

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHU

Decision No. [2025] NZEnvC 122

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14(1) of the First
Schedule of the Act

BETWEEN JEREMY BURDON

(ENV-2024-CHC-054)

(and other appellants listed in
Appendix 1)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan

Hearing: On the papers

Counsel: M G Wakefield and S L Richardson for Queenstown Lakes
District Council

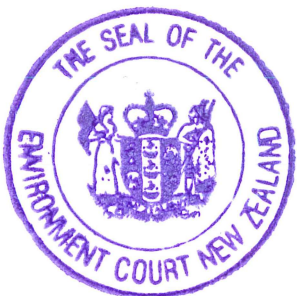
M Baker-Galloway and L McLaughlan for Jeremy Burdon,
Gertrude's Saddlery Limited, Mount Cardrona Station
Limited, Catherine and Christopher Phoon, Rock Supplies
NZ Limited, Soho Ski Area Limited and Blackmans Creek
Holdings No. 1 LP, Coneburn Preserve Holdings Limited
and Henley Downs Farm Holding Ltd, and RealNZ
Limited

N Graham for Hawthenden Limited

R E M Hill and B A G Russell for Passion Development
Limited

Dr J Cossens for himself

L Burkhardt for Cardrona Cattle Company Limited and
Milstead Trust



Last case event: 28 March 2025

Date of Decision: 11 April 2025

Date of Issue: 11 April 2025

PRELIMINARY DECISION OF THE ENVIRONMENT COURT

- A: It is beyond jurisdictional scope to pursue in any appeal any change to the PDP's mapped ONF, ONL or RCL boundaries, or any removal of particular land from any mapped ONF, ONL or RCL or any re-purposing of any PA that does not implement or is inconsistent with operative PDP policies.
- 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.
- C: The same positions apply to parties who have joined relevant appeals in terms of what they may seek to pursue, subject to the parameters set by s274.
- D: There will be no order as to costs on this preliminary matter.

REASONS

[1] This decision is on a preliminary jurisdictional issue concerning the scope of permissible relief on appeal.

[2] The appeals are against decisions by Queenstown Lakes District Council (QLDC) on a variation notified in the review of the Queenstown-Lakes district plan (PDP). That is the 'Priority Area Landscape Schedules Variation' (Variation).

[3] In the staged determination of PDP appeals, 'Topic 2 – Rural Landscapes' concerned PDP provisions on outstanding natural features and landscapes (ONF,

ONL, ONF/L) and rural character landscapes (RCL). Those provisions are primarily in Ch 21 – Rural Zone, Ch 27 – Subdivision and Development and Ch 3 – Strategic Directions. QLDC notified the Variation according to directions made by the court in decisions on Topic 2.

The preliminary jurisdictional questions sought to be addressed

[4] Appeals on the Variation are being case managed together. Before undertaking court-directed mediation, parties to these appeals seek a preliminary determination on a jurisdictional question as to the permissible scope of relief in the appeals. This arises from aspects of relief initially pursued in their submissions on the notified Variation and which parties continue to rely on as underpinning what they pursue in their appeals. The jurisdictional questions are in essence:

- (a) is it within jurisdictional scope to seek a change to the boundaries of any PA in the Variation so as to exclude land from that PA?
- (b) is it within jurisdictional scope to seek a change to the mapped boundaries of any ONF, ONL or RCL confirmed through Stage 1 of the PDP process, or through the Topic 2 appeal process so as to exclude land from that ONF, ONL or RCL?

[5] Those questions concern various appeal points as are identified in the table in Appendix 2 to this decision.

[6] QLDC say the answer to each question is “no”. The remaining parties say the answers are “yes”.

Background

Environment Court decisions leading to notification of the variation

[7] The court made a series of decisions concerning Topic 2.

[8] In Decision 2.1, the court found that simply mapping ONF/Ls without also identifying landscape values as deficient. Reasons for that finding include:¹

[30] ... 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. ...

[31] 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 list 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.

[9] Decision 2.2 made similar findings concerning the Upper Clutha RCL as to the scheduling of landscape character and visual amenity values. Also, that decision expanded the scope of scheduling to encompass associated landscape capacity for subdivision, use or development. Part of the court's reasoning was as follows:

[125] ... 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.

...

[127] Landscape capacity cannot be known unless there has been an identification of the landscape character values and their importance (i.e. knowing what the landscape is valued for and why). 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 ss 6(b) and 7(c).

¹ *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160 (Decision 2.1).

[10] In terms of land area, 97% of Queenstown-Lakes District is mapped ONL (or ONF). Much of the balance of Rural land (outside of urban centres) is mapped RCL. Recognising the very significant resourcing challenge that would be presented in scheduling values for all mapped landscapes, Decision 2.2 limited the focus to so-termed ‘Priority Areas’ (PAs). Those priority areas were not selected on the basis of relative landscape quality but according to what parts of ONF/Ls or RCLs were anticipated to come under the most significant development pressure. Decision 2.2 explained this as follows:²

As noted, those Priorities Areas are to be determined by reference to where the most significant development pressures are anticipated during the life of the ODP. The identification of an area as a Priority Area is not intended to connote any higher relative ONF/L or RCL quality rating. If need be, the SPs could make that explicit.

