

IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI

Decision No. [2021] NZEnvC 60

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14 of the First  
Schedule of the Act

BETWEEN UPPER CLUTHA  
ENVIRONMENTAL SOCIETY  
INCORPORATED

(ENV-2018-CHC-056)

and all other appellants  
concerning Topic 2 of Stage 1 of  
the Proposed Queenstown Lakes  
District Plan (listed on the  
attached schedule)

Appellants

AND QUEENSTOWN LAKES DISTRICT  
COUNCIL

Respondent

Court: Environment Judge J J M Hassan  
Environment Commissioner K A Edmonds  
Environment Commissioner J T Baines

Hearing: In Chambers at Christchurch

Last case event: Supplementary submissions made by memoranda dated  
17-18 December 2020

Date of Decision: 7 May 2021

Date of Issue: 7 May 2021



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**INTERIM DECISION OF THE ENVIRONMENT COURT**

**Topic 2: Rural Landscapes Chapters 3 and 6  
Decision 2.7**

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- A: Annexures 1 and 2 to this decision set out the provisions confirmed or amended by this decision.
- B: Directions are made for QLDC to file a reporting memorandum as to when it will file an updated set of provisions for the purposes of the court’s final decision on this Topic.
- C: Costs are reserved. A timetable will be set in due course.

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## REASONS

### Introduction

[1] This decision follows Decision 2.2<sup>1</sup> in determining several remaining matters concerning proposed Chs 3 and 6 in the review of the Queenstown Lakes District Plan (‘PDP’).

[2] Part A is on Ch 3. Part B is on Ch 6 and sets out our directions. The Annexures set out the final version of various provisions for inclusion in the PDP.

### Part A – Chapter 3

#### Background

[3] To enable final determinations on some matters, the court directed further expert conferencing in response to the findings in Decision 2.2.<sup>2</sup> Supplementary evidence was received by way of joint witness statements as follows:

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<sup>1</sup> [2019] NZEnvC 205.

<sup>2</sup> Refer to the court’s Record of Judicial Conference dated 25 September 2020 and Minute dated 7 December 2020.

- (a) a Joint Witness Statement of Landscape Experts (Ms Mellsoy, Ms Gilbert, Mr Brown and Ms Lucas) as to the extent of RCL Priority Areas in the Upper Clutha Basin, dated 29 October 2020 ('Landscape JWS');
- (b) a Joint Witness Statement of Planners (Mr Barr and Mr Ferguson) and Landscape Experts (Ms Mellsoy, Ms Pflüger and Ms Lucas) on Strategic Policies and Priority Areas, dated 29 October 2020 ('Plan Provisions JWS').

[4] As an initial response to drafting recommendations in the Plan Provisions JWS, a Minute was issued inviting parties to respond generally and posing several questions for the purposes of supplementary submissions.<sup>3</sup> QLDC and several other parties did so.<sup>4</sup>

#### **New SPs on Values Identification Frameworks and relationship to Ch 21**

[5] Decision 2.2 determined that a set of additional Strategic Policies ('SPs') was required to be added to Ch 3 to provide what it described as 'Values Identification Frameworks' ('VAF'). This was in part to remediate how the PDP's Decisions Version ('DV') addresses ss6(b) and 7(c), RMA. It determined that the new SPs would serve to give policy direction to future plan change(s) materially as follows:<sup>5</sup>

- (a) for Outstanding Natural Features/Outstanding Natural Landscapes ('ONFs'/'ONLs') to add to Ch 21 schedules of landscape values and landscape capacity for identified mapped Priority Areas; and
- (b) for the Upper Clutha RCL, to add maps identifying priority landscape

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<sup>3</sup> Minute re Topic 2 dated 7 December 2020.

<sup>4</sup> Supplementary submissions were made by memoranda filed by QLDC (dated 18 December 2020), Upper Clutha Environmental Society Inc ('UCESI') (dated 17 December 2020), Otago Regional Council ('ORC') (dated 18 December 2020) and Dr Cossens (dated 18 December 2020). We note that ORC has made it clear that it does not wish to make any comments on issues arising from the Landscape JWS or the submissions lodged by UCESI.

<sup>5</sup> Decision 2.2, at [151] and [152].

character areas and to add to Ch 21 schedules identifying landscape character, visual amenity values, and landscape capacity for those areas ('UCRCL VAF').

[6] The above-noted expert conferencing and resulting JWSs respond to the court's related directions for the development of those additional SPs.

[7] The Plan Provisions JWS recommends a number of new SPs on these matters:

- (a) XA1 to require the identification in Sch 21.22 of listed 'Rural Zone Priority Areas' within the ONF/Ls ('ONF/L Priority Areas');
- (b) XA2 to require Sch 21.22 to describe "the landscape attributes and values, as elaborated upon in 21.21.1.3" and "landscape capacity" of those ONF/L Priority Areas (including having particular regard to some specified matters);
- (c) XA3 to require QLDC to amend the District Plan by a certain date to implement SPs XA1 and XA2;
- (d) XA4 to require the identification in Sch 21.23 of "Rural Zone Priority Areas within the Upper Clutha Rural Character Landscape" (the drafting similarly assuming these would be listed in XA4, as the ONL/L Priority Areas would be in XA1);
- (e) XA5 to require Sch 21.23 to describe "the landscape attributes and values, as elaborated upon in 21.21.1.3 and landscape capacity of" the RCL Priority Areas (including having particular regard to some specified matters);
- (f) XA6 to require QLDC to amend the District Plan by a certain date to implement SPs XA4 and XA5; and
- (g) XA7 to clarify the role of Priority Areas.

[8] Associated with this, the Plan Provisions JWS recommends associated amendments to the assessment matters in r 21.21. Generally, the JWS states that

those amendments seek to achieve clearer alignment with proposed SP XA2 (on ONF/Ls) and SP XA5 (for Rural Character Landscapes).

[9] Finally, on this theme, the Plan Provisions JWS responds to findings in Decision 2.2 as to the need for the PDP to give policy direction on Priority Areas for the period pending completion of Sch 1 plan changes to implement the Values Identification Frameworks. The recommended Ch 3 provisions are SOs 3.2.5.x and 3.2.5.xx, SPs 3.3.32x and 3.3.32y.

[10] We do not forget that the assessment matters in r 21.21 are also relevant to circumstances outside Priority Areas where there is no policy direction requiring the implementation of Values Identification Frameworks in the PDP.

[11] In regard to recommended SPs XA2 and XA5 and associated recommendations concerning the assessment matters in r 21.21, a procedural complication is that Ch 21 is the subject of Topic 18 appeal points. Not all Topic 18 parties are parties to Topic 2. QLDC acknowledges the importance of ensuring due process. This means we are not in a position to determine all issues at this stage. We make related directions later in this decision.

***SP XA1 – requiring Sch 21.22 identification of listed ONF/L Priority Areas***

[12] The Plan Provisions JWS recommended SP XA1 (on the ONF/L Values Identification Framework) and SP XA4 (on the Upper Clutha RCL Priority Areas) are similarly drafted.

[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<sup>6</sup> 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 XA1 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.

[16] In the meantime, to convey the substance of our interim determination on this issue, we include in Annexure 1 a SP XA1 revised as follows:

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

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

***SP XA4 – requiring Sch 21.23 identification of listed UCRCL Priority Areas***

*What Priority Areas should be listed in SPXA4?*

[17] Decision 2.5 considered QLDC’s proposed Priority Areas (‘PAs’) for both ONLs and ONFs and broadly confirmed them as appropriate.<sup>7</sup> The proposed PAs for the Upper Clutha Basin RCL were referred to expert conferencing, while the

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<sup>6</sup> See cl 30 of Sch 1, RMA.

<sup>7</sup> [2020] NZEnvC 158 at [83].

Clutha River ONF is now subject to a separate s293 process.

[18] The Landscape JWS records full agreement as to the mapping of PAs in the Upper Clutha Basin RCL as follows:

**RCL Priority Areas in the Upper Clutha Basin**

7. The landscape experts agree that all of the RCL PA areas [sic] should be mapped to adopt 'landscape' (e.g. landforms, land use, river, bush features etc) rather than 'road' boundaries.
8. **Cardrona River/Mt Barker Road RCL PA:** the landscape experts agree that the PA mapping should be extended to the base of the lower Criffel Terrace due to the similarity of this area with respect to landscape characteristics and values, to the balance of the mapped Cardrona River/Mt Barker Road RCL.
9. **Halliday Road/Corbridge RCL PA:** the landscape experts agree that the PA mapping should be extended south-eastwards to run along the top of the river scarp, terminating at Stevenson Road due to the similarity of this area with respect to landscape characteristics and values, to the balance of the mapped Halliday Road/Corbridge RCL PA.
10. **West of Hāwea River RCL PA:** the landscape experts agree that the PA mapping should be extended westwards to the ONL boundary and reconfigured to include Maungawera Hill.
11. **Church Road/Shortcut Road RCL PA:** the landscape experts agree that this is a 'lesser' PA for inclusion. If it is included, the landscape experts consider that the extent of the PA should be expanded westwards to the toe of the slopes, and eastwards to the river so that the PA boundaries align with landscape boundaries rather than road boundaries.
12. **Maungawera Valley RCL PA (proposed):** notwithstanding that the Council has not included this area as a RCL PA, the experts agree that a RCL PA should be added that captures the lower flanks of Mt Brown where there is development pressure.
13. **Havea Flats RCL PA (proposed):** notwithstanding that the Council has not included this area as a RCL PA, the experts agree that a RCL PA should be added that captures land around Hāwea Flats that is vulnerable to development pressure. The recommended area roughly extends between Camphill Road and Watkins Road, although landscape boundaries for the PA should be determined by detailed mapping analysis.



14. Maps showing the recommended extensions and additions to Upper Clutha Basin RCL Priority Areas are attached as **Appendix A**.

[19] The Plan Provisions JWS then explains the drafting intention as follows:<sup>8</sup>

[58] ... noting that while the emphasis for PAs in the RCL is focusing on development pressure, and cumulative degradation from rural living and other residential activity, it is appropriate for the schedules to potentially contemplate landscape capacity from a range of activities, in addition to rural living as elaborated upon in Policy XA5.h.

### UCESI

[20] The recommended extensions and additions are supported by UCESI. Mr Haworth explains that they reflect areas where his analysis (reported in the map he produced in evidence for Decision 2.2) reveals development pressures.<sup>9</sup> He records that UCESI supports the inclusion in the PAs of areas around the township of Hāwea Flat (where there are several developments consented), the particularly sensitive landscape in the Maungawera Valley (which has also seen recent development pressure) and land to the west of SH6 on the approaches to the township of Hāwea. UCESI also supports the other recommended changes to PA boundaries.

[21] UCESI seeks that the Upper Clutha RCL VIFs apply also to so-termed “Non-Priority Areas”. We understand that UCESI’s request may pertain to an agreement reached with QLDC for the discontinuance of UCESI’s High Court appeal against Decision 2.2.<sup>10</sup> That agreement is not before the court. Furthermore, bearing in mind that the High Court appeal has been discontinued, it is not appropriate that we revisit our findings in Decision 2.2.

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<sup>8</sup> Plan Provisions JWS dated 29 October 2020 at [58].

<sup>9</sup> Supplementary submissions for UCESI dated 17 December 2021 at [51].

<sup>10</sup> Supplementary submissions for UCESI dated 17 December 2021 at [5].

Dr Cossens

[22] Dr Cossens characterises UCESI's request as inappropriate re-litigation of those findings.<sup>11</sup>

QLDC

[23] QLDC accepts that the JWS recommends extending the Halliday Road/Corbridge RCL PA so as to capture the entire landscape character area along the river escarpment.<sup>12</sup> Counsel explains this was initially excluded because this area is affected by the Wanaka Airport Outer Control Boundary which prohibits Activities Sensitive to Aircraft Noise (Rule 21.4.27).

[24] QLDC opposes the inclusion of a large part of the area within the JWS recommended Hāwea Flat RCL.<sup>13</sup> Counsel explains how this is regulated by Ch 22 Rural Residential and Rural Lifestyle Zones and falls outside the direction to identify PAs in the Upper Clutha RCL for the Rural Zone.

Discussion

[25] We have explained why we decline UCESI's request to extend the Upper Clutha RCL VIF to so-termed 'Non-Priority Areas'.

[26] In view of the concerns expressed by QLDC, we find it would not be appropriate to adopt the experts' recommendation to list Hāwea Flat RCL as an Upper Clutha Basin RCL PA. We accept the experts' recommendations in all other respects.

[27] As for the ONF/L PAs, we find that their listing should be accompanied by mapping (either incorporated into a provision in Ch 3 or by reference to an

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<sup>11</sup> Supplementary submissions for Dr Cossens dated 18 December 2020 at [26].

<sup>12</sup> Supplementary submissions for QLDC dated 18 December 2020 at [5.1]-[5.3].

<sup>13</sup> Supplementary submissions for QLDC dated 18 December 2020 at [5.4]-[5.5].

accessible QLDC file). Directions are made for QLDC to report back on its election.

