

Before the Independent Hearings Panel

Under the

Resource Management Act 1991

In the matter

of the Upper Clutha Landscape Schedules Variation to the
Queenstown Lakes Proposed District Plan

OPENING LEGAL SUBMISSIONS FOR QUEENSTOWN LAKES DISTRICT COUNCIL

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MAY IT PLEASE THE PANEL

1. INTRODUCTION

1.1 These opening legal submissions are presented on behalf of Queenstown Lakes District Council (**Council**) in relation to the Upper Clutha Landscape Schedules Variation (**Variation** or **UCLS Variation**) to the Queenstown Lakes Proposed District Plan (**PDP**). The Variation proposes to introduce one priority area (**PA**) landscape schedule and 12 non-PA landscape schedules (**Schedules**) into Chapter 21 *Rural Zone* of the PDP.

1.2 The objective of the Variation is to:¹

- (a) implement the requirements of the PDP relating to PAs, through the introduction of a landscape schedule for the Mata-au Clutha River; and
- (b) better achieve the objectives and policies of Chapters 3 and 6 by providing detailed descriptions of the values to be maintained or enhanced for Upper Clutha Rural Character Landscapes (**RCL**) that are not PAs.

1.3 The Variation does not propose to change any existing PDP objectives, policies (with the exception of Strategic Policy (**SP**) 3.3.36),² rules or standards, nor any underlying landscape classification or zoning.³ Rather the Schedules insert descriptions of landscape values of areas already identified as an outstanding natural feature (**ONF**) or RCL, together with maps of the Scheduled areas, and changes to Preamble 21.23 to integrate the non-PAs and explain how to use the Schedules.

1.4 The UCLS Schedules are proposed to be inserted into Chapter 21 *Rural Zone* of the PDP in the same way as the PA landscape schedules inserted by the previous

1 UCLS Section 32 Report, dated October 2024 (**s32 Report**) at [1.3].

2 This change is not substantive, it is the introduction of the Mata-au Clutha River into the list of PAs in Strategic Policy 3.3.36.

3 The relevant Chapter 3 provisions and the underlying landscape classifications were confirmed through the Topic 2 Environment Court Decisions (refer to list of cases in Appendix A). More recently, the Court in *Burdon v Queenstown Lakes District Council* [2025] NZEnvC 122 (**PALS Preliminary Determination**) also confirmed that underlying landscape classifications and zonings could not be amended through the PALS Variation.

Priority Area Landscape Schedule Variation (**PALS**). They are to be applied and used in the same way as PA Schedules, with Preambles 21.22 (for Mata-au Clutha River) and 21.23 describing how and when they are to be applied. The PALS Variation landscape assessment methodology was applied to the UCLS to ensure a consistent approach, including the Values Identification Framework and best practice methodology through Te Tangi a Te Manu.⁴

1.5 Significant testing of the content of the PALS and how the PALS apply occurred through the PALS Variation process and Environment Court appeals. The learnings from PALS have been adopted consistently through the UCLS Variation. These include the content of Preamble 21.23, the structure of the Schedules, including for example, ‘Application’ sections in the Schedules⁵, and the approach to how the maps are displayed on Council’s ePlan map.⁶

1.6 Council has carefully considered the submissions and expert evidence received. Expert witness conferencing has clarified and narrowed issues⁷ in a number of respects, as recorded in the Landscape and Planning Joint Witness Statement July 2026 (**JWS**). Post expert witness conferencing:

- (a) Three of the Schedules were not addressed in submitter expert evidence;⁸
- (b) Two of the Schedules are fully agreed based on expert evidence following expert witness conferencing (shown in blue text in Rebuttal Version);⁹ and
- (c) Eight of the Schedules are partially disagreed on the basis of expert evidence (shown in red in Rebuttal Version).¹⁰ The remaining disputes are

4 Ms Gilbert, Evidence in Chief dated 29 May 2026 (**Ms Gilbert, EiC**) at section 5 sets out the methodology used in detail. Also see s32 Report, at [2.10], [5.1]-[5.9] and Appendix C1 – Methodology Report.

5 Shown in black underline, change made in the version attached to Ms Frew’s s42A Report dated 29 May 2025 (**Ms Frew, s42A Report**).

6 The approach to displaying the maps is discussed at [5.4]-[5.5] of these submissions.

7 Council notes that the experts involved in conferencing did not represent all submitters involved in the Variation process, so submissions may raise other issues with the Schedules.

8 21.23.12 Sheepskin Creek; 21.23.17 Quartz Creek and Maungawera; and 21.23.8 Riverbank Road (noting that 21.23.8 Riverbank Road is subject to Rebuttal amendments). These schedules are not subject to submitter expert evidence, but are subject to submissions. For example Hawthenden Limited (OS50); Kyle Wills (OS40); Kai Tahu ki Otago (OS10).

9 21.23.11 East of Luggate; and 21.23.16 Crosshill.

10 21.22.25 Mata-au Clutha River; 21.23.6 East of Wānaka – Mount Aspiring Road; 21.23.7 Studholme Road; 21.23.9 Wānaka Airport Environs; 21.23.10 Northern End of Criffel / Pisa Range Foothills; 21.23.13 Kane Road and Luggate -Tarras Highway; 21.23.14 Hāwea Moraine; and 21.23.15 Hāwea Basin.

differences of opinion on expert landscape matters, including capacity ratings or guidance text for urban expansion, rural living, and farm buildings, and what information is relevant to include in the general description, as well as what land should be included in the Schedule area.

- 1.7** The Council's experts, Ms Bridget Gilbert (landscape) and Ms Emily Frew (planning) have produced rebuttal evidence that recommend further refinement to the Variation following expert conferencing.¹¹ These refinements provide clarity for users of the PDP, and respond to themes recorded in the JWS.
- 1.8** Council submits that the rebuttal version of the UCLS Variation attached to Ms Frew's Rebuttal as Appendix 1 (**Rebuttal Version**) should be recommended for approval, and that submissions should be accepted/rejected in accordance with Ms Frew's recommendations in her Appendix 2 to her rebuttal. The reasons the Rebuttal Version is the most appropriate version of the Variation are set out in the evidence of Ms Frew and Ms Gilbert (as well as the s32 Report).¹²
- 1.9** These opening submissions address the following:
- (a) Statutory framework;
 - (b) Submissions that are out of scope;
 - (c) The relevance of the impending reform of the Resource Management Act 1991 (**RMA**);
 - (d) How the Variation works and the background to the Variation (attached as **Appendix A**);
 - (e) Matters raised in submissions and evidence:
 - (i) Content of the Mata-au Clutha River PA Schedule;
 - (ii) Content of the non-PA UCLS Schedules, including how to reference to the Spatial Plan;

11 Changes are shown in purple to: Preamble 21.23 – amendment to defined terms by inserting references to Chapter 2 where relevant, and to add reference to assessment matter 21.21.2.1.a; Schedule 21.23.7 Studholme Road – Spatial Plan references; 21.23.8 Riverbank Road – alignment of Spatial Plan references with the approach in Studholme; 21.23.15 Hāwea Basin – alignment of Spatial Plan references with the approach in Studholme.

12 Ms Frew, s42A Report; Ms Frew, Rebuttal evidence dated 12 August 2026 (**Ms Frew, Rebuttal**) and Appendix 1 Rebuttal Version Provisions (see Ms Gilbert's comment boxes in red text); Ms Gilbert, EIC, and Ms Gilbert, Rebuttal evidence dated 12 August 2026 (**Ms Gilbert, Rebuttal**).

- (iii) Other issues raised with the Variation by experts on behalf of submitters:
 - A. The size of the non-PA UCLS Schedules; and
 - B. The utility of the Schedules over time.

2. STATUTORY FRAMEWORK FOR VARIATION

2.1 The relevant statutory tests to determine the merits of the Variation (which is a 'plan change')¹³ derive from sections 31, 32, and 72 – 76 of the RMA. Section 74 of the RMA sets out the matters that must be considered by a territorial authority when changing the PDP.

2.2 The requirements for assessing plan changes were broadly outlined by the Environment Court in its interim decision in *Long Bay-Okura Great Park Society Incorporated & Ors v North Shore City Council*.¹⁴ The requirements have been further updated and summarised in various cases, including *Colonial Vineyard Ltd v Marlborough District Council*¹⁵ and *Edens v Thames-Coromandel District Council*.¹⁶

2.3 In summary, the Panel must consider:

- (a) Whether the Variation is designed to accord with,¹⁷ and assist a territorial authority to carry out its functions,¹⁸ to achieve the purpose of the RMA;¹⁹
- (b) Whether the Variation gives effect to any National Policy Statement²⁰ and complies with any other regulations;²¹
- (c) Whether the Variation gives effect to the regional policy statement,²² and is not inconsistent with a regional plan for any matter specified in section 30(1)²³ or plans or proposed plans of adjacent territorial authorities;²⁴

13 Section 43AA RMA.

14 *Long Bay-Okura Great Park Society Incorporated & Ors v North Shore City Council*, ENC Auckland A078/08, 16 July 2008, at [34].

15 *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55, at [17].

