

Before the Queenstown Lakes District Council Hearing Panel

Under the Resource Management Act 1991 (**Act**)

In the matter of the renotification of two submissions on Stage 1 of the Queenstown Lakes Proposed District Plan concerning the zoning of land at Arthur's Point by Gertrude's Saddlery Limited and Larchmont Enterprises Limited

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**Synopsis of legal submissions**

1 February 2023

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## **The Submitters' case theory**

- 1 The first question in determining the next generation of district plan mapping is to assess the location and categories of landscape boundaries. In most cases, that mapping exercise will be one which is obvious to a lay person and can be done without the aid of significant expert evidence. In other cases, if necessary, resort to expert evidence follows established jurisprudence in determining what is a landscape or what may be 'part of' one. The starting point, and most desirable landscape classification criteria, is the geomorphological boundary of landform.
- 2 No previous Court decision has closely inquired into this Site and its landscape categorisation (however the 2018 IHP recommendation and Council decision did). The Commissioners in this hearing will undertake this exercise using a clean sheet of paper – the PDP is not presumed to be most appropriate landscape classification or zoning.
- 3 It is submitted that on the evidence the obvious answer and the geomorphological answer, both lead to the same conclusion, that the edge of the Shotover River Gorge ONF is outside of the Site boundary (save for two small incursions), and the Site itself does not display characteristics and values warranting section 6b classification as an ONL, either in its own right (because it is too small), or by subsuming it within a broader landscape (because it is not linked geographically, or by assimilation of values, to such a broader landscape). The Site does however share the character and values as the underlying characteristics and landform of urban Arthurs Point and there is no authority for 'nesting' a site within a broader, disconnected, ONL.
- 4 No witness considers the ONF Gorge boundary includes the Site. Although the Shotover River is considered to be an ONF nested within ONLs, it does not follow that margins of the boundary of that river ONF should encroach beyond its (agreed) geomorphological corridor, to some other extent, if that is not based upon the enclosing escarpment of the feature itself.
- 5 Part of this process will determine the logical and defensible landscape boundary based upon established jurisprudence. It is submitted that testing of the evidence will establish that neither the operative LDSRZ, nor the proposed LDSRZ extension supported by Council, could be such a boundary.
- 6 Should the Commissioners determine the Site is not ONL or ONF, the Commissioners will consider what is the most appropriate zoning of the Site, guided by section 32 and as applied through recent Court decisions and IHP recommendations. In terms of considering the most appropriate

zoning and rule framework, and the effects arising from the same, it is agreed between Council and GSL that there are no constraints to rezoning from an infrastructure, traffic, productive land and natural hazards perspective. The fundamental determination is therefore whether the rezoning accords with PDP 'higher order' landscape provisions, and in particular, whether it will protect landscape values of any ONL or ONF.

- 7 In considering whether the landscape values of the adjacent ONLs and ONFs are 'protected', GSL relies on its structure-planning approach and prescriptive controls on future subdivision and use. The Council's concerns as to protection of ONF/L values as compared to the GSL evidence is addressed point by point in Appendix 1. Ultimately, the Panel will weigh and decide those competing expert opinions (and the validity of the facts on the ground they rely upon).
- 8 Council's rebuttal proposition for the LDSRZ extension would not secure any of the positive benefits associated with the full rezoning of the LLRB component proposed by Submitters, but it would leave behind an illogical and indefensible urban / ONL boundary and greater potential for future ad-hoc subdivision of the Site.
- 9 This case is unusual in that it is inquiring again into a relatively recent decision to rezone this Site for urban development and confirm again that it is not part of any broader ONL. The first instance IHP recommendation is a relevant factor to this case.
- 10 The Submitters' evidence supports a finding that the rezoning proposal is the most appropriate zoning for the Site in section 32 terms, has no inappropriate adverse effects, net positive ecological, landscape, infrastructure, and economic effects, and is entirely consistent with the IHP rezoning principles, including by giving effect to higher order provisions of the PDP, higher order planning instruments, and Part 2 of the Act itself.

**Is the Site ONL or ONF? Either in its own right, or part of one?**

- 11 Our submissions start from the foundational question as to whether or not the Site is ONL, ONF, or part of such a section 6(b) landscape. No witness suggests the Site is within the ONF boundary of the Shotover River Gorge<sup>1</sup>.