[28] In the meantime, to convey the substance of our interim determination on this issue, we include in Annexure 1 a SP XA4 revised as follows:

Identify in Schedule 21.23 the following Rural Zone Priority Areas within the Upper Clutha Rural Character Landscapes [shown in the maps in 3.3.37 [or] shown on maps held on [QLDC referenced file]]:

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

***SPs XA3 and XA6 – date(s) for related Plan changes***

[29] The Plan Provisions JWS recommends SPs XA3 and XA6 as policies giving direction as to the date(s) by which plan change(s) would be undertaken in implementation of proposed SPs XA1, XA2, XA4 and XA5. The recommended drafting is materially:

The Council shall amend the District Plan by [insert date] to implement Policies [XA1 and XA2/XA4 and XA5].

[30] QLDC submits that it would be more efficient and logical to progress the plan change(s) concurrently. It proposes that this be specified as March 2022 for both the ONF/L and Upper Clutha Basin RCL Priority Areas.<sup>14</sup>

[31] No other party makes submissions on this issue.

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<sup>14</sup> Supplementary submissions for QLDC dated 18 December 2020 at [7].

*Discussion*

[32] We accept QLDC’s reasons for that date and approach. Hence, recommended SPs XA3 and XA6 are to be replaced by a single SP (the numbering of which will be assigned in due course). As a matter of drafting refinement, the policy is to refer to a date by which QLDC would notify a plan change to amend the Plan. In essence, that is an exercise of QLDC’s statutory function. By contrast, the words “shall amend the District Plan” do not clearly acknowledge that Plan amendment can encompass matters not within that function, such as determinations on appeal.

[33] As the policy needs to be clear as to when the direction is triggered, we have specified this as 31 March 2022 (given QLDC proposes March 2022).

[34] Hence, to convey the substance of our determination on this issue, we include in Annexure 1 the following amended SP:

The Council shall ~~amend~~ notify a proposed change to the District Plan by 31 March 2022 to implement SPs XA1, XA2, XA4 and XA5.

***XA2 and XA5 and Ch 21 – “attributes and values” of ONF/L Priority Areas and Upper Clutha RCL Priority Areas***

*Introduction*

[35] The Plan Provisions JWS recommends Ch 3 Policies XA2 and XA5 in similar terms. Each is referenced to Ch 21 as follows:

Describe in Schedule 21.22 the landscape attributes and values, as elaborated upon in 21.21.1.3....

Describe in Schedule 21.23 the landscape attributes and values as elaborated upon in 21.21.1.3... .

[36] The Plan Provisions JWS offers the following explanation:<sup>15</sup>

As part of the conferencing ... , the participants discussed whether and how a list of the values and attributes requiring consideration as part of a landscape assessment would be incorporated into the [Values Identification Frameworks (VIF)]. It was agreed that the Landscape Assessment Matters in part 21.21 ... Rural Zone provide a sound basis for undertaking an assessment of landscape attributes and it would be efficient for the VIF to cross reference these existing provisions.  
...

[37] One of the questions the court posed in response to the Plan Provisions JWS was:<sup>16</sup>

In the Values Identification Framework SPs the schedules for ONF/Ls and RCLs are to describe 'the landscape attributes and values as elaborated on in 21.21.1.3'. Should the provisions of 21.21.1.3 (including those amendments proposed in the JWS) be included in an SP (or two SPs)? What are the views of the parties on the proposed amendments?

[38] As noted, the Plan Provisions JWS also recommends a set of related Ch 3 provisions. Further, it recommends several changes to the wording of assessment matters in Ch 21. We discuss all matters together.

### *Submissions*

#### QLDC

[39] QLDC supports the drafting approach recommended in the Plan Provisions JWS.<sup>17</sup> It points out that the alternative of a self-contained XA2 would be an unhelpful duplication of the Ch 21 provision. It also considers the content is better located in the Rural Zone chapter. It submits that this better aligns with

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<sup>15</sup> Plan Provisions JWS dated 29 October 2020 at [15].

<sup>16</sup> Minute re Topic 2 dated 7 December 2020 at [5](b).

<sup>17</sup> Supplementary submissions for QLDC dated 18 December 2020 at [4.3]-[4.5].

the ‘Interpretation and Application’ section of Ch 3, referring to Clause 3.1B.1 (confirmed in Decision 2.2).<sup>18</sup>

[40] QLDC supports what the Plan Provisions JWS recommends by way of amendment to the assessment matters in r 21.21. Not all Topic 18 parties are engaged with Topic 2.<sup>19</sup> It invites the court to withhold from formally determining matters concerning proposed SP XA2 for the time being. By way of context, following court-facilitated mediation, joint memoranda have been filed by the parties to Topic 18 (including QLDC). These seek the partial determination of Topic 18 appeal points by consent order.<sup>20</sup>

### ORC

[41] ORC does not agree that Ch 21 and Sch 21.23 should serve to describe and elaborate on ONF/L landscape attributes and values.

[42] That is for several reasons.<sup>21</sup> The provisions are for the implementation of s6(b), RMA, as a matter of national importance of particular significance to Queenstown Lakes district. Furthermore, the proposed Otago Regional Policy Statement (‘RPS’)<sup>22</sup> gives direction to identify areas and values of ONF/Ls using the attributes in its Sch 3. Within the PDP, Ch 3 itself emphasises the strategic priority of protecting ONF/Ls (as do related provisions in Ch 6). Further, ORC considers that ONF/Ls may not be in the Rural Zone which is the subject of Ch 21.

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<sup>18</sup> We observe that 3.1B.2, as confirmed in Decision 2.2, is also relevant. It commences: “For the purposes of plan implementation (including in the determination of resource applications and notices of requirement): a. The Strategic Objectives and Strategic Policies in this Chapter may provide guidance on what the related objectives and policies in other chapters of the Plan are seeking to achieve in relation to the Strategic Issues: ...”.

<sup>19</sup> Supplementary submissions for QLDC dated 18 December 2020 at [4.8].

<sup>20</sup> Joint memoranda seeking consent orders, dated 19 December 2019, 20 December 2019 and 12 June 2020.

<sup>21</sup> Supplementary submissions for ORC dated 18 December 2020 at [11].

<sup>22</sup> Partially operative Otago Regional Policy Statement 2019.

[43] Therefore, ORC submits that a better approach would be to have the substance of relevant assessment matters in 21.21.1.3 expressed as a strategic policy or policies.<sup>23</sup>

[44] ORC says that it does not oppose the substance of what the Plan Provisions JWS recommends by way of refinements to the assessment matters in 21.21.1.3. However, like QLDC, it points out that the assessment matters in Ch 21 cannot be treated as resolved yet.

### UCESI

[45] UCESI disagrees with the position put forward by QLDC.<sup>24</sup> It sees Chs 3, 6 and 21 as inextricably linked. It submits that, consequential upon Decision 2.2, there is a need to make significant amendments to the Ch 21 assessment matters beyond those recommended in the Plan Provisions JWS.

[46] UCESI submits that the DV's Ch 21 assessment matters are not fit for purpose. By way of example, it notes that "capacity" does not appear in the assessment matters. It submits there is a lack of any "measurable spatial limits".<sup>25</sup> It seeks an introductory statement/explanatory note in Ch 21 to make a clear distinction between Priority Areas and Non-Priority Areas in the Upper Clutha Basin. On these and other issues where UCESI considers changes to Ch 21 are needed, consequential on the court's decisions, the Society seeks an opportunity to be heard and present evidence on the Topic 18 Rural Zone subtopic 7 assessment matters.

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<sup>23</sup> Supplementary submissions for ORC dated 18 December 2020 at [12].

<sup>24</sup> QLDC's submissions were filed later than UCESI's but UCESI refers to email correspondence from QLDC dated 15 December 2020.

<sup>25</sup> Supplementary submissions for UCESI dated 17 December 2020 at [43].

*Discussion*XA2, XA5 and Ch 21

[47] We are satisfied we can safely determine the expression of SPs XA2 and XA5, including their relationship to Ch 21 at this time. Doing so does not impinge upon the rights and interests of parties to Topic 18. It is important that we determine these matters now so as to ensure continued progress towards resolution of the PDP appeals. However, except as we set out, we leave aside determination of the substantive content of relevant Ch 21 provisions.

[48] ORC properly points out the significant priority that is to be accorded to ONF/L attributes and values in Queenstown Lakes District. These matters are traversed in some detail in our Topic 2 decisions to date. In essence, that priority arises by reason of s6(b), the RPS,<sup>26</sup> the very large proportion of the District's land area with ONF/L notation, and the significant related issues of social, cultural and economic wellbeing. That is not simply for people and communities of the District. Rather, the District's ONF/L resources are also of regional and national significance.

[49] Under RPS Pol 3.2.3, the identification of areas and values of ONF/Ls is to be by use of the attributes in RPS Sch 3. Sch 3 sets out criteria for the identification of the "biophysical", "sensory" and "associative" attributes of ONF/Ls. We consider direction on those matters ought to be in Ch 3, not Ch 21 (subject to the minor updating from "biophysical" to "physical").

[50] SP XA4 concerns the Upper Clutha RCL Priority Areas, not s6(b) RMA landscapes. Even so, the consistent approach should be to put relevant strategic directions in Ch 3 not Ch 21.

[51] Those changes involve a need to amend SPs XA4 and XA5 as set out at

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<sup>26</sup> Partially operative Otago Regional Policy Statement 2019.



[67]. This includes removal of the words “as elaborated upon in 21.21.1.3”. Consequential changes will be needed, in due course, to assessment matter 21.21.1.3. However, we leave that undetermined at this stage, given our directions on related processes for the determination of Ch 21 (including in regard to Topic 18).

[52] The net result is as follows:

- (a) SPs XA1 and XA4 serve the strategic purpose of identifying the ONF/L and Upper Clutha RCL Priority Areas for the application of the Values Identification Framework plan change processes;
- (b) SPs XA2 and XA5 serve a related strategic purpose of directing that the landscape attributes and values for each individual Priority Area be described in the PDP (as well as the landscape capacity of each Priority Area of the Upper Clutha RCL); but
- (c) Schs 21.22 and 21.23 serve a related implementation purpose of giving description to landscape attributes and values of Priority Areas (and of the landscape character of Upper Clutha RCL Priority Areas and the relationship of those Priority Areas to ONF/Ls).

[53] Furthermore, the relevant strategic directions in Ch 3 should not be confined to apply only to Priority Areas and the Values Identification Framework. They are also to be applied to the landscape assessment methodology that is the subject of the new SP XB1. Otherwise, there would be a policy gap, particularly in circumstances where there is no policy requiring the application of Values Identification Frameworks and schedules in the PDP.

[54] As for the drafting offered in the Plan Provisions JWS, we note two further points of detail.

[55] Firstly we find Plan Provisions JWS’s XA5.i. (i.e. “potential landscape and visual amenity enhancement opportunities and benefits”) unnecessary and inappropriate. The PDP requires “maintenance” of landscape character, not

enhancement. The sub-clause appears to be the only place referring to “visual amenity”. Moreover, the reference in the stem of the policy to “landscape capacity” appears sufficient, including for the consideration of circumstances where it may be appropriate to consider opportunities and benefits.

[56] Therefore we have not included XA5.i. in the Annexure.

[57] Secondly, a consistent drafting style is to be applied to any expression of defined terms. For example, we suggest ‘rural living’ in (now) XA2A.c.xii., XA5A.g.xii. and XC2.d.xi. be re-expressed as ‘Rural Living’ given it is a defined term. Directions are made to QLDC to check the drafting and report on any tidy up refinements required.

#### Remaining Ch 21 recommendations

[58] As noted, we have generally reserved determination of any associated amendments to the Ch 21 assessment matters.

[59] There is a narrow matter concerning Ch 21 that we can safely determine now.<sup>27</sup>

[60] It concerns the recommendation to delete the following sentence below the heading to 21.21.1:

The assessment matters set out below are derived from Policies 3.3.30, 6.3.10 and 6.3.12 to 6.3.18 inclusive.

[61] Clearly, the sentence is unnecessary. It is potentially confusing and outdated in view of our Topic 2 decisions to date.

[62] As for the remainder of Ch 21, we find force in UCESI’s submission as to

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<sup>27</sup> This wording arises from the agreed ‘in principle’ amendments reached on Topic 18 Sub-topic 7 mediations which took place in January and February 2020.

the need for further amendments beyond those recommended in the Plan Provisions JWS in order to ensure proper alignment with Decision 2.2. One dimension of that is to ensure that, as rules, the assessment matters help achieve related objectives and policies (RMA, s76). That includes the related strategic objectives and policies of Chs 3 and 6. Furthermore, proper alignment is important for the overall integrity and coherence of the Plan and its effective administration.

[63] We have the following questions at this stage, subject to directions to allow for supplementary submissions from QLDC and all parties to Topics 2 and 18:

- (a) how do the assessment matters in 21.21 relate to the Values Identification Frameworks and Schedules, and the Landscape Assessment Methodology and the objectives and policies of Chs 3 and 6?
- (b) with the possible exception of 21.21.1.2 on existing vegetation (with its limitation on the application of the permitted baseline), do any of the assessment matters continue to fulfil any resource management purpose (i.e. one that does not simply duplicate what is already provided for)?