16 *Edens v Thames-Coromandel District Council* [2020] NZEnvC 13, at [11].

17 Section 74(1) RMA.

18 Sections 31 and 72 RMA.

19 Sections 72 and 74(1) RMA.

20 Section 75(3)(a) RMA.

21 Section 74(1) RMA.

22 Section 75(3)(c) RMA. Noting that the Otago RPS is now operative.

23 Section 75(4) RMA.

24 Section 74(2)(c) RMA.

- (d) Whether the Variation has had regard to any proposed regional policy statement,²⁵ proposed regional plan on matters of regional significance,²⁶ or relevant management plans,²⁷ and taken into account relevant planning documents recognised by an iwi authority²⁸; and
- (e) Whether, in accordance with section 32(3)(a), the proposed objectives and policies and methods are the most appropriate way to achieve the purpose of the Act.

2.4 In terms of the principles for the section 32 analysis, as explained in *Save the Maitai Inc v Nelson City Council*:²⁹

....in undertaking the assessment of the efficiency and effectiveness of provisions, the Panel must identify and assess the benefits and costs anticipated from the implementation of the provisions and assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions;

2.5 The s42A Report and s32 Report address all of the relevant statutory matters in respect of the UCLS Variation.³⁰ As noted by Ms Frew, the policy direction in Chapter 3 *Strategic Direction* of the PDP has been prepared to give effect to Part 2 of the RMA (sections 6(b) and 7(c)), and the UCLS Variation has been prepared to give effect to Chapter 3's strategic objectives and policies.³¹ The Variation also gives effect to the Otago Regional Policy Statement, in Ms Frew's opinion.³²

2.6 The relevant PDP objectives and policies are traversed in the evidence of Ms Frew and the s 32 Report.³³ The objectives and policies in Chapter 3 *Strategic Direction* are of particular importance to the Panel's task. Those provisions are not proposed to be altered by the Variation (other than the insertion of Mata-au Clutha River into

25 Section 74(2) RMA.

26 Section 74(2)(a) RMA.

27 Section 74(2)(b) RMA.

28 Section 74(2A) RMA.

29 *Save the Maitai Inc v Nelson City Council* [2024] NZEnvC 155, at [14].

30 Ms Frew, s42A Report at [7.1]–[7.17]; s32 Report at Appendix D – Statutory Context contains all relevant objectives and policies of the PDP.

31 Ms Frew, s42A Report at [6.4].

32 Ms Frew, s42A Report at [7.14].

33 Ms Frew, s42A Report at section 7; s32 Report at section 6 and Appendix D - Statutory Context contains all relevant objectives and policies of the PDP.

the list of Scheduled PAs). Rather the Variation seeks to provide guidance material to the existing PDP provisions, aiming to enhance the efficiency and effectiveness of the PDP.³⁴

3. SUBMISSIONS THAT ARE OUT OF SCOPE

3.1 The High Court in *Clearwater Resort Limited v Christchurch City Council*³⁵ adopted a two-step approach to the assessment of whether a submission is 'on' a plan change or not.³⁶ The *Clearwater* approach continues to be applied as the leading authority,³⁷ together with the High Court decisions in *Palmerston North City Council v Motor Machinists Ltd*,³⁸ and *Mackenzie v Tasman District Council*.³⁹ In *Motor Machinists* the High Court held that for a submission to be 'on' a plan change:⁴⁰

- (a) it must address the proposed plan change itself. That is, to the alteration of the status quo brought about by that plan change; and
- (b) there must be no real risk that people directly affected by additional changes proposed in the submission have been denied an effective response to those additional changes on the plan change process; "*To override the reasonable interests of people and communities by a submissional side-wind would not be robust, sustainable management of natural resources.*"

3.2 For the submission to reasonably fall within the ambit of the plan change, there must be a connection between the submission and the degree of notified change proposed.⁴¹ The principle is focussed on fairness of process and ensuring those potentially affected are both notified and have the opportunity to have their say.,

34 Ms Frew, s42A Report at [3.3].

35 HC Christchurch AP34/02, 14 March 2003 (*Clearwater*).

36 At [66] the test was stated as '1. A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre existing status quo. 2. But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation.'

37 *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191, at [32]–[37]; *Turners & Growers Horticulture Ltd v Far North District Council* [2017] NZHC 764, at [22]–[25]; *Albany North Landowners v Auckland Council* [2017] NZHC 138, at [119]–[134].

38 [2013] NZHC 1290 (*Motor Machinists*).

39 [2018] NZHC 2304, at [81]–[85].

40 *Motor Machinists* at [80] to [82]; citing *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

41 *Motor Machinists Ltd* at [81].

with there being no scope to make amendments if they could impact on those that have not had, or have been deprived of, the opportunity to participate.⁴²

3.3 The scope of this Variation is limited to the changes to the PDP that were notified being the:

- (a) content of one ONF PA schedule;
- (b) content of the 12 new non-PA schedules within the RCL;
- (c) changes to Preamble 21.23;
- (d) small change to Strategic Policy 3.3.36; and
- (e) mapping of the 13 schedule areas.

3.4 The Council's public notice, dated 15 November 2024, states:

This Variation proposes to amend Strategic Policy 3.3.36 of Chapter 3 – Strategic Directions of the PDP, introduce additional landscape areas into schedules 21.22 and 21.23, and amend the pre-ambles for Schedule 21.23 of Chapter 21 – Rural Zone. The Variation does not change the existing rule framework for subdivision and development within the Rural Zone.

3.5 The Council's s32 Report states:

[1.5] The additional landscape schedules proposed to be introduced as part of this Upper Clutha Variation apply to the following areas:

a. Outstanding Natural Feature:

- Mata-Au Clutha River (Priority Area)

b. Rural Character Landscapes (non-Priority Areas):

- Mount Aspiring Road

- Studholme Road

- Riverbank Road

- Wānaka Airport Environs

- Northern End of Criffel / Pisa Range Foothills

- Luggate

- Sheepskin Creek

- Kane Road and Luggate Tarras Highway

- Hāwea Moraine

- Hāwea Terrace

- Crosshill

42 *Clearwater*, at [66]; *Motor Machinists Ltd* at [105].

- Quartz Creek and Maungawera

[1.6] The Variation also includes an amendment to Strategic Policy (SP) 3.3.36 of Chapter 3 of the PDP (Strategic Directions) to include reference to the Mata-au Clutha River PA.

[1.7] The Variation also amends the preamble to Schedule 21.23 to recognise that Schedule 21.23 includes both PA RCLs and non-PA RCLs.

[1.8] The Variation is accompanied by maps, which are to be incorporated by reference, that depict the extent of the areas covered by each of the additional landscape schedules. The mapping of the Mata-au Clutha River PA has been confirmed by the Environment Court, following a section 293 process that involved landscape expert input, and is not within the scope of this Variation (other than its proposed incorporation by reference into the PDP).

3.6 It is submitted that the notified changes alongside these statements confine the scope of the Variation. As set out in Appendix A to these submissions, the Environment Court has already determined the underlying landscape classification, zoning, objective and policy framework, and rules - no changes to these are notified (other than a non-material change to Strategic Policy 3.3.36).

3.7 Some submissions seek changes that the Council submits are out of scope of the UCLS Variation.⁴³ These include:

- (a) Changes to landscape classifications (ie, RCL/ONF) or zoning;⁴⁴
- (b) Scheduling of additional areas, including non-RCL land;⁴⁵
- (c) Changes to PDP Chapter 3 and 21 objectives, policies or rules;⁴⁶
- (d) Changes related to other matters such as consultation on the Variation, undertaking of biodiversity assessments, opening unmarked legal roads to the public, removing reference to the Urban Growth Boundary if it is

43 Ms Frew, s42A Report at section 8.

44 For example, Rod Macleod (OS5); Laing Dairy Limited (OS35); Kathryn and Vaughn Woodfield (OS39); and Dirk and Rebecca Venter (OS47).

45 For example, Terry Drayton (OS3) and Florence Micoud (OS7).

46 For example, Julian Haworth (OS1), and, as alternative relief, Bell Group Limited (OS31).

removed from the PDP, purchasing of land, or removal of land from the PDP.⁴⁷

- 3.8** The Variation is not an opportunity to relitigate findings made previously by the Environment Court (explained further below and in Appendix A), or to seek to amend settled strategic policy provisions. All planning experts recorded in the JWS their understanding that changes to objectives and policies are out of scope of the Variation.⁴⁸ Instead, the Panel's role is to hear submissions and make recommendations that will assist the Council to confirm the content of the UCLS Schedules.
- 3.9** As explained in Appendix A of these submissions, the Environment Court in the PALS Preliminary Determination held that the underlying landscape classification and zoning was not in scope of appeals on the PALS Variation, but that amendments could be made to the PALS overlay boundaries on the PDP ePlan maps provided that the PA still served its purpose of implementing and being consistent with the operative PDP.⁴⁹ Consistent with that finding, Council submits that any changes to the UCLS schedule area boundaries (shown on the maps) are a merits question and are within scope of the Variation.⁵⁰ The evidence of Ms Gilbert and her comments in the JWS respond to the changes sought by submitters to the mapping of the Schedule areas, from a merits perspective.
- 3.10** In terms of concerns with the approach to consultation for this Variation,⁵¹ the Schedule 1 process provides full rights of participation for the public, which have been taken up by many through the making of submissions. In the event that submitters are dissatisfied with the eventual decisions made by the Council, these rights of participation extend to the ability to lodge appeals.