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<sup>1</sup> Mr S brown provides in his EiC at [6] that 'the subject properties are currently located within the Western Whakatipu Basin ONL and on the edge of the Shotover River ONF... Both lie within the landscape 'frame' (section 6(b)) of the Shotover River and are important components of its natural character 'context' (section 6(a)).' His conclusions that the Site are within the frame or context of the River ONF is not the same as a conclusion that the Site is within the (agreed) boundary.

The question is therefore, is the Site part of the broader (Western Whakatipu) ONL?

- 12 There is significant jurisprudence for determination of landscape boundaries. The leading authority is *Man o War*<sup>2</sup>, as applied in this District / PDP context recently in *Hawthenden*<sup>3</sup>. In my submissions, case law applied in this context does lead to a conclusion that the correct landscape boundaries are those agreed by Mr Espie and Ms Pfluger (and the previously constituted 2018 IHP). In any event, stepping back, and in this case looking at what should be the 'obvious' landscape boundaries assists with determination.
- 13 When looking at the images on page 18 and Appendix F of opening legal submissions, consider whether identifying a landscape classification boundary of the Western Whakatipu Basin ONL would be logically and readily identified, as the extent of that vast ONL? [Refer paras 41-45, 48 opening legal submissions].
- 14 In response to the APONLS synopsis of legal submissions at para 23g, *Hawthenden* is authority that '*Many ONL within the Queenstown Lakes District contain smaller areas within their boundaries that are neither highly natural nor outstanding of themselves (e.g. parts of the floor of the Cardrona Valley)*'. As cited in our opening submissions at [61 – 67], while there are a number of case law examples of where a more modified area may be considered to be part of a broader ONL, although it may not exhibit those section 6b qualities and values itself, those are all cases where they are either surrounded by that broader landscape (i.e. truly nested in the literal sense of the word), or otherwise, in the *Bridesdale*<sup>4</sup> case, where the river is nested within an ONF/L, and the edge of that boundary is the enclosing ONF River escarpment.
- 15 In response to para 5.8 of QLDC's legal submissions, where Ms Scott states Ms Mellsop considers the '*(operative) LDRZ on the site extends in a triangle up to the crest of the knoll in a way that is completely unsympathetic to the natural landform lines. In response to this, she has recommended a revised ONL boundary that is more sympathetic and better aligned with existing topography and landscape elements*'. In my submission these are completely contradictory conclusions;

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<sup>2</sup> *Man O' War Station Limited v Auckland Council* [2014] NZEnvC 167

<sup>3</sup> *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160

<sup>4</sup> *Bridesdale Farm Developments v QLDC* [2021] NZEnvC 189

- (a) Referring to Figure 40, Appendix D of our legal submissions, the revised ONL extension, continues to follow up and over the highest point of the knoll, and she has provided no assessment as to the legibility or defensibility of that ONL boundary. Some relevant questions to consider when assessing this position (following the *Hawthenden /JWS*<sup>5</sup> approach) are:
  - (i) Where is the evidence to suggest that is a geomorphological boundary distinguishing landform? Where does this boundary demarcate marked changes in landcover or use patterns? What are the distinguishing values either side of that proposed ONL boundary?
  - (ii) Where is the evidence to suggest that boundary demarcates the extent of the edge of the Western Whakatipu Basin ONL within which the Site supposedly is an important part of?
  
- 16 If the overriding consideration is (per QLDC legal submissions at 5.10 relying on *Hawthenden*) to '*ensure the overall legibility of an ONL or ONF is maintained*', it is hard to follow how the QLDC rebuttal proposition for the LDSRZ extension achieves this, particularly when considering this is a position based upon the legible edge of the entire Western Whakatipu ONL.
  
- 17 If the obvious answer cannot determine the relevant ONL boundary (and in my submission it readily can), then it is submitted topographical and geomorphological considerations support the same conclusion in any event. This follows the *Hawthenden* approach; see para, 54 opening submissions.
  - (a) An ONF abutting urban zoning is evident frequently in this District – the most recent and relevant precedent being the northern Arthurs point rezoning, which defines the Shotover River ONF abutting residential zoning;
  - (b) This case does not present any issue with future creep or bleeding of development into a section 6 landscape because of the sheer and distinct Gorge boundary delineating the Site;
  - (c) A defensible urban edge to a section 6 landscape will reinforce that landscape and its values, rather than undermine it.

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<sup>5</sup> As referenced in Mr Espie's summary statement at 5, and as relied on in *Hawthenden* at 80(b).