[64] We acknowledge that supplementary submissions may throw light on the concerns we have noted on this preliminary basis.

[65] As the directions provide, we will then consider what appropriate further procedural steps may be called for before we make final determinations. That is both for these Topic 2 matters and the related substance of the various consent memoranda for Topic 18. It may be, for example, that a form of hearing would assist on these matters. It is likely that a first step would be to convene a pre-hearing conference if the court considers such a further form of hearing may assist.

[66] In addition, we consider there is a need for a new SP XXXX to send a stronger signal to inform the VIFs as well as the landscape assessment methodologies SPs. Our new policy closely reflects RPS Sch 3 and Ch 21 (also

taking into account the amendments suggested to Ch 21 by the Plan Provisions JWS).

*Outcome for SP XA2 and SP XA5 and related directions*

[67] The following drafting reflects our findings on these matters and for giving effect to Decision 2.2:

SP XA2 For Outstanding Natural Features and Outstanding Natural Landscapes Priority Areas, according to SP XA2A, describe in Schedule 21.22 at an appropriate landscape scale:

- a. the landscape attributes (physical, sensory and associative);
- b. the landscape values; and
- c. the related landscape capacity.

SP XA2A To achieve SP XA2 for each Priority Area:

- a. identify the key physical, sensory and associative attributes that contribute to the values of the feature or landscape that are to be protected;
- b. describe in accordance with SP XXXX, and rate those attributes; and
- c. assess and record the related landscape capacity for subdivision, use and development activities including but not limited to:
  - i. commercial recreational activities;
  - ii. visitor accommodation and tourism related activities;
  - iii. urban expansions;
  - iv. intensive agriculture;
  - v. earthworks;
  - vi. farm buildings;
  - vii. mineral extraction;
  - viii. transport infrastructure;
  - ix. utilities and regionally significant infrastructure;
  - x. renewable energy generation;
  - xi. forestry;

xii. rural living;

SP XA5 For the Upper Clutha Basin Rural Zone Rural Character Landscape Priority Areas, according to SP XA5A, describe in Schedule 21.23 at an appropriate landscape scale:

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

SP XA5A To achieve SP XA5 for each Priority Area:

- a. identify and describe key public routes and viewpoints both within and in proximity to the Priority Area (including waterbodies, roads, walkways and cycleways);
- b. identify the key physical, sensory and associative attributes that contribute to the landscape character and visual amenity values of the Priority Area;
- c. describe in accordance with SP XXXX and rate those attributes;
- d. assess and record the relationship between the Priority Area and the wider Rural Character Landscape context;
- e. assess and record the relationship between the Priority Area and the Outstanding Natural Features within the Upper Clutha Basin;
- f. assess and record the relationship between the Priority Area and the Outstanding Natural Landscapes that frame the Upper Clutha Basin; and
- g. assess and record the related landscape capacity for subdivision, use and development activities including but not limited to:
  - i. commercial recreational activities;
  - ii. visitor accommodation and tourism related activities;
  - iii. urban expansions;
  - iv. intensive agriculture;
  - v. earthworks;
  - vi. farm buildings;

- vii. mineral extraction;
- viii. transport infrastructure;
- ix. utilities and regionally significant infrastructure;
- x. renewable energy generation;
- xi. forestry;
- xii. rural living.

SP XXXX In applying the Strategic Objectives and Strategic Policies on landscape values and related landscape capacity of Outstanding Natural Features, Outstanding Natural Landscapes and Rural Character Landscapes, including the Values Identification Frameworks in SP XA2 and SP XA4 and the landscape assessment methodology in SP XB1, have regard to the following attributes:

- a. Physical attributes:
  - i. geology, geomorphology and topography;
  - ii. ecology;
  - iii. vegetation cover (exotic and indigenous);
  - iv. the presence of waterbodies including lakes, rivers, streams, wetlands, and their hydrology;
  - v. land use (including settlements, buildings and structures); and
- b. Sensory (or experiential) attributes:
  - i. legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;
  - ii. aesthetic values including memorability and naturalness;
  - iii. wild or scenic values;
  - iv. transient values including values at certain times of the day or year; and
- c. Associative attributes:
  - i. whether the attributes identified in (a) and (b) are shared and recognised;
  - ii. cultural and spiritual values for Tangata Whenua;

- iii. historical and heritage associations;
- iv. recreational values.

[68] This drafting is subject to directions. These require QLDC to clarify reference in XA2 and XA5 to “rural living” and enable supplementary submissions (including parties to Topic 18) on the substance of Ch 21 amendment matters.

***Recommended SOs 3.2.5.x and 3.2.5.xx, SPs 3.3.32x and 3.3.32y – direction pending scheduling and other matters***

[69] Decision 2.2 discusses the fact that it would be several years before Sch 1 plan changes could be completed such that the PDP would include schedules of ONF/L values and RCL character and values for the identified Priority Areas. Given that, it found that Ch 3 needed to give suitable direction on how subdivision and development should be assessed in the interim. Furthermore, it recognised that outside of identified Priority Areas, there would not be PDP schedules of ONF/L values and RCL character and values. Decision 2.2 included provisional drafting to address these matters and directed that this be considered at expert conferencing.

[70] The Plan Provisions JWS substantially adopt the court’s provisional drafting in its recommended SOs 3.2.5.x and 3.2.5.xx.

[71] We find the recommended drafting appropriate in giving effect to the findings in Decision 2.2 and confirm it for inclusion in the PDP accordingly.

[72] For SPs 3.3.32x and 3.3.32y, however, we have some amendments.

[73] The Plan Provisions JWS amended SP 3.3.32x to read:

In any Priority Area of any Rural Character Landscape whose landscape character and visual amenity values are identified in Schedule 21.232, ensure that new subdivision and development for the purposes of Rural Living:

- a. maintains ~~that the identified~~ landscape character;
- b. ~~maintains or~~ enhances ~~any the identified~~ visual amenity values ~~that Schedule 21.223 specifies to be enhanced~~; and
- c. ~~otherwise maintains those identified visual amenity values.~~

[74] We are concerned the revision could have unintended consequences and are not satisfied it is necessary. We have also added ‘and related landscape capacity’ for consistency.

[75] Accordingly, SP 3.3.32x will read:

In any Priority Area of any Rural Character Landscape whose landscape character and visual amenity values and related landscape capacity are identified in Schedule 21.223, ensure that new subdivision and development for the purposes of Rural Living:

- a. maintains that landscape character;
- b. enhances any visual amenity values that Schedule 21.223 specifies to be enhanced; and
- c. otherwise maintains those identified visual amenity values.

[76] For SP 3.3.32y, we broadly adopt the Plan Provisions JWS drafting with some tidying up relating to the inclusion of ‘the wider landscape context’. This SP will read:

In any Rural Character Landscape that is not a Priority Area, or is a Priority Area that has not achieved all of the requirements of SP 3.3.32x, do not allow new subdivision or development for the purposes of Rural Living except where:

- a. according to the methodology in SP 3.3.XB and having regard to the wider landscape context:
  - i. a landscape character area for assessment purposes is identified at an appropriate landscape scale, including by mapping;
  - ii. the landscape character and visual amenity values of that landscape character area are identified; and



- iii. the related landscape capacity of that landscape character area is assessed so as to soundly inform a determination that the requirements of SP 3.3.24 are met; and
- b. the approval of new subdivision or development for the purposes of Rural Living maintains the landscape character and maintains or enhances the visual amenity values identified in relation to that landscape character area and the wider landscape context.

***Recommended SP XA7 – role clarifying effect of Priority Areas***

[77] As part of the package of policies for the Values Identification Frameworks, the Plan Provisions JWS recommends a new SP XA7. This is to avoid any misinterpretation concerning the effect of Priority Areas.

[78] The Plan Provisions JWS proposes the following:

Where any Outstanding Natural Feature, part of an Outstanding Natural Landscape or a Rural Character Landscape is not identified in Schedules 21.22 or 21.23, the relevant area is of no less or more importance than the identified Priority Areas in terms of either landscape value, or visual amenity value, and is no less vulnerable to subdivision, use and development.

[79] Conceptually, we find this sound. In essence, Priority Areas acknowledge the inevitable resourcing prioritisation required in ensuring the District Plan properly responds to ss6(b) and 7(c). This is as discussed in Decision 2.2. The concept was never intended to accord a weighting for or against the values of particular ONF/Ls or RCLs.

[80] However, for greater clarity, we have revised the expression as follows:

Where any or any part of an Outstanding Natural Feature or an Outstanding Natural Landscape or a Rural Character Landscape is not identified as a Priority Area in Schedules 21.22 or 22.23, 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 any or any part of an Outstanding Natural Feature or Outstanding Natural Landscape;
  - ii. landscape character and visual amenity values, in the case of any or any part of a Rural Character Landscape; or
- b. is more or less vulnerable to subdivision, use and development.

[81] Subject to that refinement, we find this provision appropriate for inclusion in the PDP.

### **Recommended SPs XB1 and XB2 – ONF/L and RCL landscape assessment methodology (methodologies)**

#### *Introduction*

[82] This set of recommended policies responds to findings in Decision 2.2 that the Values Identification Frameworks (for ONF/L and Upper Clutha RCL Priority Areas) “should prescribe landscape assessment methodology that reflects professional good practice in landscape assessment”.<sup>28</sup>

[83] The Plan Provisions JWS explains the roles of each recommended policy (and an associated Advice Note) as follows:<sup>29</sup>

- (a) Pol XB1 provides guidance as to the landscape assessment methodology for any area where landscape matters are at issue (i.e. applicable to all Rural Zones, both within the ONF/L and the RCL, and Exception Zones). It directs that landscape assessments be undertaken in accordance with best practice landscape methodology. This is to describe landscape values and landscape capacity and apply a consistent adverse effects’ rating scale. The evaluation processes and methodology in its limbs (a) to (g) are to be applied;
- (b) the associated Advice Note refers to the QLDC Landscape

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<sup>28</sup> Decision 2.2 at [169] and [170]-[173].

<sup>29</sup> Plan Provisions JWS dated 29 October 2020 at [65]-[67].

Assessment Guidelines (‘Guidelines’). The Guidelines are to provide assistance in the application of best practice landscape methodology and should be considered as part of implementing Pol 3.3.XB. The Guidelines were initially provided as part of Ms Gilbert’s supplementary evidence of 29 April 2019;

- (c) Pol XB2 would provide guidance as to when Pol 3.3.XB is to be implemented. It expresses an intention that the prescribed assessment methodology is to be applied in all plan changes. As for resource consent applications and designation processes, it would also apply but subject to a discretion to dispense with “a comprehensive assessment” for “discretely located small scale activities”. It is explained that this is in recognition of transaction costs being potentially out of proportion to the actual and potential adverse effects on landscape values.

[84] As an initial response to these recommendations, a Minute was issued posing several questions for the purposes of supplementary submissions.<sup>30</sup> Those included the following concerning Pol XB1 and the associated Advice Note, and Pol XB2:

- (a) regarding Pol XB1 (‘XB1 Questions’):
  - (i) does the proposed landscape methodology provide sufficient and appropriate direction for applications and notices of requirement for cases where there are identified landscape values and capacity in Sch 21.22 (for ONF/Ls) or Sch 21.23 (for RCLs), and cases where there are not?
- (b) regarding the Advice Note (‘Advice Note Questions’):
  - (i) are there now finalised guidelines and are they in line with the Ch 3 SOs and SPs in Decision 2.2, and the approach in the SPs proposed in the JWS?

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<sup>30</sup> Minute re ‘Topic 2 dated 7 December 2020.

- (ii) should such a specific reference be included if there are no finalised guidelines available for consideration by the court?
- (c) regarding Pol XB2 ('XB2 Questions'):
  - (i) is confining the landscape assessment methodology to discretionary or non-complying activities appropriate in achieving the outcomes sought in the Ch 3 SOs and SPs?
  - (ii) are there activities in the restricted discretionary category that may need a comprehensive assessment to inform the assessment of effects, particularly in the absence of the identification of landscape values and capacity in Schedules 21.22 and 21.23?
  - (iii) what is intended by the directive drafting of Policy XB2c – 'Discretion is to be applied' to dispense with the requirement for an application to undertake a comprehensive assessment for discretely located small scale activities?
  - (iv) is this an appropriate approach?

*Submissions in response to the court's questions*

*QLDC*

XB1 questions and Advice Note questions

[85] QLDC answers each of these questions 'yes'.<sup>31</sup>

[86] It submits that the proposed landscape methodology in Pol XB1 provides sufficient and appropriate direction for applications and notices of requirement. That is both for cases where landscape values and capacity are identified in Sch 21.22 (for ONF/Ls) or Sch 21.23 (for RCLs) and where those matters are not identified.

[87] Further, QLDC points out that XB1 is drafted so as to ensure that all of the

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<sup>31</sup> Supplementary submissions for QLDC dated 18 December 2020 at [4.15]-[4.17].

matters in (a) to (g) will be considered. It supports this approach as ensuring consistency in methodology whilst also allowing for differences depending on landscape context.

[88] Counsel notes that QLDC’s Landscape Assessment Guidelines will provide additional guidance relative to how the matters in (a) to (g) are to be assessed.