47 For example, Florence Micoud (OS7); Lagoon Valley Dairies Ltd (OS11); Fork Farm Family Trust (OS25); Garry Derrick (OS48); Many Bell (OS49); and Dr Alexandra Durran (OS51).

48 JWS at [17].

49 PALS Preliminary Determination, at [65]. Since the PALS Preliminary Determination, no changes to the boundaries (eg. to remove land from a PA) have been made. Regardless of whether a schedule applies to land, the underlying landscape classification and related PDP tests still apply to that land.

50 Ms Gilbert, EiC at [3.1], section 4 and [6.62]; Ms Frew, s42A Report at [5.12] and [11.9]–[11.12].

51 Ms Frew, s42A Report at [9.2]–[9.10]. For example, Lagoon Valley Dairies Ltd (OS11), and Fork Farm Family Trust (OS25). The s 32 Report at section 4 sets out the consultation preceding the UCLS Variation.

4. RELEVANCE OF THE IMPENDING REFORM OF THE RMA

- 4.1** While the Panel must, at least for now, continue to apply the RMA as it stands, that may change prior to the Panel making its recommendations on the Variation. This section is intended to briefly introduce the Planning Bill and Natural Environment Bills (**Bills**) as potentially relevant to the Variation. Should the Bills be passed prior to the Hearing, counsel can address the Panel on their potential relevance to this Variation when Council's case is presented.
- 4.2** As at the date of this submission, the Bills have had their second reading. Counsel understands the Bills are likely to become law before 24 September (the last sitting day pre-election). The Council acknowledges the uncertainty that the RMA Reform has created and that some submitters have sought clarification as to its relevance in the context of this Variation.
- 4.3** These Bills will eventually repeal and replace the RMA, likely after a 4.25 year transition period (the date will be set by a future Order in Council). During the transition period that commences one month after Royal Assent to the Bills, the RMA as amended by the Planning Bill, will continue to apply.⁵²
- 4.4** The Planning Bill as at second reading does not make changes to transitional consenting under the RMA that are directly relevant to this Variation. In particular, landscape effects will remain within the scope of effects to be considered under s 104(1A) of the RMA when determining a resource consent application during the lengthy 'transitional period'.⁵³
- 4.5** Even under the new regime, under the second reading version of the Planning Bill (once in force), effects on landscapes that are outstanding, such as the Mata-au Clutha River PA, will be in scope effects under cl 14 of the Planning Bill.⁵⁴ By the time the new regime is in force and the RMA is repealed, regional spatial plans, land use plans, and natural environment plans will replace all existing district and

52 Planning Bill, Schedule 1, cl 2-4.

53 Planning Bill, Part 2 of Schedule 11, new s 104(1A).

54 Planning Bill, cl 14(1)(h) and (2)(b). Noting that effects on rural character landscapes will be out of scope unless they are outstanding natural landscapes and features or areas of high natural character.

regional plans. While the QLDC PDP will eventually be replaced under the Bills, it will remain applicable for approximately 4.25 years.

4.6 In our submission, the Panel should apply the RMA as it exists at the time of its recommendations. While in some rare circumstances impending legislation can be relevant to consider,⁵⁵ the changes to the RMA in the transitional period (as they currently stand) do not affect the 'test' for a plan change or otherwise directly affect this Variation (ie. Part 2 of the RMA is unchanged and landscape and amenity effects are still in scope for decisions made on resource consent applications within the areas of land covered by the schedules). Council's intention is to carefully consider any further changes that are made to the Bills before they are passed (assuming they are), including in respect of the transitional regime, and provide an update to the Panel at the relevant time.

4.7 For now, the RMA must be applied as it stands.

5. HOW THE UCLS SCHEDULES WILL WORK

5.1 There is a significant history preceding the UCLS Variation. The reasons for the inclusion of landscape schedules and their content, have been canvassed through previous Environment Court decisions. **Appendix A** to this submission steps through the history preceding this Variation in detail to assist submitters and the Panel.⁵⁶ The background and context to this Variation offers some explanation in response to submitters that have opposed the UCLS Variation in its entirety.⁵⁷

5.2 Some submitters have sought amendments to the Variation that depart from or are inconsistent with PALS Variation provisions, and the existing provisions of the PDP (including the 21.22 Preamble and SPs in Chapter 3). For example, the removal of certain activities (urban expansions, farm buildings, farm scale quarries) from

⁵⁵ *Transpower New Zealand Ltd v Southland Regional Council* [2025] NZEnvC 77, at [71]–[72]. The Court in *Transpower* also refers to High Court (criminal) decision in *R v Morgan* [2021] NZHC 3352 that held at [27] that “the interests of justice may extend to granting an adjournment where a legislative change is imminent or could otherwise be categorised as “inevitable” and that the Court may have regard to the parliamentary process. However, because of the courts’ obligation to apply the law as it currently exists, those circumstances must necessarily be rare and limited”.

⁵⁶ Ms Frew, s42A Report at sections 5 and 6. UCLS Variation s32 Report at sections 1 to 4.

⁵⁷ For example, Lagoon Valley Dairies Ltd (OS11); SIO No12 Limited (OS26); Tim Burdon (OS28); Bell Group Limited (OS31); Kyle Wills (OS40); Hawthenden Limited (OS50).

the landscape capacity of the schedules,⁵⁸ clarification of whether attributes and values are positive or negative,⁵⁹ or removal of capacity guidance text including terms like ‘modest’ or ‘low-key’.⁶⁰ Council submits that from a clarity and workability perspective, the UCLS Variation content should endeavour to be consistent with the approach of the PALS Variation which preceded it and which has been endorsed by the Environment Court.⁶¹

- 5.3** We briefly explain how the Schedules introduced by the Variation will function as a part of the PDP, as some submitters appear to misunderstand the function and effect of this Variation.⁶²

What the maps show

- 5.4** While the UCLS schedule maps were notified as being incorporated by reference (reflected in the s32 Report) they are now being introduced into the PDP ePlan directly.⁶³ The proposed maps identify whether land is subject to a landscape schedule via the PDP ePlan maps as two overlays:⁶⁴

- (a) Schedule Area Assessment Extent (outer boundary);
- (b) Rural Zone Schedule Area (Rural Zone land within the Schedule Area Assessment Extent).

- 5.5** Following the PALS Preliminary Determination, the parties to the PALS appeals agreed to change the approach to maps. The new approach was to split the maps into two overlays - the Priority Area Assessment Extent (outer extent) and the Rural Zone Priority Area (Rural Zone land only), and this approach was endorsed in the *Burdon v Queenstown Lakes District Council* [2026] NZEnvC 40 (**PALS Topic 1**

58 For example, Grandview Grazing Limited (OS9); Lagoon Valley Dairies Ltd (OS11); and Willowridge Developments Limited (OS24). Refer to Ms Frew, s42A Report at [13.5]–[13.6].

59 For example, Otago Federated Farmers (OS41). Refer to Ms Gilbert, EIC at [6.84]–[6.87].

60 For example, John and Colleen Leith (OS20); and Jolly Holdings Ltd (OS21). Refer to Ms Gilbert, EIC at [6.103]–[6.106], and [6.82]–[6.83].

61 Appendix A of these legal submissions at [9]–[12] and [16]–[21]; Ms Gilbert, EIC at [4.8] and [4.14]–[4.15]; Ms Frew, s42A Report at [10.1]–[10.12].

62 Ms Frew, s42A Report, sections 8 and 12; Ms Gilbert, EIC at section 6.

63 Ms Frew, s42A Report, at [11.12].

64 JWS at [13] records agreement between the experts that, if the non-PA schedules are included in the PDP, the schedules should be referenced in the plan mapping tool by way of overlays, and that this tool would enable the schedules relevant to any particular property to be identified.

Consent Determination).⁶⁵ Importantly, this did not change the way that the schedules work, but rather provided visual clarity where the schedules apply to Rural Zone land. Council considers that the same approach as taken to the PALS process should be taken here,⁶⁶ consistent with submissions seeking consistency with the PALS approach.⁶⁷

Applicable to resource consent applications in the Rural Zone

5.6 As explained in the Preambles 21.22 (applying to ONF and ONL PAs) and 21.23 (applying to RCL PAs and non-PAs), the Schedules will only apply to resource consent applications in the area of the Schedule in the Rural Zone.⁶⁸ The 'Assessment Extent' might extend to areas not rurally zoned, but reflects the area considered when the schedules were prepared.⁶⁹ This reflects that a landscape assessment cannot simply close its eyes to any non-Rural Zone land within a schedule area.⁷⁰ Therefore, values attributed to the entire Assessment Extent are recorded in the schedules.⁷¹

5.7 SP 3.3.46 requires resource consent applications in the Rural Zone to be supported by a landscape assessment, and that landscape assessment must be undertaken in accordance with SP 3.3.45 that requires identification of values and assessment of capacity.⁷² As agreed in the JWS at [12] "the strategic policies already direct that, outside of the listed Priority Areas, landscape character and visual amenity values are identified through the application of the Landscape Assessment Methodology

65 Ms Frew, s42A Report, at [11.9]–[11.12].

66 Consistent with submissions seeking insertion of schedule maps into the PDP, for example, Laing Dairy Limited (OS35); NW & DJ Pittaway Family Trust (OS36); and Otago Federated Farmers (OS41).

