevant commentary below in this memorandum.

⁶ As contemplated by Decision 2.7, at [57].

⁷ As contemplated by Decision 2.7, at [240].

Anomalous drafting

9. Council has identified the following provisions where there are examples of potentially anomalous drafting, including where revisions may be of benefit:
- a. 3.1B.5 and 3.1B.7;
 - b. SO 3.2.5.5;
 - c. SP 3.3.34;
 - d. SP 3.3.35;
 - e. SP 3.3.42;
 - f. SP 3.3.43; and
 - g. Policy 6.3.3.1.
10. Council's explanation in relation to the above provisions is set out in the following paragraphs.

3.1B.5 and 3.1B.7

- a. Both 3.1B.5 and 3.1B.7 provide definitions for terms used in Chapter 3. Council's view is that there would be sense in consolidating those provisions, so that there is only one provision that provides definitions.
- b. The benefit of this would be that 3.1B.5 would not need to refer to 3.1B.6, as the preamble for the consolidated provision would read "In this Chapter" as per the Court's 3.1B.7.
- c. Council does not consider this change results in alteration to the substance of Chapter 3. The only internal reference to 3.1B.5 is in 3.3.46, which will not need amendment as a result of Council's suggested consolidation of the two provisions.
- d. The reframed provisions would be as follows (amendments shown in underline and ~~strike-through~~), incorporating Council's refinements as set out in Appendix A:

3.1B.5 In this Chapter:

- a. ~~In 3.1B.6 and SO 3.2.5.4,~~ 'Exception Zone' means any of the following, to the extent that the Zone (or Sub-Zone) is depicted on the planning maps:
 - i a. The Ski Area Sub-Zone;
 - ii ~~b.~~ The Rural Residential Zone and Rural Lifestyle Zone (Chapter 22);

- iii e. The Gibbston Character Zone (Chapter 23);
- iv d. The Jacks Point Zone (Chapter 41).
- b. 'Landscape capacity':
 - i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means the capacity of a landscape or feature to accommodate subdivision and development without compromising its identified landscape values;
 - ii. in relation to a landscape character area in a Rural Character Landscape, means the capacity of the landscape character area to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values;
- c. 'Landscape values' in relation to any Outstanding Natural Feature, Outstanding Natural Landscape or Rural Character Landscape includes biophysical, sensory and associative attributes (and 'values' has a corresponding meaning);
- d. 'Rural Living' means residential-type development in a Rural Character Landscape or on an Outstanding Natural Feature or in an Outstanding Natural Landscape, including of the nature anticipated in a Rural Residential or Rural Lifestyle zone but excluding residential development for farming or other rural production activities;
- e. 'Priority Area':
 - i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means an area listed in SP 3.3.36 and shown on the maps [held on [QLDC reference file]];
 - ii. in relation to the Upper Clutha Rural Character Landscape, means an area listed in SP 3.3.39 and shown on the maps [held on [QLDC reference file]].
- f. 'Best practice landscape methodology' in relation to the identification of landscape values or related landscape capacity or their assessment includes a methodology produced or recommended by a reputable professional body for landscape architects.

3.1B.6 The following Strategic Objectives and Strategic Policies (or specified parts thereof) do not apply to the consideration or determination of any applications for any subdivision, use or development within any of the Exception Zones except insofar as the receiving environment includes an Outstanding Natural Feature or

Outstanding Natural Landscape (or part thereof) that is outside the Exception Zone:

- a. SO 3.2.1.7.a, SO 3.2.1.8.a, SO 3.2.5.1, SO 3.2.5.2;
and
- b. SP 3.2.5.4, SP 3.3.21.a, SP 3.3.23.a, SP 3.3.29, SP 3.3.30, SP 3.3.31.

For avoidance of doubt, the above identified Strategic Objectives and Strategic Policies apply to plan development, including plan changes.