- 18 In response to para 5.3 of QLDC legal submissions, counsel appears to state that Mr Espie's landscape assessment and categorisation of the Site is flawed as it is based upon the landscape priority areas' variation. That is not the case; he has undertaken a correct and first-principles approach to identification of landscape values and determination of boundaries following the principles followed in Environment Court decisions on this PDP.<sup>6</sup> His reference to priority area mapping is a further illustration of the illogicality of subsuming the Site within a broader, disconnected ONL, and where there is no dispute as to the boundary of the Shotover River ONF.
- 19 [Referring to the summary points listed in para 69 of opening submissions] It is submitted that if the Commissioners rely on and prefer the evidence of Mr Espie and Ms Pfluger, then that leads to findings that demarcates the Shotover River Gorge in the agreed location (beyond the Site), and determines that the Western Whakatipu Basin ONL's legible extent does not further end or enclose that ONL by cutting illogically through the Site, with no distinguishing values either side, and in contradiction to the intent of providing a future legible and coherent boundary to the community.

#### **How are ONF and ONL values protected?**

- 20 One matter of key determination in assessing whether values of an ONF/L are protected is the extent of visibility of proposed development beyond the Site. Change in visibility effects does not necessarily make those inappropriate in context [referring paras 81 – 83].
- 21 Each of the respective landscape witnesses has evaluated values of the landscapes in question (the Western Whakatipu Basin ONL and the Shotover River ONF most importantly). In my submission, those identified values in each case, and with cross reference to the recently notified Landscape Schedules variation, are broadly similar, and the Panel can inquire now as to how those values will be protected, or not, through this proposed development.
- 22 Counsel for QLDC has succinctly summarised their landscape witnesses' concerns as to where ONL/F values are not protected because of the proposed development. An analysis of those concerns is itemised in the table at Appendix 1 to this synopsis.

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<sup>6</sup> These will be covered further in Mr Espie's summary, but follow the same JWS criteria cited in Ms Scott's submissions, following the Hawthenden criteria; including, the desirability as a first preference to establish geomorphological boundaries for ONF/Ls.

- 23 The Submitter has provided a number of design responses to those concerns of Council witnesses, as well as a response in evidential explanation (in particular the summaries of Mr Espie and Ms Pfluger to be presented shortly).
- 24 In my submission, when looking at the values of the Shotover River ONF and the broader Western Whakatipu Basin ONL, and the fact that urban Arthurs Point sits within a mountain context, it is hard to see how those magnificent and distinct values, would not be protected (in the sense of keeping safe from harm), when considering:
- (a) The setback of built form from the (agreed) upper Gorge boundary of the Shotover ONF, with intervening landscaping, and which will have very low visibility effects on users of the River itself;
  - (b) The distinct and legible ONF boundary is so different from the Site, there is no possibility of reading this proposed development as encroaching into the Gorge margins or the ONF itself – and this matches the pattern of zoning at Arthurs Point north abutting the Gorge ONF;
  - (c) If the Commission finds that the Site is not part of the broader Western Whakatipu ONL, then it is hard to conceptualise how the proposed rezoning of the Site would have an effect on those distant and disconnected ONL values.
  - (d) In almost all viewpoints to the Site, the future receiving environment contains built form that has the greatest extent of effect, not the LLRB addition, which will be viewed in that future context;
  - (e) Ms Mellsop's proposition that the LLRB zoning would 'detract from the naturalness, legibility and memorability of the knoll, as well as the aesthetic quality and scenic values of the landscape' is a proposition based upon a finding that the Site is part of a broader ONL. If that finding is not made out, then this concern falls away, and it is a large jump to consider rezoning of the Site would not protect aesthetic quality and scenic values of a disconnected and surrounding mountainous landscape.
- 25 Ms Wolt's submission for herself and A Hyland raises a number of interesting issues and interpretations as to viewpoints assessed by the Submitters' experts.
- (a) Ms Wolt raises concerns as to whether some viewpoints within urban Arthurs Point have been considered appropriately; whether other

viewpoints assessed have been correctly weighted (e.g. Gorge Road); and privacy effects resulting from development of the Larchmont Site towards her property below the escarpment.

- (b) Mr Espie will address each of these points in turn in his summary to the Commission, confirming that his effects assessment and overall conclusions remain, and will talk the Commission through respective viewpoints that assess the catchments she addresses. The Commission should give most regard and weighting to expert evidence over lay interpretations where possible, and unless there is compelling reason to depart from expert assessment.

