

**BEFORE THE COMMISSIONERS APPOINTED ON BEHALF OF
QUEENSTOWN LAKES DISTRICT COUNCIL**

Under	The Resource Management Act 1991 (the Act)
In the Matter	of a variation to Chapter 21 – Rural of the Proposed District Plan to introduce Landscape Schedules
Between	SUNNYHEIGHTS LIMITED (OS37) WANAKA STATION TRUST (OS8) MONTREAL TRUSTEES 2024 LIMITED (OS 32, FS 59) SCOTT AUBREY FAMILY TRUST (OS43) BELL GROUP LIMITED (OS31) Submitter
And	QUEENSTOWN LAKES DISTRICT COUNCIL Local Authority

SUBMISSIONS OF COUNSEL

DATED 26 AUGUST 2026



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May it please the Commissioners:

1. The submitters seek relief in the alternative. Their primary position is that the UCLS Variation should be rejected in its entirety (excluding the Clutha/Mata Au Priority Area). Their alternative relief is that advanced by their experts as to the drafting of the preamble and the individual schedules. Much of that is agreed between the experts.
2. Counsel has reviewed the opening submissions filed on behalf of the QLDC and has no quibbles with them in so far as they relate to the decision-making framework that applies to Plan Changes and the relevance of the upcoming legislative changes.
3. With respect to the pending legislative changes, it is submitted that if the changes are passed and come into force prior to the Panel's recommendations it will be necessary to consider what if any implications they may have. An opportunity for both QLDC Counsel and Counsel for submitters to provide submissions with respect to any implications would be appropriate.

REJECT THE RCL NON-PA SCHEDULES

4. The concern about the UCLS Variation as it applies to the Non-Priority Area RCL's (**Non-PA areas**) can be summed up simply. It is a solution looking for a problem.
5. It is submitted that in promoting this variation, the Council have gone too far and that it is neither a necessary, nor an efficient or effective approach to be taking. The process was not considered necessary by the Court at the PDP appeals phase, and it remains unnecessary.

6. Further to that the approach is not supported by the existing strategic policy regime which was developed to specifically implement the Court's findings in the Topic 2 Decisions and ultimately set up a tiered response in relation to priority area landscapes and non-priority area landscapes.
7. It is submitted that if the Council wished to adopt the scheduling approach for Non-PA areas it needed to amend the strategic policy framework to support it. For whatever reason, it has chosen not to do that.
8. The Environment Court introduced the concept of landscape schedules through its decisions on the PDP Topic 2 appeals. They primarily related to Outstanding Natural Landscapes but also applied to the Upper Clutha RCL 'priority areas'. Those being the areas of the RCL that were facing the most development pressure during the life of the District Plan. That was the substance of *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council (Topic 2.2 decision)*¹.
9. The Court accepted the planning evidence put to it by Mr Barr (for QLDC) and Mr Ferguson (for submitter Darby Planning) which agreed that the ONF/L and Upper Clutha RCL Values Identification Frameworks should be targeted to Priority Areas. The Court explicitly rejected the evidence for QLDC that the Council should be left to decide which areas the schedule process should apply to².
10. At paragraph [197] of the Topic 2 Decision the Court stated:

The need for this [priority area] definition is simply one of drafting convenience, such that the repetition of more wordy concepts in the relevant

¹ *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* [2019] NZEnvC 205

² *Ibid* at [163]

SP's can be avoided. In essence, it refers to our intention that the SP's for the Values' Identification Frameworks be targeted to identified Priority Areas of ONF/L's and the Upper Clutha RCL.

11. This is clearly reflected in the strategic policy for RCL's at 3.2.5.7 which states:

In Rural Character Landscapes of the Upper Clutha Basin:

- a. *Priority Areas of Rural Character Landscapes are identified; and*
- b. *associated landscape character and visual [amenity values](#) and related landscape capacity are identified.*

12. This policy says nothing about areas outside of the PA's.

13. The fact the scheduling was intended to apply to PA's is further supported by paragraph [262] of the Topic 2.2 Decision. It states:

"With reference to our findings in Part B, we identify the following drafting design principles for development of new SPs for the Values Identification Frameworks:

- (a) *The overall purpose of the SPs is to provide policy direction for future Sch 1 plan change processes that would include Ch21 schedules of landscape values and landscape capacity, informed by assessments and other related provisions as we describe for Priority Areas.*
- (b) *There should be separate sets of SPs (rather than one set for:*
 - (i) *ONF/L Priority Areas; and*
 - (ii) *The Upper Clutha RCL Priority Areas:*
- (c) *Each set of SP's should apply only to Priority Areas that are:*