[89] QLDC has not sought to ‘finalise’ the Guidelines as they remain the subject of these proceedings.<sup>32</sup> However, it provides an update of the draft Guidelines that were attached to Ms Gilbert’s supplementary evidence for Decision 2.2.<sup>33</sup> The revision is in light of determinations made in Decision 2.2 concerning relevant Ch 3 objectives and policies. The update also follows QLDC’s consideration of the Plan Provisions JWS and the latest New Zealand Institute of Landscape Architects (‘NZILA’) draft guidelines. Counsel reports that the NZILA guidelines have been peer reviewed and are being workshopped with members in anticipation that they will be put up to the AGM for endorsement in May 2021.

[90] QLDC supports retention of the Advice Note as the most appropriate way to reference its Guidelines and draw attention to their availability on QLDC’s website. Counsel submits that, as a technique, use of an Advice Note reference means that the Guidelines remain a “living document” in the sense that updates can be incorporated.<sup>34</sup> For example, this may be to ensure alignment with new approaches recommended by NZILA over time. Should the court consider it necessary, QLDC seeks endorsement of its updated Guidelines as appropriate.

### XB2 questions

[91] QLDC says it is appropriate to include restricted discretionary activities in Pol XB2(b) because “discretion can be applied to dispense with the requirement

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<sup>32</sup> Supplementary submissions for QLDC dated 18 December 2020 at [4.18].

<sup>33</sup> Supplementary submissions for QLDC dated 18 December 2020, Appendix A.

<sup>34</sup> Supplementary submissions for QLDC dated 18 December 2020 at [4.23].

for applications to undertake comprehensive landscape assessments (via Policy XB2(c))”.<sup>35</sup> Counsel submits that this would “appropriately achieve the outcomes sought in the Chapter 3 SOs and SPs, which do not distinguish at a policy level between activity types”.<sup>36</sup>

[92] Counsel explains that there are a number of restricted discretionary activities that could generate significant effects that would “engage with the landscape related policies in the relevant zone provisions, and potentially those in Chapter 3 (SOs and SPs), and the Chapter 6 policies”.<sup>37</sup> In the Rural Zone, these include Passenger Lift Systems, Terminal Buildings and roads outside Ski Area Sub-Zones. There are also several rules in Ch 21 that, if triggered, would require restricted discretionary activity consent.

[93] As for the words “discretion is to be applied” in XB2.c, counsel explains that the “driver” is the Ch 21 provisions that trigger discretionary or restricted discretionary activity status even for “relatively minor non-compliances/infringements”.<sup>38</sup> To clarify the intention, counsel proposes that the words be changed to “discretion is to be applied by the Council”.

ORC

#### XB1 questions and Advice Note questions

[94] Counsel points to the inherent uncertainty in the phrase “best practice landscape methodology”.<sup>39</sup> For example, as things stand, there is a risk of different “best practice landscape methodology” being applied.

[95] ORC has related concerns about the substance of the proposed Advice

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<sup>35</sup> Supplementary submissions for QLDC dated 18 December 2020 at [4.25].

<sup>36</sup> Supplementary submissions for QLDC dated 18 December 2020 at [4.25].

<sup>37</sup> Supplementary submissions for QLDC dated 18 December 2020 at [4.26].

<sup>38</sup> Supplementary submissions for QLDC dated 18 December 2020 at [4.30].

<sup>39</sup> Supplementary submissions for ORC dated 18 December 2020 at [15].

Note.<sup>40</sup> Counsel submits that the preferable position would be to have QLDC’s Guidelines in final form and specifically directed to the achievement of the District Plan’s objectives and policies. Pol XB1 and an Advice Note could then operate on a basis that the Guidelines were used exclusively.

### XB2 questions

[96] ORC submits that it is not appropriate to confine the landscape methodology to discretionary and non-complying activities. The methodology should apply to all activities which require resource consent, other than controlled activities.

[97] As for XB2.c, ORC describes this “dispensing power” as “potentially problematic”.<sup>41</sup> That is in the sense that it would set up “a tension which should be avoided” given the resources in issue and their significance.<sup>42</sup> Counsel submits that the dispensing power is also unnecessary because of the thresholds in XB2.a and .b. As for plan changes (addressed in XB2.a), counsel submits that a landscape assessment should always be undertaken. As for XB2.b, counsel points to the threshold “where landscape effects are at issue” and submits that a landscape assessment is invariably warranted in such cases.<sup>43</sup> By contrast, the kinds of breaches identified by QLDC as triggering a discretionary or restricted discretionary application would not put landscape effects in issue. Hence, there would be no need for the dispensing power contemplated in XB2.c.

### *Discussion*

#### *Pol XB1 and the Advice Note and the draft QLDC Guidelines*

[98] We start with the QLDC Guidelines. The present state of the Guidelines

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<sup>40</sup> Supplementary submissions for ORC dated 18 December 2020 at [20].

<sup>41</sup> Supplementary submissions for ORC dated 18 December 2020 at [25].

<sup>42</sup> Supplementary submissions for ORC dated 18 December 2020 at [26].

<sup>43</sup> Supplementary submissions for ORC dated 18 December 2020 at [30].

informs consideration of whether the Advice Note has an appropriate place in relation to Pol XB1. Furthermore, the place of the Guidelines and Advice Note bear upon our consideration of the substantive content of Pol XB1.

### The Guidelines

[99] We make these observations on the basis of QLDC’s invitation to do so, mindful that the substance of Guidelines is ultimately a matter for QLDC rather than for our determination or direction. In this context, the issues for our determination concerns the place, or otherwise, of the Advice Note referencing Guidelines and the related recommended Pol XB1.

[100] Landscape assessment involves identifying landscape attributes to help inform the identification of landscape values and accounting for landscape capacity and cumulative effects. Identification of those values is essential for achieving related objective and policies (as to protection for ONF/Ls and maintenance or enhanced for RCLs).

[101] Sections 3 and 5 of the Guidelines are concerned with the identification of landscape attributes and related values. As for attributes, we note the updates to achieve better alignment with NZILA’s *Landscape Assessment Guidelines*. These include replacement of references to “biophysical attributes” with “physical attributes”. In some respects, the draft Guidelines respond to Decision 2.2.

[102] We acknowledge that the Guidelines include several updates in response to Decision 2.2. Notably, in Section 4 (on “relevant statutory context”) reference is made to the ONF/L and RCL schedules directed by Decision 2.2. In the same section, reference has been added to “or is adjacent to” ONF/L or RCL overlays, picking up on related findings in Decision 2.2.

[103] Overall, however, we find the Guidelines fail to properly align with Decision 2.2 in terms of key objectives and policies. These concern outcomes for ONF/Ls and RCLs.



[104] Specifically, the objectives and policies determined by Decision 2.2 refer to the protection of the landscape values of ONF/Ls and the maintenance of landscape character and the maintenance or enhancement of visual amenity values of RCLs. By contrast, the Guidelines appear to recommend a uniform methodology that does not clearly distinguish between ONF/Ls and RCLs in these terms. Rather, the overall emphasis is on an evaluation of landscape change, primarily in visual effects terms.

[105] There is a strong emphasis in the Guidelines on the intended role of visual effects' assessment in informing landscape assessment. For example, the Guidelines refer to "visual effects" as a "subset of landscape effects" (under Section 7, p 4). Various passages in the Guidelines appear to treat the assessment of landscape and visual effects as separate although linked procedures.

[106] Perhaps it would assist for the Guidelines to have a clearer statement to the effect that 'landscape' is not the same as 'visual amenity'.

[107] On the matter of landscape capacity, to absorb change and cumulative effects, the RMA defines "effect" to include "any cumulative effect which arises over time or in combination with other effects". In regard to landscape capacity, cumulative effects of relevance are those that arise over time through successive land developments.

[108] We note that the Guidelines usefully include a definition of "landscape capacity" that in many respects responds to the findings in Decision 2.2 on this matter. Further, the theme of cumulative effects is developed in the passage below that definition.

[109] We note the use of a 'benchmark' in the Guideline's discussion of cumulative effects. The Guidelines interpret the concept of benchmark to include the character envisaged in the District Plan, or the 'capacity' of a landscape to accommodate subdivision or development before compromising its valued characteristics and qualities. However, we are concerned that the Guidelines do

not allow for effective benchmarks, in a time-related sense, of cumulative adverse change to landscapes. Part of that relates to the assumption in the Guidelines that anything consented (but not necessarily implemented) is to be treated as part of the existing environment and therefore excluded from assessment of cumulative effects. That assumption is capable of being qualified to better respond to our findings in Decision 2.2. Furthermore, the Guidelines do not state when the benchmark date is to be established.

[110] We also consider the Guidelines need to be more explicit in describing the PDP's expected outcomes for cumulative effects' assessment. This would usefully refer to the relevant objectives and policies and, in due course, the ONF/L and RCL schedules. That is in the sense that landscape assessments need to be effective in ensuring that the cumulative change that may be associated with one or more increments of development (therefore occurring over time) remains within tolerable expressed thresholds linked to the achievement of related PDP objectives and policies.

[111] Decision 2.2 determined that Ch 3 needed to give suitable direction on how subdivision and development should be assessed, a finding which is also relevant to the assessment of associated cumulative effects. We have addressed the Ch 3 provisions earlier in this decision at [69] to [76]. Recalling that SP 3.3.32y now incorporates the concepts of 'landscape character area' and 'wider landscape context' when applying the assessment methodology in SP 3.3XB, we take the view that it is critical that corresponding policy wording in Ch 6 aligns properly with these requirements, and also with the requirement to incorporate a benchmark date. Otherwise, there is a risk that Ch 6 provisions may undermine the intentions of Ch 3. As we discuss later in this decision on Ch 6 matters, these consequential amendments apply particularly to Pol 6.3.4.3 on assessing the potential for adverse cumulative effects.

[112] Those observations on how the Guidelines could be improved are not intended as a criticism of the authors of the Guidelines. Indeed, we found it very

useful to have been provided with the work-in-progress drafts in considering the new strategic policies and how they might be implemented in practice. We acknowledge Ms Gilbert's very helpful related evidence. In essence, this input has materially assisted in the refinement of the drafting of the Ch 3 policies on landscape assessment methodology.

[113] Rather, our observations inform our determination of what, if any, reference should be made to them in XB1 or any related Advice Note.

[114] As QLDC itself acknowledges, further work is needed before the Guidelines would be suitably promulgated as final. Furthermore, we note the continuing work being undertaken by NZILA on national guidelines for its members. Inherently, therefore, the Guidelines need to remain draft until the NZILA guidelines are final, so that effective alignment can be maintained.

[115] In their current state, we find the Guidelines are not fit for the purpose of assisting to achieve related PDP objectives and policies. Rather, we consider that they could potentially undermine what those provisions seek for landscape matters.

*Recommended SP XB1 and Advice Note*

[116] Given those findings, we determine that it is not appropriate to include the Advice Note in its current form.

[117] That is not to say that there is not a place for QLDC Guidelines. Indeed, provision of suitable guidelines is an appropriate exercise of QLDC's role in the administration and enforcement of the PDP. An advantage in an Advice Note approach to the referencing of any appropriate QLDC Guidelines is that it can allow flexibility for the Guidelines to be updated. That flexibility is important, for example, for maintaining consistency with evolving best practice methodology including as led by NZILA.

[118] However, it is critical that any guidelines are clearly aligned with the PDP's

relevant objectives and policies on landscape. Because we find the Guidelines are not so aligned, we find the Advice Note as proposed is not appropriate in its current form.

[119] We agree with ORC that it would be preferable for the PDP to reference Guidelines that are in final form and are duly aligned to related objectives and policies. At this stage, it is sufficient to go so far as to recognise this approach is available to QLDC in the exercise of its planning authority role. We see advantages in a revised Advice Note to accompany SP XB1 that recognises the ability of QLDC to promulgate and update guidelines that provide assistance in the application of best practice landscape assessment methodologies by publication on the QLDC website (with a URL link). That does not mean that QLDC could not amend the PDP to give any such guidelines specific status in decision-making in the future.

[120] As for the reference to “best practice landscape methodology”, our revised SP XB1 takes account of our related finding that Ch 3 should include a related definition.

[121] In terms of content, recommended SP XB1 is much wordier than other SPs. That is in itself undesirable in terms of the role of Ch 3 in giving strategic direction. Much of this bulk arises from the described “evaluation processes and methodology” in subclauses a–g. The drafting is unclear as to whether this schedule of matters is an exhaustive or inclusive one. The introductory words suggest it is exhaustive (i.e. “by applying the following evaluation processes and methodology”). Yet, the substance essentially reads in note form akin to a check list that can be expanded upon (or not rigidly applied). Moreover, we do not recall that any of the landscape or planning experts gave evidence that enables us to make any firm findings as to the efficacy and completeness of the prescribed approach. Nor does the prescribed approach appear to derive from the findings in Decision 2.2.

[122] Overall, we find that much of the substance of recommended subclauses a–g do not assist in ensuring a methodology of assessment that assists to achieve related policies. It is in the nature of information that may be better put in guidelines. Our revision to SP XB1 is in part to seek to rectify this by directing matters to the substance of what a landscape assessment methodology is to cover.