- 26 The evidence of Mr Semple provides helpful additional viewpoints along the Shotover River corridor. Mr Espie has taken the opportunity to undertake a further site visit to those locations, and will discuss this in his summary for the Commission. His conclusions as to visibility effects overall remain unchanged based upon analysis of these additional viewpoints.
- 27 In summary, I submit the Panel can rely on the conclusions of Mr Espie, as supported by Ms Pfluger, that:

[61] if the requested relief proceeds a logical and appropriate pattern of land uses and elements will be evident in which the Shotover Gorge is preserved, the suburban area has a logical and appropriate boundary that relates to landform, and the broader mountainous ONL has its important qualities preserved. I consider that while the requested relief will bring about a degree of landscape change in the vicinity of Central Arthur's Point, the values of the relevant landscapes, including the Shotover Gorge ONF, the Western Whakatipu Basin ONL and the Central Whakatipu Coronet ONL (as those values are set out in the notified schedules), will be maintained and protected.

### **Priority area landscape schedules variation and relevant weight**

- 28 I have summarised the consequence of the landscape Schedules variation [18-21 opening submissions]. In summary, the Submitters' position is that no weight can be afforded to the identification of the Site within the Shotover River ONF priority area as notified in the Variation, and this is a matter of contention in separate Declaration proceedings.
- 29 In response to QLDC's legal submissions at para 6.1 – 6.3 – I broadly agree with the summary of the Landscape Schedules variation parallel to this rezoning, however to clarify, where Ms Scott refers to 'Environment Court Decision 2.5 as confirming priority area boundaries', it should be noted that



the boundary so confirmed in that case was the green boundary, as depicted in the green areas of Mr Espie's Appendix 7, i.e. **excluding** the Site from any priority area.

- 30 In any event, each landscape witness has undertaken a landscape assessment and proposed categorisation of the Site without reliance on this mapping.
- 31 The schedules themselves as notified, do provide initial assistance in terms of relevant values for respective ONL/Fs and have been assessed by Mr Espie to further confirm his opinion that the site does not share its attributes or values with the wider Western Whakatipu Basin ONL (summary of BE at 15).

**Weighting and relevance of the 2018 IHP recommendation and Council decision**

- 32 As set out in opening submissions at 33– 35, there are compelling reasons why the IHP recommendation stands as a valid, relevant, and in this instance, weighty matter to take into account. However, no authority is directly on point for the circumstance of a suspended Council decision in the context of a plan review. I disagree with the reasoning provide in para 4.5 of QLDC legal submissions, to the effect that the Submitters' refined relief in this hearing is a strong reason to caution against taking into account or considering the IHP recommendation, given the reduced density and hardwired additional mitigations and benefits volunteered in the Structure Planned approach.
- 33 I submit that, had the Environment Court decision enforcement order decision intended to do more than just 'suspend' a decision, meaning it had no future weight or relevance, it would have said so, perhaps directing that it was to be quashed, reconsidered, or set aside. Indeed the relief sought by APONLS in its enforcement order did seek to 'set aside' the Commissioner and Council decisions; that relief was not granted. Perhaps His Honour would have otherwise made obiter comments as to the adequacy of the IHP's reasoning or merits of the decision. He did not. The fact that the Submitter has revised its relief does not mean the IHP recommendation should not be considered or given weight, in particular because:
  - (a) The revised relief provides for less environmental effects and greater environmental benefits;
  - (b) The policy framework has not substantially changed, and if anything is more supportive or at least neutral as to rezoning;

- (c) The QLDC submission effectively states that the IHP recommendation, and Council decision accepting that, 'got it wrong' for this Site, despite the Council spending significant resources defending, in appellate Courts, its Schedule 1 process which (if successful in those cases) would have arrived at the same rezoning outcome approved originally.