67 For example, Devon Dairy Holdings Limited (OS29); Deborah and Stephen Brent as trustees of the Hawthenden Trust (OS30); Sunnyheights Limited RH and PH Masfen (OS37).

68 Rebuttal Version Preamble 21.23 at [4.2], and Ms Frew, s42A Report at [5.7], [8.4] and [12.14].

69 Rebuttal Version Preamble 21.23 at [3.1]. Ms Gilbert, EIC at [4.9] and [8.2].

70 By way of example, Schedule 21.23.15 Hāwea Basin contains a 'cut out' in the centre, which reflects non-Rural Zone land which is excluded from the Rural Zone Priority Area.

71 Rebuttal Version Preamble 21.23 at [4.4]: "As the PA Schedules contain information about the wider Priority Area Assessment Extent or Schedule Area Assessment Extent, they contain contextual information that may be relevant for resource consent applications outside the Rural Zone Priority Area or Rural Zone Schedule Area and landscape assessments informing plan development proposals."

72 SP 3.3.45 is expressly referred to in a number of Chapter 21 assessment matters. These include 21.21.2.1 that the Council will have regard to values identified in accordance with SP 3.3.45; Assessment matter 21.21.2.6 that the Council will have regard to the quality of the landscape assessment methodology including the application of a consistent and appropriate rating scale in accordance with SP 3.3.45; as well as advice note 21.3.3.6 that states that applications are to be assessed in accordance with the Landscape Assessment Methodology in SP 3.3.45 and SP 3.3.46.

set out SP 3.3.45 and SP 3.3.46".⁷³ Assessment matters 21.21.1.1 (ONF/L) and 21.21.2.1 (RCL) respectively direct the Council to "have regard to" the schedules.⁷⁴

5.8 Ms Frew recommends an amendment to the Preamble 21.23 to make the link to the Schedules for non-PAs clearer through direct reference to assessment matter 21.21.2.1, in response to concern expressed in the JWS.⁷⁵ In terms of some of the planning experts concern about how the Schedules fit with the 'higher order' direction of the PDP,⁷⁶ Ms Frew explains in the JWS how the non-PA Schedules will fit within the SP framework of the PDP, as non-PAs rather than PAs.⁷⁷

5.9 The UCLS schedules function to identify the values to be protected, maintained or enhanced.⁷⁸ Preamble 21.23 (and 21.22) explain how that information can be relevant to a landscape assessment. This includes the following statements:

- (a) The Schedules are a tool to assist with identification of the values and landscape capacity and are to inform plan implementation and landscape assessments;⁷⁹
- (b) The Schedules apply to any proposal requiring resource consent for a restricted discretionary, discretionary or non-complying activity in the Rural Zone, including the Rural Industrial Sub Zone, but not the Ski Area Sub Zone;⁸⁰
- (c) As the Schedules contain information about the wider Schedule Area Assessment Extent, they contain contextual information that may be relevant for resource consent applications outside the Rural Zone

73 JWS, at [48]: "Landscape capacity is required to be identified for non-PAs under SP 3.3.33. The Landscape Assessment Methodology directs that a consistent rating scale for attributes, values and effects should be applied across assessments (SP 3.3.45). However, the methodology does not stipulate how to achieve a consistent rating scale for attributes, values and effects."

74 The JWS at [11] states agreement that "assessment matter 21.21.2.1.a, which assists in the implementation of SP 3.3.33 and SP 3.3.45, says that Council will have regard to the schedules listed in 21.23 when considering a subdivision or development proposal. If the non-PA Schedules are adopted into the PDP, under 21.21.2.1.a Council will have regard to them."

75 Rebuttal evidence of Ms Frew, at [5.6]–[5.9]; JWS, at [18].

76 JWS, at [47].

77 JWS, at [48]: "Landscape capacity is required to be identified for non-PAs under SP 3.3.33. The Landscape Assessment Methodology directs that a consistent rating scale for attributes, values and effects should be applied across assessments (SP 3.3.45). However, the methodology does not stipulate how to achieve a consistent rating scale for attributes, values and effects."

78 s32 Report at [5.13]. Also as observed in *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160 (**Decision 2.1**) at [30] and *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 205 (**Decision 2.2**) at [139]–[141] in relation to the lack of schedules being a 'gap'.

79 Rebuttal Version Preamble 21.23 at [1.2].

80 Rebuttal Version Preamble 21.23 at [4.1].

Schedule Area and landscape assessments informing plan development proposals;⁸¹

- (d) The landscape capacity ratings in the Schedules reflect the capacity of the landscape or feature to accommodate various types or forms of development within the Rural Zone Schedule Area, without compromising the identified landscape values;⁸²
- (e) The landscape capacity ratings and associated descriptions are high level and are not intended to describe the relevant capacity of specific sites within a Rural Zone Schedule Area. These descriptions are not a replacement for any relevant policies, rules or standards in the District Plan, and are intended to provide guidance only;⁸³ and
- (f) Through the application specific assessment, the identified landscape value/s recorded in the schedules may not be relevant to a site, and/or additional values may be identified.⁸⁴

5.10 The UCLS therefore provide a high level starting point for a landscape assessment.⁸⁵ That serves to fill a gap in the PDP identified by the Environment Court by identifying the landscape values that the PDP seeks to protect, maintain or enhance.⁸⁶

Relevance to plan changes in a contextual sense

5.11 The purpose of the UCLS schedules is not to apply directly to plan development (eg future requests to rezone land subject to the schedules).⁸⁷ However, due to their descriptions of landscapes, they may contain useful context that could inform plan development proposals.⁸⁸

81 Rebuttal Version Preamble 21.23 at [4.4].

82 Rebuttal Version Preamble 21.23 at [6.1].

83 Rebuttal Version Preamble 21.23 at [6.3].

84 Rebuttal Version Preamble 21.23 at [5.2].

85 Ms Gilbert, EIC at Appendix 1; Ms Frew, s42A Report at [14.4]-[14.5].

86 Decision 2.2 at [139]-[141]; Appendix A at [7].

87 Some submitters have sought clarification regarding whether the schedules apply to plan changes, for example John and Colleen Leith (OS20); Jolly Holdings Ltd (OS21); and Deborah and Stephen Brent (OS22). See Ms Frew, s42A Report at section 12.

88 Paragraph 3.3 of Preamble 21.23 (Rebuttal Version) states: "As the PA Schedules contain information about the wider Priority Area Assessment Extent, they contain contextual information that may be

- 5.12** For example, if land within an Assessment Extent is proposed to be rezoned, the factual description of landforms, viewpoints, land use patterns etc within the Assessment Extent may assist a landscape assessment of whether that rezoning is appropriate. Similarly, if land adjacent to an Assessment Extent proposed to be rezoned, the information in the schedules may help inform the landscape assessment undertaken.⁸⁹

6. MATTERS RAISED IN SUBMISSIONS AND EVIDENCE

- 6.1** The Panel will need to make recommendations on the 55 submissions and six further submissions that were received on the UCLS Variation, on:⁹⁰

- (a) The content of one PA schedule, for the Mata-au Clutha River ONF;
- (b) The content of the 12 non-PA schedules for the RCL;
- (c) The changes to Preamble 21.23;⁹¹
- (d) The small change to Strategic Policy 3.3.36; and
- (e) The mapping of the UCLS scheduled areas.

- 6.2** This section addresses several matters arising following expert witness conferencing and Council's Rebuttal evidence, being:

- (a) Content of the Mata-au Clutha River PA Schedule;
- (b) Content of the non-PA UCLS Schedules, including how to reference to the Spatial Plan;
- (c) Other issues raised with the Variation by experts on behalf of submitters:
 - (i) The size of the non-PA UCLS Schedules; and
 - (ii) The utility of the Schedules over time.

- 6.3** For completeness, the fact that these submissions have not responded to all matters raised in submissions or evidence should not be taken to mean that Council accepts those matters. In the interests of efficiency, Council has attempted to focus

relevant for resource consent applications outside the Rural Zone Priority Area and landscape assessments informing plan development proposals.”

89 Ms Frew, s42A Report at [11.21]–[11.22],[12.10]–[12.16], and [16.3].

90 Including the submissions in support of the Variation of part of the Variation. Refer to Ms Frew, s42A Report at [15.1].

91 Preamble 21.23 was also settled by the PALS Topic 1 Consent Determination, however, some changes to Preamble 21.23 are proposed through this UCLS Variation meaning that the changes to Preamble 21.23 are within scope of the Variation. The notified changes integrate the additional non-PA schedules into Preamble 21.23 (which otherwise is drafted as referring to PAs only).

on certain matters only, but if other issues arise that warrant a response, Council can address those in reply.