- (i) *Listed in the applicable SP; and*
- (ii) *Shown on maps that could be added to Ch3 (or placed elsewhere in the ODP). ...*

14. What is also notable is that the Court provided additional direction in relation to the SPs. At paragraph [279] of the Topic 2.2 Decision it said:

As a further point of detail, also with a view to assisting the planning and landscape experts prepare for expert conferencing, we note that there are two relevant dimensions to landscape assessment methodology needing to be covered off in relevant SPs, namely:

- (a) *The methodology for the purposes of development relevant ONF/L and Upper Clutha Basin RC: schedules for inclusion in the ODP, for the identified Priority Areas; and*
- (b) *The methodology for resource consent application processes, for those ONF/Ls and RCLs where there are no such schedules in the ODP.*

15. It is submitted that there can be no doubt as to the Court's intention. Landscape schedules were for Priority Areas.

16. This intent is clearly reflected in the drafting of SP 3.3.33.

For Rural Character Landscapes, identify landscape character to be maintained, and visual [amenity values](#) to be maintained or enhanced and related landscape capacity:

- a. *for Priority Areas of the Upper Clutha Basin, in Schedule 21.23, in accordance with the values identification framework in [SP 3.3.39 - 3.3.41](#) and otherwise through the landscape assessment methodology in [SP 3.3.45](#) and through best practice landscape assessment methodology; and*

- b. *outside of identified Priority Areas, in accordance with the landscape assessment methodology in [SP 3.3.45](#), and through best practice landscape assessment methodology; and*
- c. *through associated District Plan rules setting measurable spatial or other limits, and related assessment matters, as to cumulative [subdivision and development](#) including as to location, quantity, density and design.*

[emphasis added]

17. It is abundantly clear from the drafting of this provision that Priority Areas follow one pathway, whilst a different pathway applies 'outside of identified priority areas'. It demonstrates that adopting the PALS approach and values identification framework for the non-PA's is inconsistent with the policy regime.
18. It is submitted that had Council wished for the scheduling path to apply in accordance with this policy regime it needed to identify additional Priority Areas and have them inserted into SP3.3.39. Evidence justifying why those areas met the 'threshold' for being a Priority Area is required to depart from the Court's findings.
19. Ultimately, it is submitted that the proposed variation is at odds with the strategic policy framework in the Plan. The Council's decision not to make any amendments to the strategic policy framework to accommodate the proposed new approach to scheduling non-PA's is the genesis of the issue. It is agreed that addressing this issue is beyond the scope of the variation, so the error cannot be cured.
20. The 42A report for the Upper Clutha Landscape Schedule Variation explains the relationship between the Environment Court's decision and the variation in this way:

5.8 Separately from the PALS Variation, which was directed by the Environment Court's Topic 2 decisions, Council decided to notify the UCLS Variation.

5.9 While the Environment Court's Topic 2 findings were to identify only Priority Areas of the Upper Clutha Basin, in making the decision to initiate the UCLS Variation in November 2024, the Council accepted that ongoing management of the Upper Clutha Basin's special landscapes would benefit from a study that assessed the entire area.

21. With respect, that explanation is misleading. The reason why the Upper Clutha Landscape Study (UCLS) was advanced by the QLDC in relation to the non-Priority Areas is because that was the agreement reached between QLDC and UCES to resolve the High Court appeal on Decision 2.2. It is characterised, at best, as a contractual obligation rather than a statutory obligation or following an Environment Court direction.
22. As part of the Topic 2 Environment Court process, landscape expert witness conferencing occurred, and agreement was reached on five Priority Areas within the RCL in the Upper Clutha Basin. That resulted in the Environment Court making the following direction in its Topic 2.7 decision³:

- | | |
|-----|--|
| XA4 | <p>Identify in Schedule 21.23 the following Rural Zone Priority Areas within the Upper Clutha Rural Character Landscapes <u>[shown in the maps in 3.3.37 [or] shown on maps held on [QLDC referenced file]]</u>:</p> <ol style="list-style-type: none"> a. <u>Cardrona River/Mt Barker Road RCL PA;</u> b. <u>Halliday Road/Corbridge RCL PA;</u> c. <u>West of Hāwea River RCL PA;</u> d. <u>Church Road/Shortcut Road RCL PA;</u> e. <u>Maungawera Valley RCL PA.</u> |
|-----|--|

³ *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* [2021] NZEnvC 60 at [28]

23. In between the Topic 2.2 decision and the Topic 2.7 hearing, on 22 May 2020 the UCES and QLDC entered into a settlement agreement to resolve the High Court appeal on Topic 2.2. The agreement said this:

4 Council agrees to do the following:

4.1 Council will advance through consultation with Topic 2 parties and subsequently to the Environment Court, the mapping of all of the Upper Clutha Rural RCL as a Priority Area (**PA**).