[11] Decision 2.2 made an initial set of directions for QLDC to file its “final position” on a list of PAs and their mapped geographic extent and dates for Sch 1 plan changes and for parties to respond.³ As an initial response, QLDC filed a document it had prepared for the court’s consideration, entitled ‘Final Draft PA Mapping’. In essence, this was informed by some development pressure analysis and advice from its landscape expert (Ms Mellsop).

[12] Decision 2.5 confirmed the Final Draft PA Mapping document appropriate for expert conferencing of the landscape and planning experts.⁴ On the basis of the recommendations that the experts made by joint witness statement (JWS), Decision 2.7 confirmed that PDP-DV would be amended to provide for Landscape Schedules for 29 PAs as identified in maps filed with the JWS.⁵ Decision 2.5 records the following related findings:

² Decision 2.2, at [167].

³ Decision 2.2, at [525].

⁴ *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2020] NZEnvC 158, at [67].

⁵ *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2021] NZEnvC 60.

[13] Some greater clarity is needed as to the geographic boundaries of each listed Priority Area. We understand that it would be cumbersome to have this shown in mapping incorporated into Sch 21.22. On the other hand, mapping underpins the listing. Indeed, there was some contention concerning QLDC's initial positioning of some boundaries (as Decision 2.5 discusses).

[14] We find that the balance weighs in favour of having mapping accompany the listing of Priority Areas. The maps can either be set out in the PDP or incorporated by reference to a suitable QLDC file.

[15] Our determination allows for QLDC to elect which of those two approaches it prefers (i.e. an amended SP XA 1 that provides for the mapping in the PDP at this stage or one that incorporates that mapping by reference to an accessible QLDC file). Directions are made for QLDC to report back on its election.

[13] In terms of the discretion allowed by the court's directions, QLDC elected to hold the PA mapping on a document incorporated by reference (as opposed to adding PA maps into the PDP itself).

[14] In Decision 2.9⁶ the court endorsed the final version of related 'strategic policies' for inclusion in PDP Ch 3. Those included SP 3.3.36, SP 3.3.39 as follows:

3.3.36 Identify in Schedule 21.22 the following Rural Zone Priority Areas within the Outstanding Natural Features and Outstanding Natural Landscapes shown on maps held on [QLDC reference file]:

- a. parts of the Outstanding Natural Features of Peninsula Hill, Ferry Hill, Shotover River, Morven Hill, Lake Hayes, Slope Hill, Feehly Hill, Arrow River, Kawarau River, Mt Barker, and Mt Iron.
- b. parts of the Outstanding Natural Landscapes of West Wakatipu Basin, Queenstown Bay and environs, Northern Remarkables, Central Wakatipu Basin Coronet Area, East Wakatipu Basin and Crown Terrace Area, Victoria Flats, Cardrona Valley, Mount

⁶ *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2021] NZEnvC 124.

Alpha, Roys Bay, West Wanaka, Dublin Bay, Hawea South and North Grandview, and Lake McKay Stations and environs.

(relevant to SO 3.2.5, 3.2.5.1)

3.3.39 Identify in Schedule 21.23 the following Rural Zone Priority Areas within the Upper Clutha Rural Character Landscapes shown on maps held on [QLDC reference file]:

- a. Cardrona River/Mt Barker Road RCL PA;
- b. Halliday Road/Corbridge RCL PA;
- c. West of Hāwea River RCL PA;
- d. Church Road/Shortcut Road RCL PA;
- e. Maungawera Valley RCL PA.

(relevant to SO 3.2.5, 3.2.5.7)

3.3.42 The Council shall notify a proposed plan change to the District Plan by 31 March 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).

[15] Decision 2.9⁷ also confirmed a further strategic policy SP 3.3.42. That policy is to the effect of specifying a date for notification of a plan change for the implementation of policies that provide for the Landscape Schedules (referring to “SPs 3.3.36, 3.3.37, 3.3.39 and 3.3.40”).

Notification of the Variation

Prior public consultation

[16] Between 9 March and 3 April 2022, in the lead up to notifying the Variation, QLDC carried out online community engagement. It sought feedback on the values that people associate with the 29 Priority Areas. On a so-termed ‘Let’s Talk’ page on its website, it provided a link to a map indicating the extent of the PA

⁷ *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2021] NZEnvC 124 (Decision 2.9).

areas (called a “ONF and ONL Priority Areas Map” but being materially the same as the map approved by Decision 2.7).

The public notice and website information

[17] On 30 June 2022, QLDC publicly notified the Variation. The public notice stated:

VARIATION TO QUEENSTOWN LAKES PROPOSED DISTRICT PLAN
Landscape Schedule 21.22 and Landscape Schedule 21.23

Queenstown Lakes District Council has prepared changes to the Queenstown Lakes Proposed District Plan (PDP) under Schedule 1 of the Resource Management Act (RMA). The proposal is a variation to Chapter 21 Rural Zone of the PDP, to introduce proposed landscape schedules 21.22 and 21.23.

[18] The Public Notice also gave details of where to view the Variation and as to how to make submissions.

[19] In addition, on a ‘Landscape Schedules’ page on its website, QLDC provided a link to the PAs. It also published an ‘Information Sheet’ which stated:

Queenstown Lakes District Council is proposing a variation to Chapter 21 Rural Zone of the Proposed District Plan (PDP), to introduce landscape schedules that set out the landscape values for 29 Priority Area landscapes within the Queenstown Lakes District. These schedules aim to identify which aspects of these landscapes are to be protected, maintained, or enhanced.