### **The future receiving environment**

- 34 The Panel is to assess the future receiving environment by taking into account its permitted and consented future development, likely to be implemented. In my submission, there is further authority (although only in a consenting context) to also take this a step further, and consider the anticipated environment, though that may require further consenting to be achieved [102-103 opening submissions]. There are two relevant aspects to this for the rezoning: the operative LDSRZ portion of the Site and the Larchmont Site.
- 35 Opening submissions at [90 – 92] explain the 'blue layer' of operative zoning on the Site, which frames the realistic future development visible on the Site from a number of viewpoints. Mr Espie will take the Commission through each these viewpoints in his summary, and confirm that the concerns of Ms Mellsop as to visibility of development and breaches of ridgeline, may be overstated;
- 36 [Paras 100 – 103] of opening submissions assess the Larchmont Site; an addendum is required to opening legal submissions at para 109 – the first sentence should be struck-out; this sentence refers to potential future permitted development within a building platform consented on the Larchmont Site. Upon further review, that platform was not registered on the title. This does not change the conclusions in submissions as to reliance on a realistic future environment of the Larchmont Site.
- 37 Ms Wolt's submission is that the Larchmont Site has been inappropriately relied on for a landscape effects assessment due to it including the "castle consent" (either because in her opinion that consent has lapsed, or otherwise is in breach due to tree felling). In response:
  - (a) While a number of assertions have generally been made as to consent conditions in breach, these are not specified with accuracy or with any audit against approved plans. The Commissioners may have noticed on their site visit some remaining Larch trees on that Site, and a constructed earth-berm, as required by the Court's decision.

- (b) Whether the 'castle' is consented or not, the Panel should take a 'realistic assessment' of the future environment, that is appropriate in this instance given the already modified, half constructed nature of the Larchmont Site;
  - (c) The Environment Court decision for the 'castle' appended to Ms Wolt's submissions clearly envisage the eventual replacement of Larch trees in any event. Condition (xvi) explicitly provides for their replacement, so if the consent were to be fully implemented, replacement planting would be required in any event at some point, and there would be an intervening period of transitional growth of vegetation. I.e. the consent is realistic that the trees will not last forever.
  - (d) In any event, the Larchmont Site is already modified by a number of other domestic elements, Mr Espie will discuss this aspect in his summary for the Panel and reiterates that, whether he takes the castle into account (at 5m or 8m height) or not, and with or without Larch vegetation, this doesn't make a significant difference in his overall effects-assessment.
- 38 The receiving environment also exhibits the character currently displayed including the recent wilding tree clearance.
- 39 In response to APONLS synopsis of legal submissions, at para 27 – Counsel references wilding pine clearance and that any 'mess' created should not advantage rezoning. The key point here is that wilding trees are being eradicated across the District, as a matter of national, regional and district importance. The landscape is, to some extent degraded, or less natural, because of the presence of wilding trees, and their eventual replacement with indigenous vegetation (enabled by rezoning) will provide for a net ecological benefit, and enhance nature conservation values.
- 40 The Submitter has not used the wilding clearance as a platform to advantage the rezoning, rather this clearance is actually considered to have enhanced character; as stated in Ms Pfluger's summary evidence at 13: Given the potential for wilding spread of these exotic species I agree that their removal enhances the natural character rather than detract.

### **NPS Highly Productive Land**

- 41 Paras 37 – 40 of APONL's synopsis of legal submissions place reliance on the recently released NPS-Highly Productive Land guidance material to make an inference that two experts in this field (from QLDC and the

Submitters) have not appropriately assessed the Site and its LUC classification.

- 42 In response, MfE's guidance is explanatory only, is at an early stage of development, and is intended to be further amended later this year- it should therefore be afforded little weight. Furthermore, two experts before this Commission have agreed that a more detailed mapping using LUC Capability Classification, (as anticipated, applying the definition of "LUC 1,2, or 3 Land" per clause 1.3(1)) has been undertaken and is determinative that the Site is not within those HPL categories, and the transitional definition of the NPS does not apply to the Site.
- 43 Any other interpretation of the guidance material as undermining those two opinions should be treated with caution, particularly given its developmental state, as suggested in the opening caveats:

## Purpose

This guide has been developed to help stakeholders understand and implement the National Policy Statement for Highly Productive Land 2022 (NPS-HPL). There will be two parts to the guidance.