Content of Schedule 21.22.25 – Mata-au Clutha River Priority Area

- 6.4** The Mata-au Clutha River has been the subject of previous Environment Court decisions.⁹² The ONF classification, ONF boundary, and status as a PA have already been determined.⁹³ All experts agree that Mata-au Clutha River merits a landscape Schedule in the PDP.⁹⁴
- 6.5** While the area scheduled as a PA is technically in scope for this Variation, there would need to be a compelling landscape basis for the PA Schedule boundary to deviate from the already determined ONF boundaries, since in reality, it is the values of the ONF that are being scheduled.⁹⁵ In effect, the submitters would need to establish that certain parts of the PA are not properly included in the ONF, which is a matter that was previously tested.⁹⁶ Ms Gilbert does not support any amendments to the PA boundary from a technical perspective.⁹⁷
- 6.6** The text of the Mata-au Clutha River Schedule has been refined by Ms Gilbert in response to submissions, and by agreement through expert witness conferencing.⁹⁸ The only outstanding matter for this Schedule on the expert evidence before the Panel, is the landscape capacity guidance text for urban expansion.⁹⁹ The experts agree that the rating is 'extremely limited or no', but differ on the guidance text. The reasoning for the experts' positions is explained in the comments on the Schedule. It is submitted that the position of Ms Gilbert on the guidance text,

92 Appendix A to these submissions, at [4]–[12] and [22]–[23].

93 Decision 2.1; Decision 2.2; *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2020] NZEnvC 158 (**Decision 2.5**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2021] NZEnvC 124 (**Decision 2.9**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2022] NZEnvC 198 (**Decision 2.14**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2022] NZEnvC 244 (**Decision 2.15**); Ms Frew, s42A Report at [5.11].

94 JWS, at [30].

95 Referring to submissions by Dr Alexandra Durran (OS51) and (OS38); Ms Frew, s42A Report at [11.18].

96 The boundaries of the ONF having been confirmed in Decision 2.14 and Decision 2.15. See also PALS Topic 1 Consent Determination, at [8].

97 Ms Gilbert, EiC at [6.8] and [6.10].

98 Rebuttal Version Schedule 21.22.25 – black text Ms Gilbert's recommendations in response to submissions and blue text agreed by expert witnesses.

99 As recorded in the JWS at [30], no expert disputes the inclusion of a schedule or the mapping of the Mata-au Clutha River PA.

should be preferred (for the reasons set out in her comment on the Rebuttal Version of the Schedule).¹⁰⁰

Content of non-PA Schedules

6.7 Ms Gilbert has recommended a number of changes to the non-PA UCLS Schedules in response to submissions. In terms of issues on content of the Schedules following the JWS:

- (a) Three Schedules were not addressed in submitter expert evidence (but are subject to submissions);¹⁰¹
- (b) Two Schedules are fully agreed based on expert evidence;¹⁰² and
- (c) Eight Schedules are partially disagreed on the basis of expert evidence (shown in red in the Rebuttal Version).¹⁰³

6.8 The remaining disputes are differences of opinion on expert landscape matters and include capacity ratings or guidance text for urban expansion, rural living, and farm buildings, and what information is relevant to include in the general description, as well as what land should be included in the Schedule area (disagreement shown in red in the Rebuttal Version). It is submitted that the opinion of Ms Gilbert should be preferred on these matters – noting her experience (including as the expert on behalf of Council in the PALS Variation and appeals).

References to the Spatial Plan should be clear

6.9 In Rebuttal, the Council's experts recommend changes to three non-PA Schedules on the issue of whether and how to refer to the Spatial Plan.¹⁰⁴ During expert

100 Ms Gilbert's comment on JWS Version 21.22.25 Mata-au Clutha River explains that when applying *High Country Rosehip Orchards Ltd v MacKenzie District Council* [2011] NZEnvC 387 at [74], urban development can compromise identification of an area as outstanding under RMA s 6. .

101 21.23.12 Sheepskin Creek; 21.23.17 Quartz Creek and Maungawera; and 21.23.8 Riverbank Road (noting that 21.23.8 Riverbank Road is subject to Rebuttal amendments);

102 21.23.11 East of Luggate; and 21.23.16 Crosshill.

103 21.22.25 Mata-au Clutha River; 21.23.6 East of Wānaka – Mount Aspiring Road; 21.23.7 Studholme Road; 21.23.9 Wānaka Airport Environs; 21.23.10 Northern End of Criffel / Pisa Range Foothills; 21.23.13 Kane Road and Luggate -Tarras Highway; 21.23.14 Hāwea Moraine; and 21.23.15 Hāwea Basin.

104 21.23.7 Studholme Road – Spatial Plan references; 21.23.8 Riverbank Road – alignment of Spatial Plan references with the approach in Studholme; 21.23.15 Hāwea Basin – alignment of Spatial Plan references with the approach in Studholme – changes shown in purple.

conferencing, the experts suggested retaining the reference to the Spatial Plan¹⁰⁵, but changing the phrasing. The experts used 21.23.7 Studholme Road as an example.¹⁰⁶ The suggested JWS change has been refined in the Rebuttal evidence of Ms Gilbert and Ms Frew¹⁰⁷, and the change is recommended to be applied consistently across 21.23.8 Riverbank Road, and 21.23.15 Hāwea Basin, which also reference the Spatial Plan.

- 6.10** It is submitted to be appropriate to reference the Spatial Plan in these Schedules, given that it may contain information that can influence a landscape assessment.¹⁰⁸ The Spatial Plan may be considered under s104(1)(c) of the RMA as another relevant matter in determining a resource consent application. The Spatial Plan is a non-statutory document, but it shows the Council's growth strategy and is a plan prepared under the Local Government Act 2002 that has a bearing on resource management issues of the District, so the Council must have regard to it under section 74(2)(b)(i) of the RMA.¹⁰⁹ While the Spatial Plan is relatively old (dated 2021) and a non-RMA document, it would not reflect reality to ignore its strategic direction (bearing in mind Queenstown does not have a later Future Development Strategy).¹¹⁰
- 6.11** The phrasing to refer to the Spatial Plan supported by Ms Frew and Ms Gilbert is significantly clearer for users of the PDP than the JWS Version. For example, it could be difficult for a Council planner to understand what the urban expansion capacity rating would be for Schedule 21.23.7 Studholme Road on the JWS red text version which gave a rating 'outside the ambit of the Spatial Plan', when the whole of the Schedule Area is identified in, and covered by, the Spatial Plan.

105 Submitters have sought amendments to, or deletions of, references to the Spatial Plan: For example, Florence Micoud (OS7); John and Colleen Leith (OS20); Jolly Holdings Ltd (OS21); Devon Dairy Holdings Ltd (OS29); Deborah and Stephen Brent as Trustees of the Hawthenden Trust (OS30); Hawthenden Limited (OS50).

106 Refer to JWS Version, 21.23.7 Studholme Road.

107 Ms Gilbert, Rebuttal at section 4; Ms Frew, Rebuttal at section 8.

108 Ms Gilbert, EiC at [6.97]–[6.103].

109 Ms Frew, Rebuttal at section 8.

110 According to the second reading version of the Planning Bill, Schedule 11, the insertion of s 104(1D) that will apply during the transitional period requires that once a relevant regional spatial plan has been decided the consent authority will consider the extent to which its decision on a resource consent application is consistent with it.

Other issues raised by expert evidence on behalf of submitters

Size of the non-PA UCLS Schedules

- 6.12** One of the themes discussed in the JWS was whether the size of the non-PA RCL Schedule Areas was an issue, meaning they should not be Scheduled.¹¹¹ This arose from the opinion of Mr Ben Espie, who considers that some of the non-PA UCLS Schedule areas are too small to be scheduled (including 21.23.6 East of Wānaka – Mt Aspiring Road, 21.23.7 Studholme Road, and 21.23.12 Sheepskin Creek).¹¹² Notably, all experts agreed that some of the larger Schedules in the UCLS Variation were appropriate for scheduling.¹¹³
- 6.13** In addition to Ms Gilbert's views recorded at [35]-[36] of the JWS, the Rebuttal of Ms Gilbert and Ms Frew further addresses the sizes of schedules.¹¹⁴ Ms Gilbert's Rebuttal advises that smaller areas have been scheduled in the PALS process and endorsed by the Environment Court, therefore demonstrating the Environment Court has no issue with the smaller sizes of schedules.¹¹⁵ Even small scheduled areas can reduce the amount of work required in a landscape assessment given that the content may be more site specific / relevant to a smaller area.¹¹⁶
- 6.14** With respect to 21.23.6 East of Wānaka - Mount Aspiring Road (that is approximately 97ha in size), Mr Espie makes a comparison to a finding by the

¹¹¹ JWS, at [30]–[41].