WHY LANDSCAPE SCHEDULES?

Landscape schedules will be used to assess applications for resource consent for development on properties within the identified areas. The schedules will detail a landscape’s values and make it easier to understand how a proposal for development might affect those values. There are no changes to the rules for development as part of this proposal. The schedules are intended to make assessments more efficient.

WHICH LANDSCAPES ARE INCLUDED?

The 29 schedules cover areas across the Whakatipu Basin and Upper Clutha. A separate process confirmed the areas that are referred to as ‘Priority Area’ landscapes. To view the areas head to: www.qldc.govt.nz/landscape-schedules.

HOW DO I MAKE A SUBMISSION ON THIS VARIATION?

Anyone can make a submission on this variation to Chapter 21 Rural Zone of the Proposed District Plan (PDP). Full details, including how to make a submission, a glossary of terms, and other resources are available at: www.qldc.govt.nz/landscape-schedules

Submissions on this variation to Chapter 21 Rural Zone of the Proposed District Plan (PDP) will close on Friday 26 August 2022.

QLDC’s s32 report on the Variation

[20] QLDC’s s32 report on the Variation, also dated 30 June 2022, stated (court emphasis):

- 1.2 This proposal is a variation to Chapter 21 (Rural Zone) of the Proposed District Plan (PDP), to introduce schedules setting out landscape values for 29 Priority Area landscapes within the District. The purpose of the variation is to implement Policy 3.3.42 of the PDP, which is as follows:
3.3.42 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.
- 1.3 To elaborate further, Policy SP 3.3.36 identifies 24 Priority Area landscapes within Outstanding Natural Features and Outstanding Natural Landscapes (ONLs and ONFs, or combined ONFLs), and Policy SP 3.3.37 requires, for each of these 24 Priority Areas, a schedule to describe:
 - a. The landscape attributes (physical, sensory and associative);
 - b. The landscape values; and
 - c. The related landscape capacity.
- 1.4 Similarly, Policy 3.3.39 identifies five Priority Area landscapes within the Upper Clutha Rural Character Landscapes (RCLs), and Policy 3.3.40 requires, for each of these five Priority Areas, a schedule to describe:

- a. The landscape attributes (physical, sensory and associative);
- b. The landscape character and visual amenity values; and
- c. The related landscape capacity.

1.5 The scope of this proposal is therefore limited to the content of the schedules, including the way the schedules describe the landscape attributes, landscape values (ONFLs) or landscape character and visual amenity values (RCLs), and the related landscape capacity of each of the 29 Priority Area landscapes.

1.6 This variation does not change any objectives or policies in the PDP or seek to introduce new objectives or policies. It does not change any aspect of the identification or mapping of the Priority Area themselves, nor does it seek to introduce new Priority Areas or delete identified Priority Areas. Identification and mapping of Priority Areas has already occurred and is already set out in Chapter 3 of the PDP and the web mapping application.

1.7 The best practice landscape methodology used to prepare the schedules is not within scope of this proposal, as the methodology is prescribed in Chapter 3 of the PDP, including in Policies SP 3.3.38, SP 3.3.41, and SP 3.3.43.

...

Submissions made on the Variation

[21] Appendix 2 provides a brief summary of those parts of relevant submissions that sought relief pertaining to the issues at large concerning jurisdictional scope.

QLDC decision following the IHP hearing

[22] Submissions on the Variation were heard by an independent hearings panel (IHP) under QLDC delegation. The IHP included in their report to QLDC their reasons for finding that relief pursued in submissions by way of mapping

amendments was beyond jurisdictional scope. In essence, the IHP considered leading authorities and found that:

- (a) such relief was not ‘on’ the Variation (hence fell outside legitimate scope); and
- (b) it would be procedurally unfair to entertain it.

[23] Concerning the first of those matters, the IHP’s reasons included the following:

- (a) the public notice, together with the s32 report and associated material that informed the notification of the Variation, make it unambiguously clear that the scope of the proposal is limited to the content of the Schedules. The IHP noted that the s32 report explicitly stated that the Variation does not change any aspect of the identification or mapping of the PAs;
- (b) it was not the purpose of the Variation to seek to pursue “*more defensible [PA] boundaries*”. Rather, in terms of the relevant court decisions that directed the notification of the Variation, the PAs comprise areas that are subject to *substantial development pressure*, which may not necessarily comprise landscapes or part landscapes in their own right. The ‘*iterative*’ landscape process advanced by the submitters does not necessarily, therefore, bear any relationship to the identified PA boundaries, which are for a different purpose (as explained by the court);
- (c) the ONF, ONL and RCL boundaries have been determined through robust court processes, which specifically addressed QLDC’s ability to re-visit the ONF, ONL and RCL overlays on the planning maps. The IHP did not consider it had authority to relitigate the court’s decision. The IHP noted that unless it had scope to also change the corresponding ONF, ONL or RCL boundaries, any recommendations it might make with respect to PA

mapping may have little practical effect given the role and purpose of the schedules and the need for a site-specific assessment with respect to any development.