~~3.1B.7 In this Chapter:~~

- ~~a. 'Landscape capacity':~~
 - ~~i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means the capacity of a landscape or feature to accommodate subdivision and development without compromising its identified landscape values;~~
 - ~~ii. in relation to a landscape character area in a Rural Character Landscape, means the capacity of the landscape character area to accommodate subdivision and development without compromising its identified landscape character and whilst while maintaining its identified visual amenity values;~~
- ~~b. 'Landscape values' in relation to any Outstanding Natural Feature, Outstanding Natural Landscape or Rural Character Landscape includes biophysical, sensory and associative attributes (and 'values' has a corresponding meaning);~~
- ~~c. 'Rural Living' means residential type development in a Rural Character Landscape or on an Outstanding Natural Feature or in an Outstanding Natural Landscape, including of the nature anticipated in a Rural Residential or Rural Lifestyle zone but excluding residential development for farming or other rural production activities;~~
- ~~d. 'Priority Area':~~
 - ~~i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means an area listed in SP 3.3.36 and shown on the maps in Schedule 21;~~
 - ~~ii. in relation to the Upper Clutha Rural Character Landscape, means an area listed in SP 3.3.39 and shown on the maps in Schedule 21.~~
- ~~e. 'Best practice landscape methodology' in relation to the identification of landscape values or related landscape capacity or their assessment includes a methodology produced or recommended by a reputable professional body for landscape architects.~~

SO 3.2.5.5

- e. SO 3.2.5.5 (formerly SO 3.2.5.2) was provisionally amended by Decision 2.2,⁸ with the drafting then confirmed in Decision 2.7.
- f. The discussion in Decision 2.2 refers to the evidence addressing the important contextual relationship between the Upper Clutha Rural Character Landscapes and some ONF/Ls, and held that an amended SO 3.2.5.2 and a new SO 3.2.5.iv were appropriate.
- g. In reviewing the provisions, Council has identified that (renumbered) SO 3.2.5.6 refers to “use”, but SO 3.2.5.5 does not.
- h. Council respectfully suggests that SO 3.2.5.5 could also refer to “use”, for consistency with SO 3.2.5.6. This suggested amendment is shown below.

3.2.5.5 Within Rural Character Landscapes, adverse effects on landscape character and visual amenity values from subdivision, use or development are anticipated and effectively managed, through policies and rules, so that:

SP 3.3.34

- i. SP 3.3.34 is worded “In any Priority Area of any Rural Character Landscape whose landscape character and visual amenity values and related landscape capacity are identified in Schedule 21.23...”.
- j. An alternative option to express the preamble, and not use a pronoun, would be to use “For any... where landscape...”.
- k. While not wedded to either version, Council respectfully suggests that the following would be fit for inclusion in Chapter 3:

3.3.34 For ~~In~~ any Priority Area of any Rural Character Landscape ~~whose~~ where landscape character and visual amenity values and related landscape capacity are identified in Schedule 21.23, ensure that new subdivision and development for the purposes of Rural Living:

SP 3.3.35

- i. SP 3.3.35 applies to any RCL that is not a Priority Area, and to Priority Areas that have not achieved “all of the requirements of SP 3.3.33.
- m. With reference to SP 3.3.33(a), there is only one requirement for Priority Areas of the Upper Clutha Basin. That is to “identify landscape character to be maintained, and visual amenity values to be maintained or enhanced and related landscape capacity”.
- n. SP 3.3.33(b) applies to areas of the RCL outside of identified Priority Areas, and 3.3.33(c) is a general requirement that applies to all RCLs.
- o. So that the second clause in the preamble to SP 3.3.35 aligns with the sole requirement in 3.3.33(a), Council respectfully suggests that SP 3.3.35 be amended to remove the words “all of” from the preamble for clarity reasons. The suggested amendment is as follows (tracked):

3.3.35 In any Rural Character Landscape that is not a Priority Area, or is a Priority Area that has not achieved ~~all of~~ the requirements of SP 3.3.33, do not allow new subdivision or development for the purposes of Rural Living except where:

SP 3.3.42

- p. SP 3.3.42 has incorporated the March 2022 date proposed by Council in paragraph 7 of its supplementary legal submissions, dated 18 December 2020.
- q. When this date was proposed by Council, officers were factoring in a potential 12-month lead-in period for the necessary plan changes. This lead-in period was, and still is, considered necessary to allow for completion of the steps outlined in paragraph 8 of Council’s 18 December 2020 submissions.
- r. While Council acknowledges that the Court has adopted the date proposed by Council, it remains the case that a 12-month period is needed to complete all relevant steps. For completeness, the relevant steps outlined in Council’s earlier submissions have not changed. The only update is that Council intends on publicly consulting on the draft schedules before public notification. Council

remains intent on advancing these plan changes as soon as it possibly can.