[123] Finally, we have considered the recommended SP XB1 and Advice Note in light of recommended SO 3.2.5.xx and SP 3.3.32y as those provisions link to SP XB1.

*Revised SP XB1 and Advice Note*

[124] Therefore, we find the most appropriate strategic policy on landscape assessment methodology (and related Advice Note) for achieving related objectives is as follows:

- SP XB1      Landscape assessments shall:
- a.      in the case of Outstanding Natural Features and Outstanding Natural Landscapes:
    - i.      identify landscape attributes and values; and
    - ii.     assess effects on those values and on related landscape capacity;
  - b.      in the case of Rural Character Landscapes:
    - i.      define a relevant landscape character area and its wider landscape context;
    - ii.     identify the landscape character and visual amenity values of that landscape character area and within its wider landscape context; and
    - iii.    assess effects on that character and those values and on related landscape capacity;
  - c.      in each case apply a consistent rating scale for attributes, values and effects.

Note: QLDC may, from time to time, promulgate and update guidelines that provide assistance in the application of best practice landscape assessment methodologies by publication on the QLDC website. Access will be via this link [*Add URL link.*]

*SP XB2*

[125] We now address what categories of RMA process the prescribed Landscape Assessment Methodology should be applied to and what, if any, discretion should be conferred to QLDC in applying it.

[126] Firstly, we deal with some drafting flaws in recommended SP XB2.

[127] The Plan Provisions JWS drafting of XB2.a. provides that:

The Landscape Assessment Methodology prescribed by Policy 3.3.XB is to be implemented when assessing ... any plan development, including plan changes affecting the rural environment.

[128] We understand that the reference to “plan development” derives from the experts’ thinking about the separate categories of RMA process. Conceptually, those include plan review, partial plan review and plan change processes. That contrasts with “plan implementation” (in XB2.b) which refers to processes such as consent applications or notices of requirement.

[129] However, there is an obvious danger in unnecessarily cluttering a policy with words. That is especially when their original purpose may be lost with time.

[130] We see no need for reference to either “plan development” or “plan implementation”. As for the different classes of “plan development”, we see it unnecessary to refer to anything other than plan change. Plan reviews, whether partial or full, should not be curtailed by a policy within the plan being reviewed. By contrast, as Ch 3 reflects in other respects, its objectives and policies are intended to guide and direct plan changes.

[131] In its construction, XB2.b is confusing in how it relates to XB2.a. In particular, that is evident by reading it in tandem with the words preceding XB2.a (which are meant to apply to both subclauses):

The Landscape Assessment Methodology prescribed by Policy 3.3.XB is to be implemented when assessing ... for plan implementation including resource consent applications or notices of requirement, means any discretionary or non-complying activity ...

[132] As noted, “plan implementation” is an unhelpful construct in XB2.b. We add that notices of requirement are not necessarily for plan implementation in any case, at least to the extent that they override plan rules. Rather, it is cleaner and sufficient to simply refer to the classes of resource management process to which this sub-clause applies.

[133] We agree with ORC that XB2.b. should be extended to apply to restricted discretionary activities. That is on the basis of the wide use of that activity status in the PDP and the risk of potential adverse effects. We recognise that breaching standards is a common threshold for restricted discretionary status. However, we find this does not outweigh the need for a landscape assessment to be undertaken in accordance with Policy XB1 if one is needed because landscape effects are at issue.

[134] For similar reasons, we agree with ORC that XB2.c serves no appropriate purpose.

[135] For those reasons, we find that it is appropriate and necessary to include a policy in Ch 3 that describes when the required Landscape Assessment Methodology is to be applied, but that the most appropriate expression of it is as follows:

The Landscape Assessment Methodology required by SP 3.3.XB is to be implemented when assessing:

- a. a proposed plan change affecting the rural environment;
- b. a resource consent application for the subdivision, use or development of land where:
  - i. the application is for a restricted discretionary, discretionary or non-complying activity; and
  - ii. the proposal is in relation to land within an Outstanding Natural Feature or Outstanding Natural Landscape or gives rise to landscape effects and is on land with Rural zoning; or
- c. a notice of requirement where the proposal is in relation to land within an Outstanding Natural Feature or Outstanding Natural Landscape or gives rise to landscape effects and is on land with Rural zoning; or
- d. a resource consent where the proposal (or part thereof) is in an Exception Zone in 3.1B.5 and gives rise to landscape effects on the receiving environment that includes an Outstanding Natural Feature or Outstanding Natural Landscape on land with Rural zoning outside that Exception Zone.

[136] We make related directions for this revised policy to be included in the PDP.

[137] For completeness, we reserve capacity for relevant aspects of that drafting to be reconsidered in the separate related Topic on regionally significant infrastructure.

### Other drafting issues

#### *Should the phrase “visual amenity values” be changed by deleting “visual”?*

[138] A long-established feature of the PDP is its use of the term “visual amenity values”. Those words are included in several Ch 3 provisions including several addressed or developed in Decision 2.2 (e.g. SO 3.2.5.2, 3.2.5.iv, 3.2.5.v and SPs 3.3.31x, 3.3.32x and 3.3.32y). The Plan Provisions JWS expresses a preference for deleting the word “visual”. That is in recognition of the “multi-sensory experience of landscapes”.<sup>44</sup>

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<sup>44</sup> Plan Provisions JWS dated 29 October 2020 at [23].



[139] However, the experts properly acknowledge that such a change would be wide-ranging and could well give rise to inconsistencies.

[140] In supplementary submissions, UCESI advocates for this recommendation and Dr Cossens opposes it. We do not need to traverse their arguments in any detail, as we are in no doubt that it would not be appropriate to take up the experts' recommendations. "Visual" is a qualifier to "amenity value" that has the substantive effect of narrowing the focus of relevance. The experts properly acknowledge the very large scale of any such change to the PDP and related risks of inconsistency. The court is aware of several chapters in the PDP, not before the court in appeals thus far, where the same words are used. As such, whilst the opinions of the landscape experts are noted, the court must also be mindful of the procedural fairness implications in such a change.

[141] Therefore, we decline to make this recommended change.

*Is reference to 'best practice' in the recommended drafting appropriate?*

[142] The court's 7 December 2020 Minute questioned experts' recommendation that reference be made to "best practice" in various draft PDP provisions. These include SO 3.2.5.v and 3.3.31X (concerning RCLs and some additional recommended provisions) and SO 3.3.29x (concerning ONF/L provisions) along with the Advice Note referred to above.

[143] Counsel for QLDC explains that the words are recommended with the support of Ms Gilbert and Ms Mellsop.<sup>45</sup> From their perspective, 'best practice' means an approach, process or method that is endorsed by the NZILA. More broadly, the phrase is intended to refer to an approach or process endorsed by landscape professionals. Notably, that includes the UK Landscape Institute Guidelines for Landscape and Visual Impact Assessment.

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<sup>45</sup> Supplementary submissions for QLDC dated 18 December 2020 at [4.1].

[144] ORC submits that the words would introduce undesirable uncertainty.<sup>46</sup> It offers two alternatives for addressing this. One is to remove the words altogether. Another is to add a definition of “best practice landscape assessment methodology”. However, counsel points out that a problem with the latter approach is that practice evolves.

[145] We find that it is desirable that various provisions give proper directions that best practice landscape assessment methodology be applied and make amendments to that effect.

[146] The risk of uncertainty may be reduced by including a simple definition in Ch 3, at 3.1B.7, as follows:

In this Chapter

...

- e. ‘Best practice landscape methodology’ in relation to the identification of landscape values or landscape capacity or their assessment includes a methodology produced or recommended by a reputable professional body for landscape architects.

### ***Rural Zone Landscape Monitoring***

[147] There is only SP XC2.a from the JWS to amend.<sup>47</sup> One change is to add reference to restricted discretionary activity status to better align with SOs and SPs. In addition, the reference to Ch 21 should be expanded to refer to Chs 3, 4 and 6 as Plan Provisions other than policies are also important. The provision is to read:

- (a) keeping records, including compiling photographs, gathering information and undertaking or commissioning research addressing resource consent decisions granted for restricted discretionary, discretionary and non-

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<sup>46</sup> Supplementary submissions for ORC dated 18 December 2020 at [5].

<sup>47</sup> Parties should also note have reordered d. for consistency but the content is unchanged.

complying activities, including evaluation of the commentary in these decisions to assess the implementation of the relevant provisions of Chapters 3, 4, 6 and 21...

***SO 3.2.5.v***

[148] The Plan Provisions JWS amended this SO to read:

In Rural Character Landscapes of the Upper Clutha Basin:

- a. Priority Areas of ~~Rural Zoned~~ Rural Character Landscapes are ~~identified~~ specified in Schedule 21.23, including by mapping; and
- b. associated landscape character and visual amenity values are identified.

[149] We consider the redrafting to include ‘specified’ in the Schedule confuses matters as that language is generally used in relation to values, while ‘identified’ is used for PAs. Therefore, we have deleted the words ‘including mapping’. We agree that ‘Rural Zoned’ can be deleted as all RCLs are on Rural Zoned land. The SO will read:

In Rural Character Landscapes of the Upper Clutha Basin:

- a. Priority Areas of ~~Rural Zoned~~ Rural Character Landscapes are identified; including by mapping; and
- b. associated landscape character and visual amenity values are identified.

***SP 3.3.29x and 3.3.31X***

[150] We broadly agree with and adopt the Plan Provisions JWS version of SPs 3.3.29x and 3.3.31X. We have added the phrase ‘otherwise through the landscape assessment methodology in SP 3.3.XB’ to both provisions. This is to provide better clarity to the approach to be applied before and after implementation of scheduling for the VIF. Provision a. for each of those SPs will now read:

~~for Priority Areas identified in Schedule 21.22, in accordance with the values identification framework in SP3.3.XA and otherwise through the landscape assessment methodology in SP3.3.XB and through best practice landscape assessment methodology where applicable and otherwise through assessment processes...~~

~~for Priority Areas of the Upper Clutha Basin, in Schedule 21.23,2 where applicable, in accordance with the values identification framework in SP 3.3.XA and otherwise through the landscape assessment methodology in SP3.3.XB and through best practice landscape assessment methodology otherwise through assessment processes...~~

### *Other amendments*

[151] We have added ‘related’ before the words ‘landscape capacity’ where relevant throughout the provisions. We have also added ‘for Priority Areas’ into two headings as tracked in Annexure 1 for clarity. Those changes are simply for better drafting consistency.

## **Part B – Chapter 6**

### **Background**

[152] In regard to Ch 6, QLDC responded to directions in Decision 2.2 in its memorandum of counsel of 11 May 2020. This included a version of Decision 2.2’s preliminary provisions marked up with QLDC’s recommended changes. We attach a further amended version to this decision as **Annexure 2**. Most of those are recommended as consequential on the court’s findings on the Ch 3 framework and/or assist to give greater clarity to the intention of the provisions but not to change the regulatory effect.<sup>48</sup> For most matters, the issues are narrow points of technical drafting. Before we deal with those matters, we address two issues of substance concerning the wording of particular policies:

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<sup>48</sup> QLDC memorandum dated 11 May 2020 at [3].

- (a) proposed Pol 6.3.1.3 and, in particular, whether this policy can and should include reference to what QLDC has loosely termed “Resort Zones”; and
- (b) proposed Pol 6.3.3.3 and whether this can and should be extended to ONFs.

***Should there be reference to ‘Resort Zones’ in Policy 6.3.1.3?***

[153] Decision 2.2 found the recommended Pol 6.3.1.3 generally appropriate subject to the court being satisfied there is scope for its inclusion.<sup>49</sup> Pol 6.3.1.3 would read:

6.3.1.3 Provide a separate regulatory regime for the Gibbston Valley (identified as the Gibbston Character Zone), Rural Residential Zone, Rural Lifestyle Zone, Resort Zones and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories and the policies of this chapter related to those categories do not apply unless otherwise stated. (3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.1A, 3.2.5.2B, 3.3.20 - 24, 3.3.32).

[154] Decision 2.6<sup>50</sup> pertains to similar policies for Ch 3, namely the so-termed ‘Exception Zone Framework’. The effect of the Ch 3 policies (3.1B.5 and 3.1B.6) is that, for some listed zones (or sub-zones), specified Ch 3 objectives and policies do not apply to:

the consideration or determination of any applications for any subdivision, use or development within any of the Exception Zones except insofar as the receiving environment includes an Outstanding Natural Landscape or Outstanding Natural Feature (or part thereof) that is outside the Exception Zone.

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<sup>49</sup> Decision 2.2 at [376], [377].

<sup>50</sup> *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2020] NZEnvC 159.

[155] A notable difference between recommended Pol 6.3.1.3 and SPs 3.1B.5 and 3.1B.6 is that the former includes reference to so-termed “Resort Zones” but the latter does not. Rather, the exclusions under SPs 3.1B.5 and 3.1B.6 extend only to the Ski Area Sub-zone; Rural Residential Zone, Rural Lifestyle Zone (Ch 22), Gibbston Character Zone (Ch 23) and Jacks Point Special Zone (Ch 41).