¹¹² Mr Espie, evidence dated 26 June 2026 (**Mr Espie, Evidence**), at [21], [46] and footnote: “Most relevantly, schedule areas 21.23.6, 21.23.7, 21.23.9, 21.23.11, 21.23.12, and 21.23.16”; JWS at [34]–[35]. Mr Espie's evidence is on behalf of Mata Au Investments Ltd (OS17); Exclusive Developments Ltd (OS45); Wanaka Station Trust et al (OS8); Montreal Trustees 2024 Ltd (OS32); D & S Brent as trustees of Hawthenden Trust (OS22 and OS30); Lake McKay 2024 Ltd Partnership (OS16); Grandview Grazing Ltd (OS9); Devon Dairy Holdings Ltd (as successor to Devon Dairy Farms Ltd) (OS29); J & C Leith (OS20); Jolly Holdings Ltd (OS21); Laing Dairy Ltd (OS35); Sunnyheights Ltd (OS37); SIO No12 Limited (OS26); Scott Aubrey Family Trust (OS43); PLDC Trustees Ltd and A Wright (OS19).

¹¹³ JWS, at [30] “We agree that the Mata Au Clutha River is an ONF and merits a schedule, as it was directed in the Topic 2 Decisions, and that the larger landscape areas (21.23.15 Hāwea Basin, 21.23.14 Hāwea Moraine, and 21.23.13 Kane Road and Luggate-Tarras Highway) are of an appropriate scale for scheduling.”

¹¹⁴ Ms Gilbert, Rebuttal at section 5; Ms Frew, Rebuttal at [7.8]–[7.9].

¹¹⁵ The smallest PA is 21.22.7 Feehly Hill, approximately 14ha. The smallest non-PA is 21.23.7 Studholme Road, approximately 84ha. Ms Gilbert, Rebuttal at [5.3].

¹¹⁶ Ms Gilbert, Rebuttal at [5.1]–[5.9]. Ms Frew, Rebuttal at [7.8]–[7.9].

Environment Court in *Beresford v Queenstown Lakes District Council* [2024] NZEnvC 182 (**Sticky Forest**).¹¹⁷ Mr Espie states that:¹¹⁸

...I consider it to be akin to the 50ha area of land in the Sticky Forest vicinity that was annotated in the PDP as RCL but was found by the Environment Court to be "essentially a small remnant of an original rural character landscape that is now far too small to constitute a landscape" and therefore not appropriately categorised as RCL. I consider that the same applies to the 21.23.6 area....

6.15 It is submitted that the quote from *Sticky Forest* is taken out of context and is not applicable to the UCLS Variation:

- (a) The Environment Court, found that: "The RCL mapping of part of the Site does not serve the intentions of the PDP. That is because that mapping is essentially a small remnant of an original rural character landscape that is now far too small to constitute a landscape."¹¹⁹
- (b) This finding was made in respect of a 25ha portion of the wider site that was subject to the appeal (the total area of the Sticky Forest site was approximately 50ha).
- (c) The other 25ha of the site was and still is classified as ONL. The ONL overlay was not challenged in the appeal so the finding referred to by Mr Espie could not have applied to the full 50ha.
- (d) The observation from the Environment Court was made in the context of a rezoning request for the 25ha in question – which is not the case with the Variation where the underlying Rural Zoning is not challenged and is out of scope.
- (e) The *Sticky Forest* decision relates to a very unique piece of land. It has, over time, been essentially enveloped by urban development on three boundaries, with the fourth boundary being an ONL.
- (f) Further, the Environment Court in *Sticky Forest* specifically acknowledged that "small landscapes can nest within larger ones".¹²⁰

117 Mr Espie, Evidence at [34]–[35]; JWS at [33]–[34].

118 Mr Espie, Evidence at [34].

119 *Beresford v Queenstown Lakes District Council* [2024] NZEnvC 182 (**Sticky Forest**), at [82].

120 *Sticky Forest*, at [71].

6.16 Further, as explained by Ms Gilbert,¹²¹ the PA and non-PA landscapes are not necessarily landscapes in their own right and are rather parts of broader rural landscapes. Preamble 21.23 expressly addresses this:

3.2 The mapped extent of the Rural Zone Priority Area or Rural Zone Schedule Area does not in all places align with the RCL boundaries in the Plan as many of the Rural Zone Priority Area or Rural Zone Schedule Area are part of a broader landscape.

Utility over time

6.17 The JWS records the experts' agreement that the non-PA UCLS Schedules will be useful:¹²²

We agree that the non-PA landscape schedules have a degree of utility for both the general public and landscape experts. For the general public, especially via the mapping tool, the schedules may inform them of the identified landscape values and capacity of parts of the RCL they are interested in. For the landscape experts working on a specific proposal, the schedule will provide a potential common starting point with respect to the existing landscape values and high-level landscape capacity.

6.18 The JWS also records agreement that 'the degree of utility may decline over time as the landscape changes, if the schedules are not periodically reviewed and updated.'¹²³ This would equally apply to the PALS Variation, and to other planning provisions that may lose their relevance over time as the environment changes but were directed be included into the PDP by the Environment Court.¹²⁴ Preamble 21.23 also expressly recognises at Rebuttal Version paragraph 6.4 that:

Landscape capacity is not a fixed concept and it may change over time as development occurs or landscape characteristics change. In addition, within each Rural Zone Priority Area or Rural Zone Schedule Area there is likely to be variation in landscape capacity, that will require detailed consideration and assessment

121 Ms Gilbert's Rebuttal, at [5.9]; JWS, at [35]–[37].

122 JWS, at [19].

123 JWS, at [20] also records that this applies equally to the PA schedules and Schedule 24.8 (Wakatipu Basin Landscape Character Units). Section 79 of the RMA requires period review of district plans (in the usual course absent RMA Reform). This ensures that district plans do not become outdated, that they maintain alignment with higher order documents, and that they continue to address current resource management issues.

124 Noting that monitoring is required by SP 3.3.47 and SP 3.3.48 PDP, and Council has established a methodology for monitoring landscapes under the PDP.

through future resource consent applications. As development, landscape or policy change occurs, there may be a need to review the spatial extent of the Rural Zone Priority Area or Rural Zone Schedule Area, or the content of the Schedules (including landscape capacity ratings).

- 6.19** It is submitted that the fact that the environment may change over time (including the landscape values and capacity of that environment) does not present a reason that the Schedules should not be included in the PDP. Any site specific assessment under SP 3.3.45, regardless of when that site specific assessment is undertaken (eg. one month or one year after the schedules are introduced), can displace the content of the schedules (including due to changes occurring since they were introduced) and therefore the schedules do not 'lock in' landscape values or capacity.¹²⁵
- 6.20** Ms Gilbert considers the schedules would have high utility to landscape experts in the assessment of future resource consents.¹²⁶ The high-level guidance in the Schedules improves consistency in landscape assessments, improves certainty for plan users, and reduces costs of resource consent applications.¹²⁷ As described in Ms Frew's Rebuttal, the PALS schedules have already proven useful tools for consents officers.¹²⁸ Additionally, section 35 of the RMA and Chapter 3 of the PDP also requires the Council to monitor the efficiency and effectiveness of the Rural Zone provisions.¹²⁹ These schedules therefore also assist the Council to monitor the protection, maintenance, or enhancement of the respective landscape values, by having a baseline to assess change against.¹³⁰
- 6.21** The utility of the non-PA UCLS schedules outweighs the concern that the Schedules will become out of date, because that concern can be clearly accommodated for via a resource consent specific landscape assessment (as described in the

125 Albeit if development achieves the policy direction to maintain landscape values and visual amenity values then it is unlikely to affect the landscape values stated in a schedule. Ms Gilbert, EIC at [6.21], [6.37] and [6.94]; Ms Frew, s42A Report at [13.17].

126 JWS at [22].

127 Ms Frew, s42A Report, [14.3]–[14.6]; Ms Frew, Rebuttal at [7.1]–[7.3].

128 Ms Frew, Rebuttal at [7.2]–[7.4] referring to an example where 21.22.4 Morven Hill PA was relied on and improved efficiency in the consent application process.

129 SP 3.3.47 and SP 3.3.48 PDP.

130 Ms Frew, Rebuttal at [7.6]; JWS at [22].

Preambles).¹³¹ As the s32 Report puts it, ‘not identifying the values to be protected, or landscape character to be maintained or enhanced may result in less certainty that the landscape outcomes of the PDP would be achieved.’¹³² While the schedules could be updated when they become out of date (coming with a cost), the efficiency gains for resource consent applications outweigh that potential future cost, in Council's submission.¹³³

7. CONCLUSION

7.1 Council submits that the Rebuttal Versions of the UCLS Variation documents attached to Ms Frew's Rebuttal as Appendix 1 are the most appropriate in achieving the objectives and policies of the PDP, and that submissions should be accepted or rejected in accordance with Ms Frew's recommendations in her Rebuttal Appendix 2 (relying on Ms Gilbert's expert opinion).

DATED this 19th day of August 2026



Kierra Parker / Shanae Richardson
Counsel for Queenstown Lakes District Council

131 Also refer to Appendix A at [6].

132 s32 Report's Assessment of the Costs, Benefits and Efficiency and Effectiveness – Table 4, right hand column.