- s. Council has undertaken detailed project planning following the issuing of the Court's Decision 2.7, including confirming availability of its landscape experts and factoring in the scheduling of all Committee meetings for the Schedule 1 process steps that have not been delegated to Council officers.
- t. In order to provide for the required 12-month lead-in period, and ensure alignment with Council's meeting schedules, Council respectfully requests that the date specified in SP 3.3.42 is adjusted to 30 June 2022. This date will provide for a clear 12 months from the date of the Court's Decision 2.7.
- u. Given that there were no submissions in opposition to the initial proposed date, and that it is Council that will be responsible for leading the plan change processes, it is hoped that this request will not cause the Court concern. If the finer details of Council's project planning would assist with the Court's consideration of this request, Council would be happy to provide that to the Court for review.

SP 3.3.43

- v. SP 3.3.43 sets out the attributes that are to inform the values identification framework process and all other landscape assessments.
- w. After reviewing the Court's expression of attributes against that set out in the Joint Witness Statement dated 29 October 2020 (**JWS**), refer Appendix A, Council identifies two particular omissions.
- x. While the list attached to the JWS was intended for inclusion in Chapter 21, Council's understanding is that the attributes are intended to be used in the same way in Chapter 3 (ie. forming the basis for landscape assessment).
- y. Council respectfully requests that the Court's final list of attributes in SP 3.3.43 be amended in three respects to reflect the position recorded in the JWS. Those amendments are shown below:
 - a. Physical attributes:
 - i. geology, geomorphology and topography;
 - ii. ecology;
 - iii. vegetation cover (exotic and indigenous);

- iv. the presence of waterbodies including lakes, rivers, streams, wetlands, and their hydrology;
- v. land use (including settlements, buildings and structures; and
- b. Sensory (or experiential) attributes:
 - i. legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;
 - ii. aesthetic values including memorability and naturalness;
 - iii. wild or scenic values;
 - iv. transient values including values at certain times of the day or year;
 - v. experiential attributes, including the sounds and smells associated with the landscape; and
- c. Associative attributes:
 - i. whether the attributes identified in (a) and (b) are shared and recognised;
 - ii. cultural and spiritual values, including for Tangata Whenua;
 - iii. historical and heritage associations;
 - iv. recreational values; and
 - v. identity or 'sense of place'.

Policy 6.3.3.1

- z. The Decision 2.7 version of Policy 6.3.3.1 has included the word “subsequent”.
- aa. As noted in Council’s tracked provisions (Appendix A), Council’s understanding is that Decision 2.7 addressed the matter of scope only, and did not make any substantive finding which replaced Decision 2.2 in relation to the drafting of 6.3.3.1.
- bb. On this basis, the word “subsequent” has been suggested for deletion, so that the policy reads (incorporating Council’s other suggested minor refinements):

- 6.3.3.1 Recognise that subdivision and development is inappropriate on Outstanding Natural Features or in Outstanding Natural Landscapes unless:
 - a. landscape values are protected; and
 - b. in the case of any subdivision or development, all buildings and other structures and all changes to landform or other physical changes to the appearance of land will be reasonably difficult to

see from beyond the boundary of the site in question.

Are directions required in relation to the above potentially anomalous drafting?

11. As indicated in Council's 28 May memorandum, if any of the potentially anomalous drafting was of a nature that should warrant involvement by the other parties, directions to facilitate that would be proposed by Council.
12. Council has reflected on the refinements set out in Appendix A, and the potentially anomalous drafting discussed in paragraph 9. Council's current view is that the matters raised are not of a nature that warrants wider involvement, and so this memorandum does not seek any further directions.
13. Council acknowledges however that it is not in a position to speak for all parties, and therefore suggests that the Court consider providing a limited period for the parties to consider this memorandum, and the attached Appendix A, and then file memoranda outlining any additional drafting anomalies for the Court's consideration.
14. Counsel can be available for a telephone conference to discuss any aspect of this memorandum if that would assist the Court.

DATED this 16th day of June 2021



M G Wakefield
Counsel for Queenstown Lakes District Council

APPENDIX A

Consolidated Chapter 3 and 6 provisions for Topic 2