[156] At the risk of adding some confusion at this point, the notation “Resort Zones” is only presently used expressly in one zone, namely “Gibbston Valley Resort Zone”. This is one of various zones in the PDP’s “Part 6: Special Zones”. Part 6 also lists other zones that are generally known as “resorts” or having resort elements (e.g. clubhouse, restaurants), namely Ch 41: Jacks Point Zone, Ch 42: Waterfall Park and Ch 43: Millbrook. In addition, Part 6 Special Zones include Ch 44: Coneburn Industrial Zone.

[157] QLDC explains that, in Stage 3 of the PDP review, it is proposed to add to Part 6 the ‘Rural Visitor Zone’ (a further type of ‘resort’ zoning).

[158] QLDC proposes that Pol 6.3.1.3 be revised to read:

Exclude the Exception Zones identified in 3.1B.5 from the application of the Outstanding Natural Feature and Outstanding Natural Landscape Policies within 6.3.3, and the Rural Character Landscape Policies within 6.3.4.

[159] QLDC explains that the revision clarifies the intended ‘carve-out’ approach. QLDC also submits that the Darby Planning Limited (‘Darby’) appeal provides scope to add reference to ‘Resort Zones’ as set out in the DV drafting of the policy.<sup>51</sup>

[160] The Darby appeal seeks a relatively confined change to the DV’s equivalent Ch 6 Pol 6.3.3. That is as shown tracked as follows:<sup>52</sup>

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<sup>51</sup> QLDC memorandum dated 11 May 2020 at [53]-[54], ENV-2018-CHC-150-023.

<sup>52</sup> Darby notice of appeal dated 19 June 2018, Appendix A, p 11.

Provide a separate regulatory regime for the Gibbston Valley (identified as the Gibbston Character Zone), Rural Residential Zone, Rural Lifestyle Zone, the Wakatipu Basin Lifestyle Precinct and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories and the policies of this chapter related to those categories do not apply ~~unless otherwise stated~~. (3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.2, 3.3.20-24, 3.3.32).

[161] The notice of appeal gives the following reason:<sup>53</sup>

Clarify that landscape categories do not apply to RR, RLZ, and special zones / Wakatipu Basin Lifestyle Precinct (WB Precinct) suitable for further development. Clarify whether 'special zones' is useful terminology (i.e. does this cover Jacks Point), specifically refer to other resort zones.

[162] We acknowledge that it is desirable to assist in the interpretation and administration of the Plan for there to be proper consistency in the drafting of related Ch 3 and Ch 6 policies. However, we are concerned that QLDC's revision may have unintended consequences at this very late stage of the review process. It is more appropriate for QLDC to use a plan change to achieve better drafting alignment. Hence, we simply delete reference to 'Resort Zones' in Pol 6.3.1.3.

[163] We are not satisfied that the Darby appeal confers scope for what QLDC seeks. Notably, the relief in that appeal is confined as noted and the associated reasons do not seek that the policy refer to "Resort Zones" as such. Rather, they question the usefulness of the terminology "special zones" in terms of whether this covers Jacks Point and whether there should be specific reference to "other resort zones". We understand the latter to refer to those Special Zones that have "resort" elements to them, including Jacks Point.

[164] As for the proposed addition of the Rural Visitor Zone in Stage 3 of the PDP review, we do not yet have jurisdiction on that matter. Hence, we leave it

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<sup>53</sup> Darby notice of appeal dated 19 June 2018, Appendix A, p 11.

aside to be addressed either in the context of considering relevant appeal(s) or by QLDC-initiated variation or plan change.

[165] Therefore, we do not accept QLDC's submissions on this matter and revise Pol 6.3.1.3 as follows:

6.3.1.3 Provide a separate regulatory regime for the Gibbston Valley (identified as the Gibbston Character Zone), Rural Residential Zone, Rural Lifestyle Zone, ~~Resort Zones~~ and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories and the policies of this chapter related to those categories do not apply unless otherwise stated. (3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.1A, 3.2.5.2B, 3.3.20-24, 3.3.32).

***Can and should Policy 6.3.3.3 be extended to ONFs?***

[166] The equivalent to proposed Pol 6.3.3.3 in the DV read:

Recognise that large parts of the District's Outstanding Natural Landscapes include working farms and accept that viable farming involves activities that may modify the landscape, providing the quality and character of the Outstanding Natural Landscape is maintained.

[167] Decision 2.2 provisionally found that this policy should be revised so as to also apply to ONFs:<sup>54</sup>

For working farms within Outstanding Natural Features and Outstanding Natural Landscapes:

- (a) recognise that viable farming involves activities that may modify the landscape; and
- (b) enable those activities in a way that is consistent with protecting the values of Outstanding Natural Features and Outstanding Natural Landscapes.

[168] That provisional finding was subject to the court being satisfied as to scope

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<sup>54</sup> Decision 2.2, at [420].



for this change. Decision 2.2 also allowed for related submissions including from QLDC as to whether various reference to ONLs should be changed to also refer to ONFs.<sup>55</sup>

[169] QLDC opposes the addition of reference to ONFs.<sup>56</sup> Counsel submits that there is no scope in that no appellant sought that the policy be extended to ONFs and it is not a consequential change. Secondly, counsel submits that the expansion of the policy to ONFs is not meritorious and would give rise to unintended consequences. Counsel notes that neither the Notified Version nor the Decisions Version of Chapter 6 (Policy 6.3.14) contemplated that the policy would extend to ONFs. As to the merits, counsel refers to Mr Barr’s evidence-in-chief which states:<sup>57</sup>

The Policy purposefully excludes ONFs, because these are generally discreet features located within the ONL, and these individual features are more sensitive to the adverse effects of development.

[170] Overall, QLDC says that the change “inadvertently reduces the protection of ONFs”.<sup>58</sup>

### *Discussion*

[171] On the matter of available scope, we must first address related legal principles. In *Gock v Auckland Council*, Whata J set out the ‘ordinary requirements’ as to scope for a Council (and the Environment Court on appeal) in amending a plan:<sup>59</sup>

- (a) The paramount test is whether any amendment made to the plan as notified goes beyond what is reasonably and fairly raised in submissions on the

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<sup>55</sup> Decision 2.2, at [380].

<sup>56</sup> QLDC memorandum dated 11 May 2020 at [25]-[31].

<sup>57</sup> C A Barr evidence-in-chief dated 15 October 2018 at [16.5].

<sup>58</sup> QLDC memorandum dated 11 May 2020 at [27].

<sup>59</sup> *Gock v Auckland Council* [2019] NZHC 276; (2019) 21 ELRNZ 1 at [43].

plan.<sup>60</sup>

- (b) That assessment should be approached in a realistic workable fashion.<sup>61</sup>
- (c) A submission must first raise a relevant resource management issue, and then any decision requested must fairly and reasonably fall within the general scope of the original submission, or the proposed plan as notified, or somewhere in between.<sup>62</sup>
- (d) The approach requires that the whole relief package detailed in submissions be considered.<sup>63</sup>
- (e) Consequential changes that logically arise from the grant of relief requested and submissions lodged are permissible, provided they are reasonably foreseeable.<sup>64</sup>
- (f) Such changes can extend to consequential rule changes following agreed relief regarding policy changes, provided the changes are reasonably foreseeable.<sup>65</sup>
- (g) There is an implied jurisdiction to make consequential amendments to rules following changes to objectives and policies on the principle that regional and district plans have an internal hierarchical structure.<sup>66</sup>
- (h) In the case of a combined plan being developed contemporaneously, submissions on higher order provisions inevitably bear on the direction of lower order objectives. Objectives, policies, methods and rules should be

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<sup>60</sup> *Countdown Properties (Northlands) Ltd v Dunedin City Council* (1994) 1B ELRNZ 150 (HC) at [171].

<sup>61</sup> *Royal Forest & Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 (HC) at 413.

<sup>62</sup> *Re an application by Vivid Holdings Ltd* [1999] NZRMA 467 (EnvC) at [19].

<sup>63</sup> *Shaw v Selwyn District Council* [2001] 2 NZLR 277 (HC) at [31].

<sup>64</sup> *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 (HC) at [73].

<sup>65</sup> *The Church of Jesus Christ of Latter Day Saints Trust Board v Hamilton City Council* [2015] NZEnvC 166 at [47].

<sup>66</sup> *Clark Fortune McDonald & Associates v Queenstown Lakes District Council (No 2)* C89/02, 24 July 2003 at [17].

promulgated with regard to all topically relevant submissions.<sup>67</sup>

[172] In terms of those principles, QLDC submits that there is no scope in that no appellant sought that the policy be extended to ONFs and it is not a consequential change.

[173] It is clearly not the intention of Decision 2.2 to reduce the protection of ONFs. We consider Mr Barr’s opinion on this matter in light of the evidential findings in Decision 2.2.

[174] His observation that ONFs “are generally discreet features located within the ONL” is not inaccurate *per se*. However, it fails to acknowledge the several lakes and rivers that are ONFs but not within an ONL. The Minute of 11 July 2019 specifically directed parties to address in closing whether there are “good reasons for excluding reference to ONFs particularly given their coverage of lakes and rivers”. QLDC’s closing submission was:<sup>68</sup>

Yes. Where an ONF has not been referred to within a policy that is because that particular policy intends to refer to, or capture, specific activities that either take place on land that is categorised as ONL, or occur within the wider ONL within the District (i.e. SP 6.3.3.3, which refers to ‘farming’, and SP 6.3.3.4).

[175] We do not find any sound basis for QLDC’s present submission that the provisional drafting of this policy in Decision 2.2 “inadvertently reduces the protection of ONFs”. In particular, we find the drafting satisfactorily addresses the concern that Mr Barr expressed that ONFs “are more sensitive to the adverse effects of development”. In particular, for both ONFs and ONLs, the policy would qualify the enablement of farming by the words “in a way that is consistent with protecting the values of Outstanding Natural Features and Outstanding

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<sup>67</sup> *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [114].

<sup>68</sup> Second supplementary closing legal submissions Topic 2: Rural Landscapes, sub-topics 2 to 10, 4 September 2019 at [7.2].

Natural Landscapes”.

[176] As Decision 2.2 reflects in its changes to other provisions, it is clearly important, in plan integrity terms, for there to be no anomalous inconsistencies between different objectives and policies. We consider the change would assist achieve the Ch 3 Strategic Objectives pertaining to both ONFs and ONLs. We agree with QLDC that the change would not be within scope of any appeal before the court. Nor is it within scope as a consequential change.

[177] Nevertheless, as set out, we consider there is merit in achieving better alignment in these provisions along the line we have described. In particular we find extending the policy to ONFs better responds to the evidential finding in Decision 2.2. We consider it justified to make directions under s293 RMA to those ends. We make directions for QLDC to propose a timetable for this.

### ***6.1 Purpose***

[178] QLDC suggests two clarifying additions to the second sentence as follows (tracked from DV):

This chapter needs to be read with particular reference to the strategic objectives and policies, which identify the outcomes the policies in this chapter are seeking to achieve.

[179] We find those additions assist clarity and adopt them subject to the following minor clarification:

This chapter needs to be read with particular reference to the Chapter 3 strategic objectives and strategic policies, which identify the outcomes the policies in this chapter are seeking to achieve.

### ***Language consistency check***

[180] Decision 2.2 identifies a need to undertake a “language consistency check”

of several related Ch 6 policies.<sup>69</sup> In its memorandum, QLDC identifies the following such policies:<sup>70</sup>

6.3.2.2, 6.3.2.4	refers to 'landscape character'
6.3.2.6	refers to 'landscape and nature conservation values'
6.3.2.7	refers to 'landscape quality, character and visual amenity'
6.3.3.3 <sup>71</sup>	refers to 'quality and character of the Outstanding Natural Landscape'
6.3.3.5	refers to 'landscape character and amenity values of Outstanding Natural Landscapes' (it is understood this should instead be a reference to 6.3.3.4)
6.3.4.4	refers to 'landscape character and visual amenity values'
6.3.4.5, 6.3.4.7	refers to 'landscape quality or character'

[181] Providing some context for our consideration of these matters, we note Ms Mellsop, in her evidence-in-chief for Topic 2, described 'landscape character' as a:<sup>72</sup>

... 'a distinctive combination of landscape attributes that give an area its identity' or 'a distinct recognisable and consistent pattern of elements in the landscape that makes one landscape different from another, rather than better or worse'.

[182] Similarly, Tuia Pito Ora NZILA in its *Best Practice Note – NZILA – Landscape Assessment and Sustainable Management 2010* defines landscape character as:

... a distinctive combination of landscape attributes that give an area its identity.

[183] Largely, we accept QLDC's drafting refinement recommendations. However, to assist other parties, we traverse each provision in turn.

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<sup>69</sup> Decision 2.2 at [379].

<sup>70</sup> Memorandum of counsel for QLDC dated 11 May 2020 at [1.3]. As signalled in [113], the court has also identified the need to amend Pol 6.3.4.3 for reasons of consistency with Ch 3 policy wording.

<sup>71</sup> We deal with Policy 6.3.3.3 earlier in this decision and it is subject of s293 directions.

<sup>72</sup> H J Mellsop evidence-in-chief dated 12 October 2018 at [7.16] fn 24.