- **Part 1** is this guide, which focuses on providing guidance to local authorities, landowners, applicants and planners on the NPS-HPL provisions that relate to subdivision, use and development and rezoning proposals on highly productive land (HPL). This guide will:
    - assist local authorities to understand and interpret the provisions that influence the processing of resource consent applications and rezoning proposals on HPL
    - benefit landowners and applicants in understanding how the NPS-HPL applies to HPL and in preparing resource consent applications for HPL and private plan changes to rezone HPL.
  - **Part 2**, which will be available in early 2023, will focus on mapping, and changes to regional policy statements and district plans to give effect to the NPS-HPL. We may revise Part 1 to align it with the publication of Part 2 in early 2023.
- 44 Part 2 will provide more detail on mapping, is yet to be developed, and may change the current guidance material, and therefore it is submitted the Commissioners should continue to rely on the agreed evidence, from the requisite experts in this field, which have confirmed that a more detailed assessment has been conclusively and appropriately undertaken. My more practical points of submission are:
- (a) Either way, if the new guidance material yet to be released explicitly rules out landowner-lead detailed assessments, the Commission should consider that the conclusive reason from two experts in this case as to the Site not being 'HPL' is because the steep slope

precludes it from any LUC 3 category. That is based on the LUC classification parameters as per the methodology in the Land Use Capability Survey Handbook (2009).

- (b) The slope of the Site is not going to change, irrespective of a future regional scale mapping, or future MfE guidance – it will remain precluded from any HPL category for this reason.
- (c) Even if the Site were considered HPL, and the Submitters and Council's evidential case remains it is not, there would inevitably be a policy route for the subdivision of this Site, including in particular the exemptions of clause 3.10 relating to permanent or long term constraints for production activities. The clear nature of the expert opinions as to classification mean the Panel does not need to undertake this further policy exercise.

### **Positive effects and rezoning principles**

- 45 Our opening legal submissions traverse positive effects of the rezoning in terms of infrastructure upgrades, maintenance of landscape values (i.e. the proposed BRA over the knoll and including operative LDSRZ land), recreation and access improvements to DOC reserve and within the Site, and economic benefits consequent to rezoning as compared to rural production uses, including the addition of a portion of housing supply within the Arthurs Point locale.
- 46 These are all relevant in determining the most appropriate zoning for the Site, as guided by the section 32 principles from case law summarised in opening submissions, and the previously relied upon IHP principles.
- 47 I wish to make a small addendum here in Appendix B of the opening submissions – para (b) should be struck-out – I agree that the higher order provisions of the PDP are now settled and, as per the *Bridesdale* Environment Court decision, these enunciate the relevant obligations in higher order planning instruments and in Part 2 of the Act. This does not change the conclusions in submissions, and in particular in reliance on Mr J Brown's planning analysis, which considers the Submitters' proposed rezoning is the 'most appropriate' zoning.
- 48 As to infrastructure upgrades, this includes transport network upgrades which, are a desirable consequence of the rezoning, including as set out in the information tabled by Mr Gousmett:

[p3] Roading – there is 195m of one way gravel road from the end of the formed and sealed legal road to the residential zoned land at the end of the ROW.

There is no provision for pedestrians or cyclists. With widening and retaining walls being necessary and even considerable lengths of safety barriers for people and vehicle guard rails, the cost for roading to meet Council's standards will be very high. The relatively tight bend is dangerous particularly for children walking and cycling for recreation and to and from the school bus.

- 49 Ms Wolt's legal submissions raise the issue of effects on the transport network, including closure of Atley Road for upgrade [see paras 63-69]. In response:
- (a) The particular access points at issue here are governed by private ROW easements over Atley Road – it is for private owners to agree to, and make adequate provisions under easement terms for, access arrangements in the event of any upgrade or repair (which will potentially occur at some point in the future anyway, regardless of this rezoning);
  - (b) Mechanisms to control and provide for efficient upgrades to traffic infrastructure are a matter for determination at the stage of consenting and implementation and through a traffic management plan, not for this Panel, which guided by section 32 and the rezoning principles, should assess the feasibility of upgrades required.
- 50 The Council and Submitters' experts are entirely aligned in concluding that rezoning can be appropriately accessed from the local road network and there are no transport reasons to oppose the requested zoning.
- 51 Ms Wolt's submissions categorise the Submitters' proposed recreational aspects as being overstated, and including that the proposed future trail links are trails to nowhere. In response it is submitted that:
- (a) The evidence assessed includes benefits of the proposed walkway and cycle link within the Site – a significant stretch connecting urban Arthurs Point to the DOC reserve;
  - (b) This supports the statements in Mr Semple's evidence, that the River experience of recreationalists is highly valued – in my submission that value should be enhanced and encouraged through facilitating greater access as proposed in this rezoning;
  - (c) The trail link within the Site connects to Council reserve – even if it becomes just a stopping point, because through access cannot be achieved without landowner consent, it is still a step closer in connecting the trail link 'dots'.