[24] In response to other arguments, the IHP also reasoned as follows:

- (a) the references that QLDC landscape expert, Ms Gilbert, had made to “notified PA mapping” was, on a purposive interpretation, simply referring to the PA maps that accompanied the Variation (by way of weblink) as a point of reference for submitters. Had the PA mapping not been made readily available by QLDC, the ability of submitters to meaningfully participate in the Variation process would have been significantly impeded;
- (b) the court’s observation, in declining to exercise its powers under s293 to notify the PA mapping and schedules through the Topic 2 process, that it anticipated the potential for affected parties to be able to ‘participate’ at a later date. The IHP concluded that while on its face that is a possible interpretation of the court’s observations, there are equally valid interpretations that would confine participation to the content of the schedules, and it is also very clear that the court ultimately left such matters to QLDC in its discretionary judgement as the planning authority.⁸ QLDC chose not to notify the PA maps as part of this Variation on the basis that the PA mapping had been endorsed for incorporation in the PDP by the court.

[25] The IHP determined that jurisdictional scope was limited to the content of proposed Schedules 21.22 and 21.23, including the proposed preambles.

[26] QLDC accepted the IHP’s reasons and recommendation and notified its decision accordingly on 21 June 2024.

⁸ Decision 2.2, at [164].

Statutory framework and legal principles

[27] The jurisdictional scope questions pertain to what a submission on a proposed plan change or variation may seek according to what RMA Sch 1 cl 6(1) prescribes. That is in terms of its specification of a right to “make a submission *on*” the notified proposed planning instrument. It is established that the assessment of whether any purported submission duly qualifies as being “on” a notified proposed planning instrument involves two limbs of inquiry:⁹

- (a) does the submission address the change to the status quo advanced by the proposed plan change (or variation) (Limb 1)?
- (b) is there a real risk that persons affected or potentially affected by what the submission pursues by way of change to the status quo have been denied an effective opportunity to participate in the plan change process (Limb 1)?

[28] An approach to Limb 1 is to consider whether the submission raises matters that should have been addressed in the s32 evaluation and report (not simply whether the s32 report did or did not address it).¹⁰ If a submission seeks a new management regime for a resource, a further matter for inquiry in Limb 1 is whether the district plan’s management regime for the particular resource is altered by the plan change.¹¹

[29] *Paterson Pitts Limited Partnership v Dunedin City Council* offers a helpful approach to the consideration of Limb 1.¹² The court concluded that what the submission pursued (in that case heritage listing) was not what a person reading the notified documents would reasonably contemplate as an outcome of the

⁹ *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003; *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, at [91].

¹⁰ *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191, at [39].

¹¹ *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003; *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, at [91].

¹² *Paterson Pitts Limited Partnership v Dunedin City Council* [2022] NZEnvC 234, at [100].

submission and hearing process. That contributed to the court finding that what the submission pursued was not on the variation.

[30] If what a submission pursues does not meet the requirement of addressing the change to status quo according to those Limb 1 considerations it is beyond jurisdictional scope under Sch 1 cl 6(1).

[31] If Limb 1 is satisfied, the further Limb 2 assessment addresses the natural justice dimensions. An example of where court determined Limb 2 satisfied is where the submitter's relief was to seek to restrict the extent of change to the status quo rather than increase it.¹³ However, Limb 2 very much calls for bespoke contextual assessment.

Legal submissions

[32] Material differences between QLDC and other parties are essentially as to how those established principles ought to be applied to the circumstances of the Variation. Some submissions and representations are made on matters beyond simply the application of those principles, including matters of context and merit. While I have considered those further points, I do not need to traverse them as they do not materially bear on the preliminary jurisdictional scope questions.

Whether the submission addresses the change to the status quo advanced by the proposed variation

QLDC's opening submissions

[33] QLDC submits that there is no suggestion in the public notice or supporting material that any change to the PDP maps was proposed or anticipated. Rather, they say that, in all respects the scope was plainly limited to the text of the

¹³ *Bluehaven Management Ltd*, at [60].

Landscape Schedules.

Other parties' submissions

[34] The Anderson Lloyd parties submit that the plain effect of the Variation is to change the status quo for land that is subject to the notified Landscape Schedules. As such, they say that submissions seeking that the status quo remain unchanged (including that the Schedules not apply to their land) are within scope. Following from that, they say that changing the maps is a logical and effective means of redress, in terms of maintaining the status quo. As such, it ought to have been the subject of s32 evaluation. The fact that the s32 report did not evaluate this remedy does not, on their argument, render submissions pursuing relief by way of PDP mapping changes beyond jurisdictional scope.

[35] Hawthenden Ltd adds that various mapping amendments formed part of the public notification and reinforced a perception that mapping was within the available scope of the Variation. It maintains that this perception was also fostered by the broad drafting of the public notice and associated material. It submits that the IHP erred in treating the narrow focus of the s32 report as determinative of scope, rather than considering instead on what that report ought to have covered.

[36] CCCL and Milstead Trust also approach their argument by reference to the purpose of the Landscape Schedules. They describe that as being to provide a shorthand identification of values and attributes of ONF/Ls to be protected and of development capacity. On that premise, they submit that it must follow, as a matter of logic, that mapping relief must be available. That is as a means of excluding land that is demonstrated to not qualify as ONF/L in those terms.

[37] Passion Development Ltd and Dr Cossens make similar points.