*Policy 6.3.2.2*

[184] Policy 6.3.2.2 applies to activities in the Rural Zone (Ch 21), Rural Residential and Rural Lifestyle Zone (Ch 22) and Gibbston Character Zone (Ch 23) and reads:

Ensure that the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and of landscape character, including of the sense of remoteness where it is an important part of that character.

[185] QLDC recommends no change to the reference to 'landscape character' on the basis that:<sup>73</sup>

... it embraces the three components of landscape: biophysical, sensory and associative attributes, rather than just visual (one of the aspects of sensory attributes). Whether or not the location and direction of lights that could cause unnecessary glare, and unnecessary degradation of views of the night sky is location dependant, and relates to what the character of a landscape, or a location embedded within a landscape may be, in particular whether remoteness is an important part of that character.

[186] We are satisfied with QLDC's recommendation and adopt the wording accordingly.

*Policy 6.3.2.4*

[187] Policy 6.3.2.4 also applies to activities in the Rural Zone (Ch 21), Rural Residential and Rural Lifestyle Zone (Ch 22) and Gibbston Character Zone (Ch 23) and reads:

Enable continuation of the contribution low-intensity pastoral farming in the Rural Zone and viticulture in the Gibbston Character Zone on large landholdings makes

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<sup>73</sup> QLDC memorandum dated 11 May 2020 at [10].

to the District's landscape character.

[188] QLDC recommends no change to the reference to 'landscape character'.<sup>74</sup> That is on the basis that Pol 6.3.2.4 acknowledges how farming and productive viticulture have respectively influenced the identity of the Rural Zone and the Gibbston Character Zone. QLDC notes that landscape character in this context is a "more nuanced and appropriate phrase than, for instance, 'values'".<sup>75</sup>

[189] We are satisfied with QLDC's recommendation and adopt the wording accordingly.

*Policy 6.3.2.6*

[190] Policy 6.3.2.6 also applies to activities in the Rural Zone (Ch 21), Rural Residential and Rural Lifestyle Zone (Ch 22) and Gibbston Character Zone (Ch 23) and reads:

Encourage subdivision and development proposals to promote indigenous biodiversity protection and regeneration where the landscape and nature conservation values would be maintained or enhanced, particularly where the subdivision or development constitutes a change in the intensity in the land use or the retirement of productive farm land.

[191] We questioned the appropriateness of 'landscape and nature conservation values'.<sup>76</sup>

[192] Counsel for QLDC explains that the intention is that this policy refer to two distinct constructs, namely 'landscape values' and 'nature conservation values'. 'The reference to 'landscape values' is broad because the promotion of indigenous biodiversity protection and regeneration may change the landscape character

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<sup>74</sup> QLDC memorandum dated 11 May 2020 at [12]-[14].

<sup>75</sup> QLDC memorandum dated 11 May 2020 at [13].

<sup>76</sup> QLDC memorandum dated 11 May 2020 at [15].

(whether this is positive or negative depends on the location, effects and merits of a proposal). The reference to ‘nature conservation values’ is consistent with the definition of the same in the PDP:

Nature Conservation Values

Means the collective and interconnected intrinsic value of indigenous flora and fauna, natural ecosystems (including ecosystem services), and their habitats.

[193] QLDC recommends clarifying those intentions by the addition of the word ‘values’ after ‘landscape’ so as to reinforce that the two constructs are to be read separately. Counsel submits that there is scope for this confined change under the Darby appeal (which seeks that the policy be completely re-written).

[194] Being satisfied there is scope to do so, we adopt QLDC’s recommendation as appropriate.

*Policy 6.3.2.7*

[195] QLDC’s Decisions Version of proposed Policy 6.3.2.7 confines it to ONFs. Decision 2.2 records the court’s preliminary view that it should also apply to ONLs. The decision also signals an amendment to replace the words ‘landscape quality, character and visual amenity’ with ‘landscape values’. That is for improved language consistency.

[196] QLDC refers to the UCESI and New Zealand Tungsten Mining appeals as providing scope.<sup>77</sup> At least insofar as UCESI’s appeal is concerned we agree. It seeks that the policy be relocated to sit within the suite of policies for managing activities in the ONL and ONF and that it be amended by adding reference to ‘natural values’ after ‘landscape quality’.<sup>78</sup>

[197] We find that the changes are within scope. Therefore, we confirm the

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<sup>77</sup> QLDC memorandum dated 11 May 2020 at [19]-[20].

<sup>78</sup> ENV-2018-CHC-056-017.



wording of Policy 6.3.2.7 as set out in Decision 2.2.

*Policy 6.3.3.4*

[198] Our drafting in the Decision Version reads:

The landscape character and amenity values of Outstanding Natural Landscapes are a significant intrinsic, economic and recreational resource, such that new large scale renewable electricity generation or new large scale mineral extraction development proposals are not likely to be compatible with them.

[199] In response to the court’s questioning about the appropriateness of the words ‘landscape character and amenity values’, counsel for QLDC explains that ‘landscape character’ (as defined, for instance, by NZILA) captures a landscape’s attributes with particular reference to the identity or distinctiveness of a particular location.<sup>79</sup> Counsel also points to the broad meaning of ‘amenity values’ in the RMA (which is carried into the PDP), submitting:<sup>80</sup>

The specific reference to landscape character and amenity values ... is to provide particularisation as to emphasis on character (i.e. a landscape’s attributes with particular reference to the identity or distinctiveness of a place), as well as making it clear that the full spectrum of amenity values is likely to [be] necessary to be considered, where large scale renewable energy or extractive activities are proposed.

While, for instance the potential effects from a wind farm in terms of noise or risk to fauna (for example), could all fall within the ambit of landscape values, this may not be necessarily readily accepted. In this instance the policy deliberately casts a broader net to encompass amenity values generally, rather than just referring to ‘landscape values’, and to avoid any room for ambiguity.

[200] In hindsight, the words ‘landscape character and amenity values’ are somewhat inconsistent with the different roles of s6(b) and s7(c) RMA. Perhaps

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<sup>79</sup> QLDC memorandum dated 11 May 2020 at [32]-[37].

<sup>80</sup> QLDC memorandum dated 11 May 2020 at [36]-[37].

this would be better re-expressed ‘The landscape values of ...’. However, this is now a matter for QLDC to consider in its planning authority capacity. It is for it to decide whether or not to amend this wording by variation or plan change.

*Policy 6.3.4.3*

[201] Policy 6.3.4.3 addresses activities in Rural Character Landscapes and reads:

Require that proposals for subdivision or development for rural living in the Rural Zone take into account existing and consented subdivision or development in assessing the potential for adverse cumulative effects. (3.2.1.8, 3.2.5.2A, B, 3.3.23, 3.3.32A).

[202] As we discussed above, the current drafting of Pol 6.3.4.3 provides considerably less detail on the required methodology for assessing cumulative effects than the corresponding strategic policies in Ch 3. This gives rise to the risk that Pol 6.3.4.3 may undermine the intentions of Ch 3. We make the following consequential changes to the wording:

Require that proposals for subdivision or development for Rural Living in the Rural Zone:

- (a) take into account all subdivision or development that is in existence or is consented for all land within the relevant landscape character area as at 14 May 2021; and
- (b) assess the potential for adverse cumulative effects on the landscape character of that area and its wider landscape context. (3.2.1.8, 3.2.5.2A, B, 3.3.23, 3.3.32A).

[203] We find the most appropriate benchmark date to be the date our decision issues.

*Policy 6.3.4.4*

[204] Proposed Policy 6.3.4.4 applies to activities in Rural Character Landscapes

and the planners' recommended wording is:

Have particular regard to the potential adverse effects on landscape character and visual amenity values where further subdivision and development would constitute sprawl along roads.

[205] The court questioned the use of 'landscape character and visual amenity values' within this Policy.

[206] Counsel for QLDC explains<sup>81</sup> that 'landscape character' is favoured in this context as the policy seeks to address sprawl as viewed along roads and it is important to treat 'landscape character' and 'visual amenity values' as two separate constructs. This is particularly so in the context of managing the amenity of rural areas that are outside the ONF/L, but where s7(c) RMA applies. Visual amenity values may be maintained or enhanced through development. On the other hand, the maintenance of landscape character is specifically identified in Policy 6.3.4.4 as a distinctive and important concept. It should not be conflated with visual amenity values.

[207] We are satisfied with QLDC's explanation and adopt the recommended wording.

*Policy 6.3.4.5*

[208] Proposed Policy 6.3.4.5 applies to activities in Rural Character Landscapes. It reads:

Ensure incremental changes from subdivision and development do not degrade landscape quality or character, or important views as a result of activities associated with mitigation of the visual effects of proposed development such as screen planting, mounding and earthworks.

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<sup>81</sup> QLDC memorandum dated 11 May 2020 at [38]-[41].

[209] We questioned the use of ‘landscape quality or character’ within this Policy.

[210] Counsel for QLDC explained that ‘quality’ as is referred to falls within the ordinary meaning of that word, whereas ‘character’ is intended to be read as particular to landscapes as identified in the related definitions. That is particularly in the context of rural amenity landscapes where subdivision, use and development can often be claimed to enhance landscape values. The policy emphasises the importance of landscape character.<sup>82</sup>

[211] QLDC considers that the wording could be refined. We agree and find it appropriate to replace ‘landscape quality or character’ with ‘landscape character’. That refinement is consequential on the court’s amendments to SO 3.2.5.2(a) on the maintenance of the landscape character of Rural Character Landscapes.

[212] We amend the wording accordingly.

*Policy 6.3.4.7*

[213] Policy 6.3.4.7 applies to Rural Character Landscapes and reads:

In the Wakatipu Basin, avoid planting and screening, particularly along roads and boundaries that would degrade openness where such openness is an important part of its landscape quality or character.

[214] For the same reasons as for Policy 6.3.4.5, QLDC recommends removing the reference to ‘quality or’ such that the policy refer simply to ‘landscape character’.<sup>83</sup>

[215] QLDC records that some parties have raised concerns about how this policy would apply to the ‘Wakatipu Basin’.<sup>84</sup> However, the Wakatipu Basin Rural

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<sup>82</sup> QLDC memorandum dated 11 May 2020 at [42]-[44].

<sup>83</sup> QLDC memorandum dated 11 May 2020 at [46].

<sup>84</sup> QLDC memorandum dated 11 May 2020 at [47].

Amenity Zone provisions, included in the PDP by variation, are assigned to a later stage of the appeal hearings. As such, we make no determination on those appeals at this time.

[216] We are satisfied with QLDC's recommended refinement to this policy and adopt the amended wording accordingly.

### **Other matters**

#### *Is there scope for the court's redrafting of Policy 6.3.3.1?*

[217] Decision 2.2 substantially revised the expression of Policy 6.3.3.1. The decision invited supplementary submissions as to whether there is scope for the revision. QLDC submits that there is available scope. Counsel refer to several appeals<sup>85</sup> seeking deletion of, or changes to, DV Policy 6.3.12 (now renumbered as Policy 6.3.3.1) and the summary in Mr Barr's evidence-in-chief.<sup>86</sup> QLDC's memorandum points out that various appeals seek that the DV of the policy be deleted. This confers scope to make changes to the policy that would sit within the spectrum between the DV of the policy and no policy at all.

[218] QLDC submits the only change that requires further consideration is the substitution of the words 'where the landscape or feature can absorb the change' with the revised 'landscape values are protected'.<sup>87</sup> Counsel submits that this change is consequential to Darby's appeal point as well as various relief on Strategic Objective 3.2.5.1.

[219] Assisted by those submissions, we find that there is scope for the court's

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<sup>85</sup> Real Journeys Limited (ENV-2018-CHC-131-027), SYZ Investments Limited (ENV-2018-CHC-130-009), Queenstown Park Limited (ENV-2018-CHC-127-030), Remarkables Park Limited (ENV-2018-CHC-126-010), Federated Farmers (ENV-2018-CHC-053-004), Transpower New Zealand Limited (ENV-2018-CHC-114-016) and Upper Clutha Environmental Society Incorporated (ENV-2018-CHC-056-015).

<sup>86</sup> C A Barr evidence-in-chief dated 15 October 2018 at [16.3], [16.4], [16.6], [16.8]-[16.9], [16.11]-[16.12] and [16.19].

<sup>87</sup> QLDC memorandum dated 11 May 2020 at [24].

approach to Policy 6.3.3.1 and confirm the revised wording accordingly.

***Matters we have determined against changing***

*QLDC suggestions for various changes to improve drafting clarity*

[220] QLDC proposes a number of changes that are not intended to be substantive but simply for drafting clarity.

[221] These include the following proposed changes to how the DV expresses Pols 6.3.1.2 and 6.3.1.3 (QLDC changes tracked):

6.3.1.2 Exclude identified Ski Area Sub-Zones from the application of the Outstanding Natural Feature and Outstanding Natural Landscape Policies within 6.3.3, and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the application of the Rural Character Landscape Policies within 6.3.4.

~~Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories applied to the balance of the Rural Zone and from the policies of this category related to those categories (-,-,-).~~

...

6.3.1.3 Exclude the Exception Zones identified in 3.1B.5 from the application of the Outstanding Natural Feature and Outstanding Natural Landscape Policies within 6.3.3, and the Rural Character Landscape Policies (. . .).