4.2 If the Court decides that only certain parts of the Upper Clutha RCL should be identified in the PDP as a PA, Council will still undertake the Values Identification Framework (**VIF**) exercise for the entire Upper Clutha RCL. The VIF will be undertaken for the extent of the Upper Clutha RCL as shown on the PDP plan maps following resolution of Topic 2, sub-topic 1 Environment Court appeals relating to the appropriate boundary between the ONL and RCL landscape classifications in the Upper Clutha, those appeals being at Lake McKay Station, for the Clutha River, and in relation to the UCESI appeal.¹

24. And then:

6.3 The VIF and the mapping of the PAs for the Upper Clutha RCL will be implemented through future Schedule 1 processes. Chapter 3 Strategic Policies must be consistent with the Court's drafting design principles contained in Decision 2.2. This requires expert conferencing to address, among other things, "policy direction about cumulative adverse effects on landscape character and visual amenity values from increasing Rural Living subdivision and development". That policy direction would then apply to rules that set "measurable spatial limits or other limits, and related assessment matters (including as to location, quantity, density and design)"². Any amendments to the provisions in Chapter 21 as a consequence of this VIF process, will be considered at a later date as part of a separate Schedule 1 process.

25. In reliance on clause 4.1 of that agreement, at the Topic 2.7 hearing the UCES submitted that additional areas in the Upper Clutha Basin should be identified and scheduled through the VIF process and not just the 5 Priority Areas. The Environment Court declined UCES's submission. It stated:

"UCESI seeks that the Upper Clutha RCL VIFs apply also to the so-termed "Non-Priority Areas". We understand that UCESI's request may pertain to an agreement reached with QLDC for the discontinuance of

UCESI's High Court appeal against Decision 2.2. That agreement is not before the court. Furthermore, bearing in mind that the High Court appeal has been discontinued it is not appropriate that we revisit our findings in Decision 2.2.⁴

26. The UCES dissolved on 30 March 2026. The obligation of the QLDC to complete its obligations under the settlement agreement by pursuing a variation expired along with the dissolution of the UCES. Put simply, there is now no entity to which the QLDC owes any contractual obligations. Although the variation Hearing Panel has accepted Mr Haworth as the successor to UCES' submission on the variation⁵, Mr Haworth cannot enforce the UCES settlement contract as he is not a party to it. Put simply, the QLDC's obligations to the UCES under the settlement agreement are no longer enforceable.
27. Despite that, Ms Frew's evidence effectively reverse engineers an approach reliant on an assessment matter as the 'policy hook' to tie the non-PA schedules into the District Plan Framework. It is submitted that this "bottom up" approach goes against the clear and plain drafting of the strategic provisions. Chapter 3 is being reverse engineered to fit an outcome, rather than the operative Chapter 3 provisions being used as the test for whether the variation provisions are the most appropriate way to achieve the Plan's objectives⁶.
28. The Court laid out a clear framework in the Topic 2.2 Decision.
 - (a) Identified Priority Areas require a schedule in order to provide a framework for managing development (in particular cumulative effects) in areas of the district where pressure for development was highest. This approach was a direct response to the resource management issue.

⁴ Ibid at [21]

⁵ We hold serious doubts about whether that succession decision is legally correct, but other submitters were not given any opportunity to be heard about that.

⁶ Section 32(1)(b) of the Act.

- (b) Areas not subject to the same development pressure would rely on the Landscape Assessment Methodology which provides a standardised process for assessment. It does not require schedules to be created.
29. The evidence of Mr Edgar steps through the existing policy regime carefully, and confirms that the provisions do not direct or anticipate scheduling beyond the identified priority areas. This position was supported by the majority of the planning experts who participated in the expert conferencing.
 30. Ms Frew's evidence states that the strategic provisions do not direct against the creation of additional schedules. She also points to the RPS as indicating that the proposed approach has support. However, this appears to miss the point that the Upper Clutha is identified as a rural character landscape as a whole and that the applicable RPS framework makes identification of highly valued landscapes optional within a District Plan.
 31. Ms Frew's rebuttal evidence also overstates the intent of SP3.3.45. That policy simply sets out what landscape assessments must do. There is no suggestion that landscape schedules are an outcome of those assessments.
 32. The SP's provide a framework for identifying the values of the Non-PA's through the Landscape Assessment Methodology, as distinct from the requirements applicable to Priority Areas.
 33. Further, as discussed above the Court saw fit to establish the schedules for the PA's in response to development pressure. It was a response to an identified resource management issue. Ms Frew is correct that PA RCL's and non-PA RCL's are no more or less important than one another. The distinguishing feature between them is development pressure. That is not to say that non-PA areas are not