QLDC's reply submissions

[38] QLDC disputes that the Variation sought to alter the PDP status quo to

the extent claimed. It points out that the Variation responded to the court's Topic 2 findings and directions in a context in which the court also finally determined the geographic extent of ONF/Ls and RCLs and the substance of related objectives, policies, rules and other methods. As such, QLDC describes the Variation as having a confined purpose. It did not address the underlying categorisation of land as ONF, ONL or RCL, nor the associated mapping which was completed through Stage 1 and subsequent appeals allocated to Topic 2. Instead, the Variation relied on the PA mapping (which was based on development pressure) to then assess and identify the landscape attributes, values and capacity required for the landscape schedules in PDP Ch 21.

[39] QLDC submits that the Landscape Schedule the subject of the Variation is only a starting point for the landscape assessments required by PDP Ch 3. That is in helping to inform the assessment of landscape attributes, values, and capacity. That is not as an end point for any assessment; site-specific assessments are still required. On that basis, QLDC submits that it would be invalid to regard submissions pursuing changes to ONF/L or RCL boundaries as simply pursuing consequential relief.

Procedural fairness

QLDC's opening submissions

[40] QLDC submits that to allow for PDP mapping alterations to be entertained as relief would lead to procedural unfairness. That is in the sense that the Variation was not developed or notified in a manner that signalled that such changes could result.

Other parties' submissions

[41] The Anderson Lloyd parties submit that the court's Topic 2 decisions clearly anticipated that both the PA maps and related text in the Schedules would be matters that affected parties would be able to subsequently submit on in the

Variation process. They point out that the court declined to notify the PAs to affected landowners using s293 in 2021 because they would be able to participate in the relevant RMA Sch 1 process, including as to mapping, as to the effects of the nature and extent of the PA overlay and Landscape Schedule on the parties' interests. These parties (and Hawthenden) draw attention to the following observations on these matters in Decision 2.5:

[33] On behalf of several clients who were not parties for Decision 2.2, Ms Baker-Galloway submits that the court should instigate a process to allow for their participation, at this stage, as parties. In essence, Ms Baker-Galloway submits that those clients ought to have the opportunity to present their position on whether or not their land should be included within a PA, notwithstanding that they are not parties. Ms Baker-Galloway lists her relevant clients having interests and concerns as follows:

...

[68] We respectfully observe that parties who raise jurisdictional objections would appear to have misunderstood both the intentions expressed in Decision 2.2 for the listing of PAs and the related matters of scope. As to those intentions, the listing of PAs is purely to serve the drafting of new Strategic Policies that are to apply to QLDC's subsequent Sch 1 plan change or variation processes. Those processes allow for participation by those who seek to make submissions or further submissions, and attendant appeal rights. The intended SPs seek to assist to remediate the DV-PDP's identified flaws in regard to its treatment of ONF/Ls and RCLs. As noted, that is in terms of their lack of proper identification of ONF/L values and in RCL character areas, landscape character and visual amenity values ...

[42] As to principles of natural justice, the Anderson Lloyd parties respond that any risk of procedural prejudice to other parties is very small. That is in the sense that the mapping relief pursued is to the effect of reducing the application of the Variation in relation to relevant parties' land, rather than increasing it. On the other hand, the Anderson Lloyd parties maintain that those who are affected landowners and occupiers stand to be significantly prejudiced by any denial of their

ability to seek mapping relief. Bearing in mind at that stage PA mapping was not part of the notified architecture of the PDP, they argue it would be a breach of natural justice to deny them opportunity to seek changes to relevant PDP maps as well as the schedules.

[43] Other parties make materially similar submissions on the procedural fairness limb of the jurisdictional scope test.

QLDC's reply submissions

[44] In reply, QLDC maintains that whether or not some submitters misunderstood the Variation does not take away from the clear description of the Variation in the notified material. It reiterates that the principle of procedural unfairness is not intended to work in favour of those who made submissions, but those that did not. It maintains that there were persons who may be prejudiced if PA and landscape mapping alterations are accepted as being in scope.

Evaluation

Did mapping relief address the change to the status quo advanced by the Variation?

[45] The court's decisions on appeal points in Topic 2 extended to all points concerning ONF/L and RCL objectives, policies, rules, maps and other methods in the PDP, including the Rural zone and Strategic Direction chapters. The decisions included associated directions to QLDC to update the relevant PDP-DV Topic 2 provisions. The noted Topic 2 decisions include final determinations and directions concerning relevant objectives, policies, rules and other methods. That includes final determinations as to the geographic extent of all ONF/Ls and RCLs as shown on PDP planning maps. Those determinations were supplemented by a number of consent orders by parties who reached full settlement with QLDC.

[46] The construct of 'status quo', as applied in the consideration of

jurisdictional scope, is to be considered in that relevant context in terms of finalisation of the PDP. That is the context of the PDP-DV as updated by the court's final determinations in its Topic 2 decisions. In terms of the substance of the notified Variation, the proper focus is on what it proposed to change with respect to that updated PDP status quo position.

Submissions could not pursue changes to ONF/L or RCL boundaries or changes to PAs to alter their operative purposes

[47] The change to that status quo advanced by the Variation was limited to including in PDP Ch 21 Rural Zone proposed landscape schedules 21.22 and 21.23. That is so as to help implement the above-noted Ch 3 policies as were included in the PDP-DV by the court's various Topic 2 decisions.