133 s32 Report's Assessment of the Costs, Benefits and Efficiency and Effectiveness – Table 4, 5 and 6; JWS, at [25]–[29]; Ms Frew's Rebuttal, at [7.2]. The Environment Court in Decision 2.2 also observed at [138] that “... the DV would transfer the costs of identifying landscape values to resource consent applicants. QLDC raise concerns about the potentially significant costs that would be imposed on participants in the current proceedings, were the court to direct scheduling in determination of these appeals. However, as we have noted, district plans have a statutory purpose of fleshing out and contextualising pt 2 RMA (including ss 6(b) and 7(c)). While there would be transactional costs for ratepayers in Sch 1 plan changes, those are as a consequence of the proper exercise of QLDC's planning authority responsibility.”

APPENDIX A - BACKGROUND TO THE UCLS VARIATION

1. This Variation follows the Priority Area Landscape Schedules Variation (**PALS Variation**), and before that, a series of Environment Court decisions issued in relation to appeals against the Council's decisions on Stage 1 of its PDP (referred to as the decisions version). The background to the UCLS Variation is set out in the evidence of Ms Frew and Gilbert¹³⁴, and these submissions seek to set that scene and highlight previous findings of the Environment Court that are relevant to some submissions on this Variation.¹³⁵
2. Those appeals were allocated to Topic 2 – Rural Landscapes, and Environment Court decisions on these appeals are referred to as the **Topic 2 Decisions**.¹³⁶ The 'rural landscapes' involved in Topic 2 were all of the ONF, ONL and RCL landscape classifications, as well as the supporting Chapter 3 *Strategic Direction* and 6 *Landscapes Rural Character* objectives and policies. Significantly, the Topic 2 Decisions addressed the policy approach to rural landscapes generally, including the Upper Clutha Basin (which is largely categorised as RCL). The appeals concerning Chapter 21 *Rural Zone* were separately allocated to Topic 18, which was considered after the Topic 2 appeals were largely resolved.
3. A timeline is set out below that steps through this process.

134 Ms Frew, s42A Report at section 5, Ms Gilbert, EIC at section 4.

135 Ms Frew, s42A Report at [5.1]–[5.12].

136 *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160 (**Decision 2.1**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 205 (**Decision 2.2**); *Lake McKay Station Ltd v Queenstown Lakes District Council* [2019] NZEnvC 206 (**Decision 2.3**); *Hawthenden Ltd v Queenstown Lakes District Council* [2020] NZEnvC 157 (**Decision 2.4**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2020] NZEnvC 158 (**Decision 2.5**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2020] NZEnvC 159 (**Decision 2.6**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2021] NZEnvC 60 (**Decision 2.7**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2021] NZEnvC 61 (**Decision 2.8**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2021] NZEnvC 124 (**Decision 2.9**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2021] NZEnvC 138 (**Decision 2.10**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2021] NZEnvC 154 (**Decision 2.11**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2021] NZEnvC 155 (**Decision 2.12**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2022] NZEnvC 40 (**Decision 2.13**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2022] NZEnvC 198 (**Decision 2.14**); *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2022] NZEnvC 244 (**Decision 2.15**); and *Lake McKay Station Ltd v Queenstown Lakes District Council* [2023] NZEnvC 146 (**Decision 2.16**). (Together, **Topic 2 Decisions**)

TIMELINE	
Date	Event
2018	Stage 1 PDP Council decision (ONF, ONL, RCL)
2019 – 2023	Topic 2 Environment Court Decisions (Decisions 2.1 to 2.16)
June 2022 – June 2024	PALS Variation notification and Council decision – regarding PA Schedules ¹³⁷
April 2025	PALS Environment Court Preliminary Determination - regarding jurisdiction to amend PA and underlying zoning or landscape classification maps ¹³⁸
March 2026	PALS Topic 1 Consent Determination - regarding Preamble 21.22 and Preamble 21.23 and relief generally relevant across all PA Schedules ¹³⁹
November 2024	UCLS Variation notified – regarding non-PA and Mata-au Clutha River PA schedules ¹⁴⁰
March 2026	UCLS Plan Stop Exemption granted by the Minister ¹⁴¹

137 PALS Variation webpage accessible online at <https://www.qldc.govt.nz/your-council/district-plan/priority-area-landscape-schedules>.

138 *Burdon v Queenstown Lakes District Council* [2025] NZEnvC 122

139 *Burdon v Queenstown Lakes District Council* [2026] NZEnvC 40. PALS Topic 2 Consent Orders have also been issued on a number of bespoke/schedule specific appeals.

140 UCLS Variation webpage accessible online at <https://www.qldc.govt.nz/your-council/district-plan/upper-clutha-landscape-schedules-variation>.

141 Plan Stop Exemption Decision accessible online at <https://www.qldc.govt.nz/media/nutmck15/exemption-decision-upper-clutha-landscape-schedules-13-mar-2026.pdf>. Note that the Minister stated: "...this Variation will identify relevant landscape values and capacity for change without altering the existing rule framework, which will improve consistency and resolve current inefficiencies in the Proposed District Plan (PDP). The Variation will also directly address the Environment Court's finding that the PDP lacks landscape schedules for ONLs/ONFs and RCLs. The addition of the schedules will also contribute to resource consent processing efficiency by avoiding repeated bespoke landscape assessments, while also supporting better management of growth pressures and the visitor economy, and enhancing overall plan usability. This approach aligns with the Government's objective of improving system effectiveness and reducing unnecessary red tape, along with protecting landscape of national importance."

Topic 2 Environment Court Decisions

4. The Council's Stage 1 decisions version of the PDP contained objectives and policies seeking to protect ONF and ONL values, and to maintain or enhance RCL values, but it did not specify what those values were.¹⁴² The Council's Stage 1 decisions were appealed by a number of submitters to the Environment Court, with a broad array of relief sought.
5. When considering and determining the appeals, the Environment Court, in summary, observed that without the landscape values being described in the district plan, landscape assessments would require a first principles approach and lead to a greater risk of inconsistent approaches to the identification and assessment of landscape values.¹⁴³ The identification of this gap ultimately led to the Court directing the notification of the PALS Variation in order to 'plug the gap' for identified PA areas.¹⁴⁴
6. The Environment Court in its Topic 2 decisions made a number of, in our submission, important observations (in summary):
 - (a) Mapping only assists in identifying the geographic extent of what is sought to be protected. Listing those values that inform why a feature or landscape is an ONF or ONL is an important further element of setting out what is sought to be protected.¹⁴⁵
 - (b) Objectives, policies, assessment matters and other rules are relatively limited in their capacity to enunciate particular ONF or ONL values because they are designed to apply generically. The listing of relevant values, provided it is properly informed and expressed, helps plug that gap. As such, scheduling values would assist the ODP to fulfil its protective purposes.¹⁴⁶

142 As observed in Decision 2.2 at [15]–[18]. For example, Stage 1 decisions version included Strategic Objective 3.2.5.1 The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration, and Strategic Objective 3.2.5.2 The rural character and visual amenity values in identified Rural Character Landscapes are maintained or enhanced by directing new subdivision, use or development to occur in those areas that have the potential to absorb change without materially detracting from those values.

143 Decision 2.2, including at [127].

144 Decision 2.1 at [31].

145 Decision 2.1 at [30].

146 Decision 2.1 at [31].

- (c) In order that the appropriateness or otherwise of activities can be adjudged at the time of resource consenting, the absorption capacity of the landscape and effects of a development on that landscape need to be known.¹⁴⁷
- (d) Landscape capacity cannot be known unless there has been an identification of the landscape character values and their importance (ie, knowing what the landscape is valued for and why).¹⁴⁸
- (e) Evaluating a landscape is inherently an exercise where different landscape experts have different opinions. That is why it is important that a district plan identifies both landscape values and landscape capacity in that both of these are part of the plan's intended statutory authority in regard to sections 6(b) and 7(c).¹⁴⁹

7. These findings led to the overarching finding in Decision 2.2 that:

[139] For all of those reasons, we find the DV's regime for ss 6(b) and 7(c) is not appropriate.

[140] For ONF/Ls, that is particularly in regard to the DV's:

- (a) failure to identify the landscape values and related landscape capacity, particularly for areas needing to be accorded priority given anticipated development pressures;
- (b) inadequate provision for the integrated management of landscapes, including those mapped Upper Clutha RCLs in proximity to ONFs and/or ONLs.

[141] In regard to the Upper Clutha RCLs, that is also by reason of the DV's failure to:

- (a) identify the geographic extent of landscape character areas most at risk of degradation through the intrusion into Rural areas of 'rural living' and other types of residential development; and
- (b) identify the landscape character and associated visual amenity values of those areas; and
- (c) give related policy direction, in Chs 3 and 6, to provide effectively against their degradation through such development (including by effective linkage to related assessment matters).