52 The Submitters are not running a section 85 argument on the basis that there is no other reasonable use of the land than rezoning. In response to the APONLS and Ms Wolt's legal submissions on this matter, and to clarify, the point of Mr Fairfax's evidence and when read in conjunction with the Submitters' landscape, ecology, economic, and highly productive land evidence, is that there are limited productive rural uses of the Site; the economic benefits of rezoning are net positive; and there will be benefits to the community and to the Submitters, by providing certainty of future development outcomes as opposed to potential incremental subdivision and development.

53 Put simply, without the rezoning approval, the full potential of this Site for community benefits will not be realised. To reiterate Mr J Brown's planning conclusions from his summary statement, this rezoning proposal is the most appropriate zoning for the future generation District Plan:

[12] Option B strikes an appropriate balance between achieving a worthwhile residential yield, delivering broader community and associated benefits (including in the form of open space, ongoing revegetation and pest management, public access, and necessary infrastructure upgrades), while managing the effects on landscape values of the Site and the adjacent ONF.

54 In conclusion, the Commission can be confident that the Site is not considered to be within, or part of, any section 6b landscape, as has previously been determined by a significantly experienced, differently constituted, Independent Hearings Panel in 2018, and previously agreed by Council decision.

55 I respectfully submit therefore the Commission may focus attention on effects of the adjacent ONF and ONL values, and an inquiry into how those are protected. The Submitters' case is that its proposal entirely protects those values, and better so than leaving future incremental subdivision and development to chance, without securing the opportunity now to achieve significant community benefits.

Dated this 1<sup>st</sup> day of February 2023



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**Appendix 1 - Assessment of whether the Submitters' rezoning will protect ONL and ONF values**

QLDC (taken from QLDC legal submissions at 7.1)	Gertrude
<p>(a) Several platforms are either on steeper slopes or high on the southern slopes of the knoll;</p>	<p>the setbacks internally within the site follow logical contours of the Site, the ONF gorge boundary is actually some further distance from the proposed buildings themselves and includes intervening steeper topography. (YP Summary at 11a)</p> <p>the platforms proposed are of a lesser elevation than what the operative and future receiving environment provides for (BE summary at 19).</p> <p>The relativity of the LLRB lot heights compared to the future anticipated development, does not cause a greater effect in terms of height of built form in relation to the River corridor ONF.</p> <p>To the extent that the 'margin' is the agreed ONF Boundary of the Gorge, the proposed LLRB built form is setback from this (as above). No witness is proposing that the Site is the margin of the Shotover River.</p>
<p>(b) several platforms are close to the ONF boundary with minimal or no intervening planting (setbacks of 2 - 25m on Lots 28, 30, 31, 33 and 38);</p>	<p>additional setback is provided between the outer proposed buildings and the gorge by the DOC Reserve, which although potentially to be cleared of wilding trees, will continue to provide space between urban Arthurs Point and the river. Additional mitigation planting has been proposed in the revised version of the structural planting plan to ensure the 5m buffer of planting is provided between building platforms and the proposed zone / property boundary (YP summary at 11b)</p>

	<p>This ONF boundary is often approximately 20m outside the subject site's boundary, meaning that the intervening DOC Reserve provides an additional buffer to the ONF river gorge corridor, in conjunction with the site-specific proposals of setbacks and mitigation planting (BE summary at 16).</p> <p>No platforms bleed out or encroaches upon the agreed ONF boundary – and per Mr Espie's evidence, ONF/L boundaries abutting urban zoning is common in this District (including at Arthurs Point North) and can reinforce the distinct, legible, and defensible boundary of an ONF: "This will give more visual logic to the pattern of built development that ultimately emerges, will avoid built development sprawling onto steep, prominent or otherwise sensitive areas and will protect the genuinely outstanding and natural areas of landscape, and the values that contribute to them being outstanding." (BE EIC at 48)</p>
<p>(c) buildings on a number of the LLRB platforms would break the skyline when viewed from public and private places;</p>	<p>The main breaches of skyline from most viewpoints is from operative LDSRZ in any event – any additional breach is limited to a few viewpoints, and assessed in context with that operative extent of breach already to occur (BE summary at 20).</p> <p>Protection of the highest and most sensitive parts of the Site, including the operative LDSRZ portion, are important amenity benefits, and in any event, the depicted modelling is a worst case possibility of built form (BE Summary 19-20).</p> <p>Minimal additional skyline breaches will occur compared to the operative LDSRZ (YP summary at 13).</p>