[48] Those Ch 3 policies give directions to:

- (a) identify those parts of ONF/Ls and also those parts of Upper Clutha RCLs that are PAs for the purposes of the PDP (SP 3.3.36, SP 3.3.39);
- (b) describe the landscape attributes (physical, sensory, associative), landscape values (or for RCLs, character and visual amenity values) and related landscape capacity of each Identified PA (SP 3.3.37, SP 3.3.40); and
- (c) identify, describe, assess and record the various matters prescribed in SP 3.3.38 and 3.3.41 for each PA. That includes identifying and rating key physical, sensory and associative attributes to be protected. It also extends to identifying and recording related landscape capacity for subdivision, use and development activities including in a non-exclusive list of activity classes. For RCL PAs, there are related requirements for example as to identification and description of key public routes and viewpoints and how the RCL relates to its relevant landscape context.

[49] As noted, the only landscape classes under the PDP are ONFs, ONLs and

RCLs. PAs are for a confined purpose. As Decision 2.2 records, the selection of PAs according to the court's Topic 2 decisions was by reason of development pressures in the identified areas rather than to connote any higher relative ONF/L or RCL quality rating. Those intentions are now reflected in PDP SP 3.3.44. This policy provides:

Where any or any part of an Outstanding Natural Feature, Outstanding Natural Landscape or a Rural Character Landscape is not identified as a Priority Area in Schedule 21.22 or 21.23, this does not imply that the relevant area:

- a. is more or less important than the identified Priority Areas in terms of:
 - i. the landscape attributes and values, in the case of an Outstanding Natural Feature or Outstanding Natural Landscape;
 - ii. landscape character and visual amenity values, in the case of a Rural Character Landscape; or
- b. is more or less vulnerable to subdivision, use and development.

[50] Seeking to revisit what land is encompassed in any ONL, ONF or RCL does not address the change to the status quo proposed in the Variation. Therefore, we find each of the following outcomes pursued in submissions would be beyond jurisdictional scope as not addressing the Variation:

- (a) any change to the PDP's mapped ONF, ONL or RCL boundaries;
- (b) any removal of particular land from any mapped ONF, ONL or RCL;
- or
- (c) any re-purposing of any PA that does not implement or is inconsistent with operative PDP policies as I have described.

Submissions could pursue changes to the PA boundaries notwithstanding determinations by the court

[51] Decision 2.7 made final decisions on live appeal points concerning Topic

2, including with respect to the identification of PA boundaries.

[52] The Variation’s provisions describing the geographic extent of PA boundaries accorded with those decisions and directions. However, those decisions and directions could not and did not proscribe the statutory scope of QLDC’s jurisdiction to notify variations. Nor could the court limit the scope of the right conferred by Sch 1, cl 4 to make a submission on the notified Variation. The above-quoted observations in Decision 2.5, referred to by the Anderson Lloyd parties and Hawthenden, reflect that legal position.

[53] SP 3.3.42 is part of the PDP status quo. It gives direction concerning the purposes of QLDC’s notification of the Variation, namely to “implement SPs 3.3.36, 3.3.37, 3.3.39 and 3.3.40”. That includes implementation of the identification of those parts of ONF/Ls and of Upper Clutha RCLs that are PAs for the purposes of the PDP (SP 3.3.36, SP 3.3.39). “Implement” is to be understood in the sense that the RMA prescribes that district plan rules and other methods serve to “implement” related plan policies.¹⁴ That is they assist to fulfil or give effect to those policies.¹⁵

[54] The Variation includes provisions that propose to identify the geographic extent of each PA. Its drafting choice for doing so is as a narrative rather than by use of maps (although maps are incorporated by reference). By way of example, for 21.22.1 Peninsula Hill PA, the narrative description of its geographic extent is as follows:

The Peninsula Hill PA includes the ONF that encompasses the elevated roche moutonnée landform of Peninsula Hill which frames the south side of Whakatipu Waimāori’s (Lake Whakatipu’s) Frankton Arm. Along its north and west boundaries, the PA adjoins urban zoned land at Kelvin Peninsula. The southern part of the PA coincides with the Jacks Point Zone (Exception Zone) and the

¹⁴ RMA, s75(2)(b)

¹⁵ ‘Implement’, 1.a, b, *New Zealand Oxford Dictionary* Ed. Deveron & Kennedy, Oxford University Press.

Jacks Point Urban Growth Boundary. The south boundary adjoins the Jacks Point Zone Tablelands and Homesites area. The eastern boundary adjoins urban zoned land including Hanley Downs and the Coneburn SHA.

[55] While those provisions of the Variation are substantially the same as was Decision 2.7 determined, that does not take away from the statutory nature of those provisions. That is as provisions proposed by the Variation for inclusion in the PDP and hence proposed changes to the PDP status quo that are open to being addressed by any submission on the Variation.

[56] I find that a person reading the notified Variation documents would reasonably have contemplated that an outcome of the submission and hearing process could extend to changes being made to the geographic extent of notified PAs. That is particularly in the sense that:

- (a) the proposed Variation included provisions identifying QLDC's proposed geographic extent of each PA; and
- (b) the public notice on the Variation is expressed in broad terms. The public notice does not suggest that it would not be open to make any submission on the geographic extent of any PA or whether any particular land should be included in or excluded from it. Were the notice to have made any such statement or suggestion, that would have been invalid.