147 Decision 2.2 at [125].

148 Decision 2.2 at [127].

149 Decision 2.2 at [127].

8. These findings (and associated directions from the Court) led to Council's initiation of the PALS Variation.¹⁵⁰

Priority Areas vs non-Priority Areas

9. Through the Topic 2 appeal process the Environment Court was asked to consider whether all ONF/L and RCL scheduling should be carried out at one time, but the Court confirmed that scheduling was to occur for PAs only. In relation to non-PAs, the Court left the decision to schedule them to the discretion of the Council.¹⁵¹

[164] We disagree with Mr Ferguson that the Values' Identification Frameworks should extend to giving direction to QLDC to undertake a District-wide landscape assessment or to progress ONF/L values scheduling beyond specified Priority Areas or to re-visit the ONF/L or RCL overlays on the planning maps. Rather, **on all these matters, we find in favour of leaving these matters to QLDC's discretionary judgment as the planning authority.** That is also on the basis that our directions will allow parties to inform our ultimate findings on the Priority Areas to be specified in the relevant new Strategic Policies.
(our emphasis)

10. The Council, in deciding to prepare and notify the UCLS Variation, relied on this discretion. The rationale for the Council's decision can be summarised as plugging the same 'gap' that arises for any non-PA areas within the Upper Clutha Basin.
11. The distinction between a PA and non-PA area is simply that the PA's were prioritised (based on identified development pressure)¹⁵² and specifically directed to be scheduled by the Court's Topic 2 Decisions. However, as stated in SP 3.3.44, classification of a landscape as a non-PA does **not** imply that it:¹⁵³
- (a) is more or less important than a PA in terms of:
- (i) the landscape attributes and values, in the case of an ONF or ONL;

150 SP 3.3.42 PDP: The Council shall notify a proposed plan change to the District Plan by 30 June 2022 to implement SPs 3.3.36, 3.3.37, 3.3.39 and 3.3.40. (relevant to SO 3.2.5, 3.2.5.1 and 3.2.5.7).

151 Decision 2.2 at [164].

152 Decision 2.2 at [5] and [18] recorded that almost the entire District (97%) is mapped as ONF or ONL for the purposes of s6(b) of the RMA. Most of the remaining 3% of the District is mapped as RCL for the purposes of s7(c). Land is otherwise non-rural zone land or Wakatipu Basin (which is excepted from the generalised RCL notation).

153 JWS at [32].

- (ii) landscape character and visual amenity values, in the case of a RCL;
or
- (b) is more or less vulnerable to subdivision, use and development.

12. As recorded in Decision 2.5, the Council had initially proposed to treat the entire Upper Clutha RCL as one single PA. This was rejected by the Court, because it was inconsistent with the approach taken in relation to identifying PAs due to development pressure they faced.¹⁵⁴ The Court again confirmed that it is the Council's discretion to decide whether to schedule the values within any non-PA area.¹⁵⁵

Chapter 3 Strategic Direction confirmed through Topic 2

13. The Topic 2 Decisions resulted in the confirmed SOs and SPs in PDP Chapter 3 *Strategic Direction*. Those provisions provide (in summary, and with reference to the existing PDP provision numbering):¹⁵⁶

Overarching direction:

- (a) ONF, ONL and RCL's are identified on the ePlan map.¹⁵⁷
- (b) ONF and ONL values¹⁵⁸ and landscape capacity¹⁵⁹ is identified and protected.¹⁶⁰
- (c) RCLs landscape character, visual amenity values, and landscape capacity is identified and maintained or enhanced.¹⁶¹

PAs:

- (d) PAs are listed in SP 3.3.36 and SP 3.3.39.
- (e) PA ONF and ONL attributes, values and capacity are identified in accordance with SP 3.3.36 – SP 3.3.38, and SP 3.3.43 – SP 3.3.46.

154 Decision 2.5 at [48]–[49].

155 Decision 2.5 at [46]–[49].

156 Decision 2.12 directed the Council to update its PDP with the final version of Chapters 3 and 6.

157 SP 3.3.28 and SP 3.3.32 PDP.

158 3.1B.5 PDP: meaning of '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);

159 3.1B.5 PDP: meaning of 'Landscape capacity': in relation to an ONF or ONL, means the capacity of a landscape or feature to accommodate subdivision and development without compromising its identified landscape values; in relation to a landscape character area in a RCL, 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;

160 SO 3.2.5.1, SO 3.2.5.5. and SP 3.3.30 PDP.

161 SO 3.2.5.5 and SO 3.2.5.7 PDP.

(f) PA RCL attributes, values and capacity are identified in accordance with SP 3.3.39 – SP 3.3.42, and SP 3.3.43 – SP 3.3.46.

(g) The PALS Variation was to be notified by 30 June 2022.¹⁶²

Non-PAs:

(h) Outside of PA's, values and capacity of ONF, ONL and RCL are identified in accordance with SP 3.3.45 (landscape assessments) and through best practice landscape assessment methodology.¹⁶³

Landscape assessments:

(i) Landscape assessments for resource consent applications in the Rural Zone and plan changes affecting the rural environment must identify the landscape values and assess effects on those values.¹⁶⁴

Rural Zone landscape monitoring:

(j) The Council shall monitor the efficiency and effectiveness of the Rural Zone provisions and whether SO 3.2.5, the retention of the Districts landscapes, is being achieved.¹⁶⁵

14. Chapter 6 *Landscapes – Rural Character* and Chapter 21 *Rural Zone* contain similar objectives, policies and rules, for the implementation of the above strategic directions.

15. The collective effect is a framework that guides how landscape values and capacity are to be identified, and what is required to achieve the protection, enhancement or maintenance of those values.

The PALS Variation

16. As explained by Ms Frew and Ms Gilbert, the UCLS Variation 'is intended to 'build on' and align with the learnings and outcomes of the PALS process and decisions'.¹⁶⁶ The PALS Variation was notified on 30 June 2022 and introduced 29 PAs covering ONF, ONL or RCL. The Variation was heard before an Independent Hearings Panel and the Council made decisions on the PALS Variation on 6 June 2024.

162 SP 3.3.42 PDP.

163 SP 3.3.29.b and SP 3.3.33.b PDP.

164 SP 3.3.45 and SP 3.3.46 PDP.

165 SP 3.3.47 and SP 3.3.48 PDP.

166 Ms Gilbert, EiC at [3.1].

17. A number of appeals were lodged against the Council's decisions on the PALS Variation. Appeals against the PALS Variation were allocated into two topics – Topic 1 included Preamble 21.22, Preamble 21.23 and relief relevant across all PA schedules. Topic 2 included relief specific to individual schedules.
18. On the question of whether maps could be amended in the PALS Variation, the Court issued a PALS Preliminary Determination, that found that:¹⁶⁷
- (a) it is beyond jurisdictional scope to pursue in any appeal:
 - (i) any change to the PDP's mapped ONF, ONL or RCL boundaries;
 - (ii) any removal of particular land from any mapped ONF, ONL or RCL; or
 - (iii) any re-purposing of any PA that does not implement or is inconsistent with operative PDP policies as I have described.
 - (b) it is otherwise permissible for a submission and hence an appeal to seek that any specified land (including as described by zone) be excluded from any specified PA.
19. All relief allocated to Topic 1 was resolved by the Topic 1 Consent Determination.¹⁶⁸ This means that there are no outstanding PALS appeals that could result in any changes to Preamble 21.22 or 21.23. The Topic 1 Consent Determination, confirmed the changes to Preamble 21.22 and 21.23 and the approach to mapping, that the parties agreed through the PALS Variation. These changes largely clarified how the schedules apply.
20. There are some outstanding PALS appeals with relief allocated to Topic 2, however, due to the bespoke nature of the outstanding relief that relates to specific schedule content, they are not relevant to the UCLS Variation.¹⁶⁹

Mata-au Clutha River – previous findings

21. Through the Topic 2 appeals, the Mata-au Clutha River was originally proposed to be a PA, and to be notified alongside the other PAs in PALS. However, the Court found that it was an ONF (not ONL and ONF) which resulted in a s293 process occurring that delayed confirmation of the Mata-au Clutha River ONF and PA boundaries. The Court

167 PALS Preliminary Determination at [65].

168 PALS Topic 1 Consent Determination.

169 The outstanding PALS appeals are accessible online at <https://www.qldc.govt.nz/your-council/districtplan/proposed-district-plan/appeals/landscape-schedule-variation/appeals-2024/>.

directed, that joint witness conferencing was to occur on the proposed ONF and PA boundaries of the Mata-au Clutha River. Conferencing occurred in October 2020, and the experts agreed that the proposed boundaries were appropriate.¹⁷⁰ Decision 2.9 subsequently directed s 293 notification of the Mata-au Clutha River ONF mapping.¹⁷¹ The s 293 process ultimately concluded in November 2022 with Decision 2.15 that directed QLDC to update the PDP accordingly.¹⁷² The ONF boundary is now mapped in the PDP ePlan map.

22. The Mata-au Clutha River PA therefore was not able to be notified alongside the other PAs, since the PALS Variation had to be notified by 30 June 2022. Accordingly, the Mata-au Clutha River PA has been notified as part of this UCLS Variation.

170 Joint Statement arising from Expert Planner and Landscape Conferencing in relation to Strategic Policies and Priority Area Expert Conferencing Topic 2: Rural Landscapes, dated 29 October 2020. Also refer to Decision 2.8 at [6]–[11] that sets out the history leading to the s293 direction.

171 Refer to map attached in Annexure 2 to Decision 2.9.

172 Decision 2.15.