<p>(d) the substantial alteration to the natural landform of the knoll resulting from necessary earthworks, in addition to earthworks required to form building platforms and widen the access road – with planting not being an adequate mitigation;</p>	<p>The LLRB portion of rezoning is accessed off an already formed accessway within the Site (YP EIC at 33). Provisions of the proposed zone, including matters of control, provide for mitigation of earthworks through revegetation – it is common to be assess thisat the consenting stage and relevant controls applied.</p> <p>In any event, if the Site were to be used for future rural production, or comprehensive replanting, there would be earthworks required in any event (Dr R Hill, EIC at 57).</p>
<p>(e) the proposed planting would not completely screen dwellings or associated domestic activities. Only 30% of plant species required to be used are required to be taller species capable of growing more than 5m in height at maturity;</p>	<p>The proposed planting will initially achieve visual integration of built form and eventually partial screening – it is not intended to be an invisibility screen (YP summary at 13).</p> <p>The planting has been proposed in its current form to integrate future development into the broader scene, to visually soften development and to increase natural character (BE Summary at 24(a)</p> <p>The relevant test here is not whether future built form is completely screened or reasonably difficult to see from beyond the site (particularly in the instance of a finding that the Site is not ONL/F). The assessment here is protection of values of the ONF and ONLs adjacent – as concluded by both Mr Espie and Ms Pfluger, the visual catchments of the Site are confined and for the most part, visual effects of development will be at the lower end of the impact scale. In all respects, the surrounding ONL and the Gorge will remain intact and the Site will remain subservient to the surrounding natural landscape (YP summary at 6)</p>

<p>(f) considerable uncertainty about how revegetation planting would be maintained once it is compartmentalised within individual private lots following subdivision;</p>	<p>The methods of control established as a pre-requisite to subdivision of new titles ensures that planting is 'established' (Rule 27.7.XXX.1(C)) and further, matter of control (d) requires methods to ensure the approved structural planting plan is complied with on an ongoing basis. When read together with the information requirements of that plan, which include maintenance obligations and replacement of dead or dying species, this presents a highly prescriptive outcome binding through registered controls (i.e. consent notices) for future lot owners.</p>
<p>(g) visibility of an urban pattern of development that would be widely visible from public and private places around Arthurs Point, that would detract from the naturalness, legibility and memorability of the knoll, as well as the aesthetic quality and scenic values of the landscape;</p>	<p>To the extent that there will be effects on the knoll itself (i.e. the Site) – this is relevant only insofar as there is a conclusion that the Site is ONL. If it is not, then any visibility effects must be assessed in terms of how those protect surrounding ONL and ONF values – per Mr Espie and Ms Pfluger's opinions, those surrounding ONL values remain dominant, distinct, and legible with the rezoning proposed.</p>
<p>(h) the attributes that make this knoll a part of the wider ONL – its natural and now open and legible landform, its landmark role as the 'bookend' to urban development on Atley Terrace and the 'turning point' of the river gorge, its memorability and its connection to other schistose landforms and mountains – would be substantially degraded; and</p>	<p>As above – in this context we are discussing to what extent ONL and ONF values are protected. This concern only holds true if the Site is considered to be part of an ONL. The proper consideration is whether those broader landscapes and features' values are protected</p>

<p>(i) urban development (albeit of a lower density than that originally proposed) in close proximity to the river escarpments and within the visual enclosure of the river corridor would still adversely affect the naturalness, scenic and wildness/remoteness attributes of the adjacent ONF to a moderate-high degree affect the naturalness, scenic and wildness/remoteness attributes of the adjacent ONF to a moderate-high degree.</p>	<p>BE EiC at 61 - If the requested relief proceeds, a logical and appropriate pattern of land uses and elements will be evident in which the Shotover Gorge is preserved, the suburban area has a logical and appropriate boundary that relates to landform, and the broader mountainous ONL has its important qualities preserved. While the requested relief will bring about a degree of landscape change in the vicinity of Central Arthur's Point, the values of the relevant landscapes, including the Shotover Gorge ONF, the Western Whakatipu Basin ONL and the Central Whakatipu Coronet ONL (as those values are set out in the notified schedules), will be maintained and protected.</p>
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