[57] There is some ambiguity and inaccuracy in the information offered on QLDC's website link and in the associated s32 report:

- (a) the website link document states that a "separate process confirmed the areas that are referred to as 'Priority Area' landscapes". While that is strictly correct, in referring to the Topic 2 decisions, any implication that this precludes any submitter from seeking changes to PA geographic coverage would not be legally sound;

- (b) the s32 report should not have inferred that it is not open to seek to change provisions of the Variation that describe the geographic extent of each PA. Rather, it should have made clear that the statutory right of submission is as specified in Sch 1 such that there is a right to make a submission in support of or in opposition to the Variation or to seek change to any of its content, including all of its proposed PDP provisions.

[58] However, the well-established position concerning s32 reports equally applies to other communications such as the website link information. The proper focus is on what should have been addressed, rather than just what was.

[59] Therefore, I find it is open for relevant noted submissions on the Variation to have sought a change to the geographic extent of any PA. That is doing so addressed the change to the status quo PDP proposed by the Variation. The fact that the Variation uses only a narrative description does not preclude a submission seeking change to the geographic extent of a PA by narrative, mapping or a combination of the two.

Whether a real risk of denying persons effective opportunity to participate in the Variation process

[60] I do not need to consider this limb with respect to changes sought in submissions to ONF/L or RCL mapping as I find those excluded from scope under Limb 1.

[61] Nevertheless, for completeness, I record I find pursuit of such relief would pose a real risk of denying persons opportunity for effective participation in the Variation process. Such provisions carry significant associated community and other public interest extending beyond those individual land owners whose land is within any mapped ONF/L or RCL. The opportunity to engage on those provisions by submission is well past. Landowners who did not avail themselves of the opportunity to do so cannot claim prejudice by not being able to seek to

revisit such matters through the Variation. Entertaining any attempt to do so would pose a real risk of undermining the investment many have made in participating by submission and appeal or s274 notice in processes to determine those landscape boundaries.

[62] As for PA boundaries, the relevant submissions in essence seek changes to effect a reduction of the extent of particular PAs for instance so as to exclude from a PA a particular landholding.

[63] I find that allowing this relief to be entertained as sought in these submissions poses no real risk of denying persons effective opportunity to participate in the Variation process. Insofar as there are any persons who would stand to be significantly affected by the reductions in geographic extent of particular PAs sought, they were in the same procedural position as the relevant parties when the Variation was notified. That is, insofar as they considered any need to defend the inclusion of particular land within the PA, they could have submitted in support of that. Further, they had opportunity to read the particular submissions and elect whether to make a further submission opposing this aspect of the submitter's relief. Furthermore, I find it improbable that there would be any person with a relevant association, interest or attachment to any land in issue as would see them materially affected by any grant of relief as pursued in these submissions.

[64] On the other hand, for the appellants in question, as having ownership or commercial or other interests in particular land in issue, I find that there would be real prejudice in not allowing such relief to be entertained. That is particularly given my finding on Limb 1. In those terms, the measure of prejudice is in what the Variation proposes to change to the PDP status quo (as updated by the court's Topic 2 decisions).

Outcomes and directions

[65] Therefore, with reference to the various appeal points in the Annexure, the

court finds as follows:

- (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.

[66] The same positions apply to parties who have joined relevant appeals in terms of what they may seek to pursue, subject to the parameters set by s274.

[67] On a review of the appeals, it is evident that, in a number of cases, relief is expressed in terms that is to some extent beyond jurisdiction. That will need to be tidied up prior to mediation. Directions are made for leave to be sought for those purposes.

[68] It is therefore **directed**:

- (a) appellant parties may seek leave to amend the relief in their appeals to accord with this decision by memorandum to be filed, following consultation with QLDC and any s274 party, by **Wednesday 30 April 2025**;
- (b) if QLDC or any s274 party opposes any proposed amended relief, they may file a memorandum of opposition by **Thursday 1 May 2025**; and
- (c) unless so opposed, parties to scheduled mediation can proceed on the basis of the proposed amended relief as filed according to direction (a), pending any further Minute or determination.

[69] All parties have sensibly co-operated to have these jurisdictional questions answered prior to mediation. It is evident that the answers leave most parties in a position of having won some points and lost others. In this planning context, I find there could be no reasonable case made by any party for costs with respect to their participation in this preliminary determination matter. As such, costs lie where they fall.



J J M Hassan
Environment Judge



APPENDIX 1

ENV-2024-CHC-55	Cardrona Cattle Company Limited
ENV-2024-CHC-56	Gertrude's Saddlery Limited
ENV-2024-CHC-57	Hawthenden Limited
ENV-2024-CHC-59	Mee Holdings Limited
ENV-2024-CHC-60	Mount Cardrona Station Limited
ENV-2024-CHC-61	Passion Development Limited
ENV-2024-CHC-62	The Milstead Trust
ENV-2024-CHC-64	Phoon
ENV-2024-CHC-65	Rock Supplies NZ Limited
ENV-2024-CHC-66	Soho Ski Area Limited and Blackmans Creek Holdings No. 1 Limited Partnership
ENV-2024-CHC-67	Glencoe Land Development Company Ltd & others
ENV-2024-CHC-68	Coneburn Preserve Holdings Limited & others
ENV-2024-CHC-69	Glendhu Bay Trustees Limited
ENV-2024-CHC-70	Alpine Deer Holdings LP & others
ENV-2024-CHC-95	Arthurs Point Outstanding Natural Landscape Society Incorporated