vulnerable to subdivision, use and development, but rather the (relative) lack of pressure meant the more prescriptive scheduling approach was not required in the Court's view.

34. So far as Counsel is aware the Council have not produced any evidence suggesting that the non-PA's are now subject to development pressures that did not previously exist. In the absence of such evidence one must ask – why is this process now necessary when the Environment Court held that it is not? In the absence of evidence explaining the change in circumstances that have occurred since the Environment Court's decision in Topic 2.7, then the Court's decision should be followed.

Regional Policy Statement Status

35. Since this variation was notified the Otago Regional Policy Statement 2021 has become fully operative. The 2019 Regional Policy Statement is no longer relevant.
36. The 2021 RPS is less directive than the 2019 RPS. There is no longer a mandatory direction to identify 'highly valued landscapes' in the RPS provisions. The policy direction to identify highly valued landscapes is optional.
37. It is submitted that this supports the differential approach taken in the SP's to priority and non-priority areas. In relation to the priority areas the case for including them is buttressed by Strategic Issue 2, namely development pressure faced by the identified priority areas.
38. The section 32 report does not provide any evidence that similar or new development pressures are being faced by the non-priority areas. In the absence of that it is submitted that there is no evidence to support a change from the status quo, particularly in light of the less directive RPS policy that need to be given effect.

Size of areas

39. I want to note that two of the PALS identified by Ms Gilbert in her rebuttal at paragraph 5.3 are outstanding natural features, namely Feehly Hill and Mount Iron. Those are by their nature not landscapes. In my submission their relative size is not instructive.
40. Ms Gilbert also discusses how conceptualising the RCL schedules areas as landscapes is unhelpful. She opines that they are a planning overlay or categorisation rather than a landscape or landscape unit. That might be so, however they are being used as a method to manage cumulative effects on landscapes. Each schedule creates its own capacity ratings and in that sense they are self-contained. That is why there is concern about the implications of scale in the context of the RCL landscape schedule areas (as distinct from the ONF's). The schedules create a de-facto limit which has a greater impact in smaller areas. When used at small scale, capacity limits are effectively pre-judging site- specific development proposals, when that is not the purpose of the schedules.
41. It is submitted that the section 32 assessment does not adequately address this when considering the costs and benefits of the proposal.
42. The issues are borne out in the rebuttal evidence of Ms Frew where she provides an anecdotal example of how the schedules are operating in a consenting context. The way she describes them being used goes against the purpose of the schedules. The preamble is explicit that the assessments in the schedules do not replace site specific assessments of individual proposals. Utilising the capacity assessments as a de-facto trigger for notification of individual applications is concerning and serves to demonstrate the risks and inefficiencies that the schedules present.

43. The acknowledgement in the pre-amble that schedules do not replace site specific assessments calls into question whether they are efficient or effective. From an applicant's standpoint, not only will they be required to complete their own site-specific assessment of proposals, they will also have to address the relevance and accuracy of what is said in the relevant schedule. In effect, the schedule will be another piece of work, and another battleground to be fought over, when any application comes to the Council. The schedules will be adding cost and complexity to consent applications rather than simplifying them.
44. This issue will be exacerbated over time as increasingly out of date schedules are applied in this fashion. For this reason it is submitted that any efficiency gains that may be achieved will erode over time and are likely to result in additional costs as differences of opinion about the applicability or relevance of the schedule content increase.

Conclusion

45. The Council elected not to make amendments to the strategic provisions. Therefore, the variation needs to implement and be tested against the operative policy regime.
46. It is submitted that the Court's decision expressly declining to extend the schedule process to Non-PA RCLs is binding. The Hearing Panel should not depart from that decision.

Dated 26 August 2026



Bridget Irving

Counsel for Sunnyheights Limited, Scott Aubrey Family Trust, Wanaka Station Trust, Montreal Trustees 2024 Limited, Bell Group Limited.