APPENDIX 2: APPEAL POINTS REQUIRING PRELIMINARY DETERMINATION

SPECIFIC SCHEDULE RELATED TO THE PRIORITY AREA, ONF OR ONL	APPELLANT	APPEAL POINT(S)	SUMMARY OF APPEAL POINT(S) RELIEF SOUGHT
21.22.1 Peninsula Hill	Coneburn Preserve Holdings Limited and Henley Downs Farm Holdings Ltd	05	The Appellant seeks that the Jacks Point Zone be excluded from the Peninsula Hill Priority Area and the ONF.
21.22.3 Kimiākau (Shotover River)	Arthurs Point Outstanding Natural Landscape Society	01	That the land at 113 and 163 Atley Road, and Sec 92 Blk XIX Shotover SD, is included within a PA and afforded appropriate status as a s6(b) Landscape.
		02	As primary relief, the land at 113 and 163 Atley Road, and Sec 92 Blk XIX Shotover SD is identified within the West Wakatipu Basin PA as secondary relief, the land in question remains in the Kimiakau Shotover River PA
	Gertrude's Limited	Saddlery 02	The Appellant seeks that that the boundary for the Shotover River PA be amended so that it excludes the Appellants land at 111 Atley Road as shown in the notice of appeal. The Decision on the findings in respect of the mapping of the boundary of the Shotover River PA

and the Shotover River ONF as it relates to the Appellant's land at 111 Atley Road (Lot 1-2 DP 518803) erred in its finding there was no jurisdiction in the Variation process to make changes to priority area or ONF boundaries.

21.22.6 Slope Hill

The Milstead Trust

03

The Appellant seeks any other amendments to amend the boundaries of any ONFs (and ONLs) to include only features (and landscapes) that are both truly “outstanding” and are sufficiently “natural” to such an obvious extent that an objectively reasonable member of the community would consider them so.

04

The Appellant seeks, in the case of the Slope Hill ONF, if the entire ONF is not removed, to remove the ONF notation from the “toe of the slope” so that the ONF aligns with the area identified by the New Zealand Geopreservation Inventory

21.22.9 Kawarau River

Rock Supplies
Limited

NZ

03

The Appellant seeks that Victoria Flats part of the Gibbston Character Zone be excluded from the Priority Area Maps.

05

The Appellant seeks that the Kawarau River ONF classification over the Victoria Flats part of the Gibbston Character Zone is removed.

21.22.12 Western Whakatipu Basin	Passion Development Limited	17		That the Western Whakatipu Basin ONL PA be amended to exclude the Appellants land at Lot 1 DP 20613 as held in Record of Title 838157 in upper Fernhill, and that there is jurisdiction to amend the ONL boundary.
	Catherine Wan Yung Phoon and Christopher Michael Phoon	07		Amend the Priority Area boundaries/map to the changes sought in the Appellants further submission.
		08		Remove the ONL classification from the Appellant's site. Being the land at: Section 38 Block XX Shotover Survey District held in Record of Title OT60/211; Section 31 Block XIX Shotover Survey District held in Record of Title OT62/180; Section 68 Block XX Shotover SD held in Record of Title OT60/210
	Arthurs Outstanding Landscape Society	Point Natural	01 (as above)	That the land at 113 and 163 Atley Road, and Sec 92 Blk XIX Shotover SD, is included within a PA and afforded appropriate status as a s6(b) Landscape.
			02 (as above)	As primary relief, the land at 113 and 163 Atley Road, and Sec 92 Blk XIX Shotover SD is identified within the West Wakatipu Basin PA as secondary relief, the land in question remains in the Kimiakau Shotover River PA
21.22.17 Victoria Flats	Cardrona Cattle Company Limited	03		Any other amendments to amend the boundaries of the Victoria Flats ONL to include only features (and landscapes) that are both truly “outstanding” and are sufficiently “natural” to

such an obvious extent that an objectively reasonable member of the community would consider them so (which would remove the Property - described as Lot 8 DP 402448 and Section 32 Block II Kawarau Survey District from the boundaries of the Victoria Flats ONL)

21.22.18 Cardrona Valley

Rock Supplies Limited <i>(as above)</i>	03	The Appellant seeks that Victoria Flats part of the Gibbston Character Zone be excluded from the Priority Area Maps.
	04	The Appellant seeks that the Victoria Flats ONL classification over the Victoria Flats part of the Gibbston Character Zone is removed.
Soho Ski Area Ltd and Blackmans Creek Holdings No. 1 LP	10	The Appellant seeks that the Ski Area Sub Zone be excluded from the Cardrona Valley Priority Area map and ONL Map
Mount Cardrona Station Limited	03	The Mount Cardrona Station Special Zone and Ski Area Subzone should be removed from the Priority Area Map.
	04	Confirmation that there is no ONL classification in the PDP on the Mount Cardrona Station Special Zone.

21.22.19 Mount Alpha	Hawthenden Limited	02	All submissions in respect of PA and ONF/L Boundaries, s 32 Report inadequacies, and landscape methodology issues as raised by the Appellant during the hearing process are fully considered and afforded appropriate weight.
		06	That the lower Mount Alpha fan, including the Appellants land, be excluded from the Mount Alpha PA and ONL.
21.22.23 Hāwea South North Grandview	Jeremy Burdon	07	Exclude the Appellant's land at 1576 Makarora-Lake Hawea Road, Hawea, from the Priority Area.
		08	Exclude the Appellant's land 1576 Makarora-Lake Hawea Road, Hawea, from the ONL Classification.