[222] Decision 2.2 did not change the DV's expression of either of those policies. QLDC explains that its recommended revisions would provide greater clarity concerning specified zones where certain policies as to ONF/Ls and RCLs do not apply. Counsel submits that the revision would reflect the observation in Decision 2.2 as to the desirability of greater clarity in the drafting of these policies. Counsel further submits that the change would be consequential to the relief in appeals seeking clarity as to how the 'carve-out' in Ch 6 applies to various Rural zones.

Counsel refers to the assessment of jurisdiction for the Exception Zone Framework in QLDC's 28 April 2020 memorandum and submits that the relief sought concerning Pol 6.3.3 in the appeals by Walker<sup>88</sup> and Waterfall Park Developments Limited<sup>89</sup> provide some scope for the change.

[223] In addition, QLDC proposes that:

- (a) the heading in Pol 6.3.1 read (tracked on DV):  
Rural Landscape Categorisation, interpretation and application.
- (b) the heading in Pol 6.3.2 be replaced to read:  
Policies 6.3.2.1 to 6.3.2.8 apply to activities in the following zones:  
.  
  - (a) Rural Zone (Chapter 21);
  - (b) Rural Residential and Rural Lifestyle Zone (Chapter 22); and
  - (c) Gibbston Character Zone (Character 23.
- (c) the heading to Pol 6.3.3 read (tracked on the DV):  
Managing Activities in the Rural Zone on Outstanding Natural Features Landscapes and in Outstanding Natural Landscapes, excluding the Ski Area Sub-Zones.
- (d) the heading to Pol 6.3.4 read (tracked on the DV):  
Managing Activities in the Rural Zone in Rural Character Landscapes.

[224] QLDC submits that the changes would provide greater clarity and linkage to the 'exception' policies in 6.3.1 and better alignment with the Exception Zone Framework in Chapter 3 and 6.3.1.<sup>90</sup>

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<sup>88</sup> ENV-2018-CHC-099-006.

<sup>89</sup> ENV-2018-CHC-124-015.

<sup>90</sup> QLDC memorandum dated 11 May 2020 at [61]-[63].

*Discussion*

[225] We find it would not be appropriate to make these recommended changes. Firstly, the changes were not sought during the hearing, in evidence or submissions, and go beyond Decision 2.2. Secondly, it would not be appropriate to make changes of this kind, given their importance, without carefully scrutinising QLDC's assumptions that they would have no regulatory effect. In any case, as the planning authority, QLDC is able to change the District Plan at any time according to the processes of Sch 1, RMA. We find that course the most appropriate for pursuing changes of the kind proposed, given the potential interests of the community and property owners in such matters.

**Part C – Remaining matters****Cross-referencing**

[226] QLDC notes that various Ch 6 policies include references across to other strategic objectives and policies in Ch 3. It proposes to undertake a careful review of the cross references and provide these to the court once the court has determined the final wording of provisions of Chs 3 and 6. This decision fulfils that purpose and, hence, we encourage QLDC to proceed with this and direct it to report for the purposes of a final decision, giving direction to QLDC to update the PDP to implement this decision.

**What remains for Topic 2?**

[227] Decision 2.1 was issued in September 2019. The court intends to progress remaining proceedings to achieve full determination of Topic 2 as a priority. That is important to ensure timely and efficient progress towards full determination of remaining stages of the Plan review.



*Steps for the determination of remaining Topic 2 Ch 3 and Ch 6 provisions*

[228] This decision largely determines the substance of all remaining Topic 2 Ch 3 and Ch 6 provisions. That is subject to some minor clarification points on which directions are made for QLDC to respond to. As a final step, the court will require QLDC to provide a comprehensive set of all provisions (possibly renumbered) for the court's endorsement as appropriate for inclusion in the updated PDP. However, our directions, at this stage, simply require QLDC to report with a proposed timetable such that further directions can issue at the appropriate time. That is because we bear in mind that the appropriate time to formally update the PDP may be contingent on the determination of other related matters.

*Two further matters requiring determination*

[229] There are two other matters remaining before the court's role in Topic 2 can be concluded:

- (a) the determination of related Ch 21 assessment matters, meaning that there is a need to now bring Topics 2 and Topic 18 together. A Minute is being issued to alert the Topic 18 parties to the related directions in this decision;
- (b) the issuance of directions under s293 and conclusion of related proceedings concerning aspects of the ONF/L mapping. A companion Decision 2.8 is released with this decision. It determines some matters in preparation for those s293 proceedings.

*Steps for the determination of Ch 21 assessment matters*

[230] As we have explained, the parties to Topic 18 have (some time ago) successfully concluded court-facilitated mediation and filed memoranda seeking that the court determine matters by consent order. As this decision sets out, however, there are a number of important issues to work through so that the Ch 21 assessment matters are effective in fulfilling their statutory purpose of achieving

related objectives and policies, notably those determined for inclusion in Chs 3 and 6.

[231] In essence, therefore, the remaining matters for determination pertain to ensuring Plan integrity and coherence. That is essentially about ensuring consistency with and respect for the substance of directions given in Chs 3 and 6. That is a matter for which QLDC has direct responsibility as planning authority. It supercedes any agreement it may have reached with parties to Topic 18, insofar as necessary. However, the court is also mindful of the rights and interests of other interested parties, particularly parties to Topics 2 and 18.

[232] An initial step will be to allow for QLDC and other interested parties to confer and file memoranda (with any limited associated planning opinion) on drafting to ensure that Ch 21 achieves related objectives and policies.

[233] If there is a need for further hearing time on Ch 21, an initial step will be a judicial teleconference (‘JTC’) so arrangements can be made, assuming priority.

[234] The court’s provisional view is that it would be best for any hearing to be designed to facilitate effective “workshopping” of any alternative planning approaches advanced. It may be best to proceed as a court-facilitated exchange, rather than an adversarial contest. For instance, a “round table” configuration of the courtroom may work better in allowing greater capacity for parties and their planning witnesses to work collectively to achieve the most informed and effective outcome. Some parties may be familiar with the application of this model in parts of the hearing on the post-earthquakes Christchurch Replacement District Plan (there termed the “sleeves rolled up” hearing).

[235] Following any necessary hearing on these matters, the court would, as a matter of priority, make any necessary determinations and give associated direction for the updating of Ch 21 in the PDP.

*Decision 2.8: Steps in regard to s293 and mapping finalisation*

[236] We refer to companion Decision 2.8 on these matters.

*Regionally significant infrastructure and other related Topics*

[237] It may well be appropriate to extend the compass of any further hearing to other topics relating to Topic 2 where parties have reached settlement. Directions on that will issue by Minute.

**Conclusion and directions**

[238] Annexures 1 and 2 to this decision set out the provisions confirmed or amended by this decision.

[239] We consider a first step should be for QLDC to file a reporting memorandum proposing a timetable for when it will be in a position to file for final directions for:

- (a) a proposed s293 direction in relation to Pol 6.3.3.3; and
- (b) an updated set of provisions, including any necessary renumbering and refinement of provisions (see [57]) (and following QLDC's completion of its cross referencing review) for the purpose of the court's final decision(s) on this Topic.

[240] The s293 directions will follow similar format to other directions made under s293 for Topic 2. Given the purpose of Pol 6.3.3.3, we consider public notification would be appropriate. QLDC is directed to file the reporting memorandum within **15 working days** of this decision. This memorandum must:

- (a) propose a timetable for the matters in [240];
- (b) respond to any related directions in this decision;
- (c) draw to the court's attention any apparently anomalous drafting the

court should refine in its final decision.

[241] Once the court's directions are implemented and any responses to them are in, any need for and the extent and nature of any hearing can be gauged. Hence, this will be addressed by later Minute and/or JTC so that related direction(s) can issue.

[242] Costs are reserved. A timetable will be set in due course.

For the court:



**J J M Hassan**  
**Environment Judge**

## SCHEDULE

ENV-2018-CHC-053	Federated Farmers of NZ
ENV-2018-CHC-055	Hawthenden Farm Limited
ENV-2018-CHC-082	Kawarau Jet Services Holdings Limited
ENV-2018-CHC-083	Mt Cardrona Station Limited
ENV-2018-CHC-091	Burdon
ENV-2018-CHC-092	Trojan Helmet Limited
ENV-2018-CHC-093	Queenstown Airport Corporation Limited
ENV-2018-CHC-094	The Middleton Family Trust & others
ENV-2018-CHC-095	Seven Albert Town Property Owners
ENV-2018-CHC-099	Bill and Jan Walker Family Trust & others
ENV-2018-CHC-103	Mt Christina Limited
ENV-2018-CHC-104	Soho Ski Area / Blackmans Creek
ENV-2018-CHC-106	Te Anau Developments
ENV-2018-CHC-107	Treble Cone Investments
ENV-2018-CHC-108	Aurora Energy Ltd
ENV-2018-CHC-114	Transpower NZ Ltd
ENV-2018-CHC-115	Willowridge Developments Ltd
ENV-2018-CHC-119	Halfway Bay Lands Limited
ENV-2018-CHC-124	Waterfall Park Developments Limited
ENV-2018-CHC-126	Remarkables Park Limited
ENV-2018-CHC-127	Queenstown Park Limited
ENV-2018-CHC-129	Slopehill Properties Limited
ENV-2018-CHC-130	SYZ Investments Limited
ENV-2018-CHC-131	Real Journeys Limited
ENV-2018-CHC-134	Ngai Tahu Tourism Limited
ENV-2018-CHC-136	Burgess
ENV-2018-CHC-137	Coneburn Preserve Holdings Limited & Others
ENV-2018-CHC-138	Real Journeys (trading as Go Orange Limited)
ENV-2018-CHC-141	Glendhu Bay Trustees Limited
ENV-2018-CHC-142	Queenstown Wharves GP Limited
ENV-2018-CHC-144	James Wilson Cooper
ENV-2018-CHC-145	Glen Dene Limited
ENV-2018-CHC-146	Real Journeys Limited (trading as Canyon Food and Brew Company Limited)
ENV-2018-CHC-148	Allenby Farms Limited
ENV-2018-CHC-150	Darby Planning Limited
ENV-2018-CHC-151	NZ Tungsten Mining
ENV-2018-CHC-160	Lake McKay Station Limited

**Key for Chapter 3**

- Decision 2.2: black text.
- Decision 2.7: underlined and ~~struck through~~ black text subject to:
  - incorporating changes from Decisions 2.6 (EZP); and
  - where the provisions are new, the Landscape and Plan Provisions JWS appendices are used as a base and amendments tracked. However, new provisions where more than minor amendments were made are not tracked for legibility and marked with an asterisk.

## 3 Strategic Direction

### STRATEGIC OBJECTIVES

#### 3.1B Interpretation and Application of this Chapter

...

3.1B.5 In 3.1B6 and SO 3.2.5.1A, 'Exception Zone' means any of the following, to the extent that the Zone (or Sub-Zone) is depicted on the planning maps:

- a. The Ski Area Sub-zone;
- b. The Rural Residential Zone and Rural Lifestyle Zone (Chapter 22);
- c. The Gibbston Character Zone (Chapter 23);
- d. Jacks Point Special Zone (Chapter 41).

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

- a. SO 3.2.1.7.a, SO 3.2.1.8.a, SO 3.2.5.x, SO 3.2.5.xx; and
- b. SP 3.3.1A.a, SP 3.3.20.a, SP 3.3.24.a, SP 3.3.29.x, SP 3.3.30, SP 3.3.30x.

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

#### Outstanding Natural Features and Outstanding Natural Landscapes

3.2.5.x The District's Outstanding Natural Features and Outstanding Natural Landscapes and their landscape values and related landscape capacity are identified.

3.2.5.xx Within the Rural Zone, new subdivision, use and development is inappropriate on Outstanding Natural Features or in Outstanding Natural Landscapes unless:

- a. where the landscape values of Priority Areas of Outstanding Natural Features and Outstanding Natural Landscapes are specified in Schedule 21.22, those values are protected; or

- b. where the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are not specified in Schedule 21.22, the values identified according to SP ~~3.3.XB1~~ ~~{the intended new SP on assessment methodology}~~ are protected.

3.2.5xxx In locations other than in the Rural Zone, the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected from inappropriate subdivision, use and development.

3.2.5.1A In each Exception Zone located within Outstanding Natural Features and Outstanding Natural Landscapes, any application for subdivision, use and development is provided for:

- a. to the extent anticipated by that Exception Zone; and
- b. on the basis that any additional subdivision, use and development not provided for by that Exception Zone protects landscape values.

### Rural Character Landscapes

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

- a. landscape character is maintained; and
- b. visual amenity values are maintained or enhanced.

3.2.5.iv In Rural Character Landscapes, new subdivision, use and development in proximity to any Outstanding Natural Feature or Outstanding Natural Landscape does not compromise the landscape values of that Feature or Landscape.

3.2.5.v In Rural Character Landscapes of the Upper Clutha Basin:

- a. Priority Areas of Rural Zone Rural Character Landscapes are identified, ~~including by mapping~~; and
- b. associated landscape character and visual amenity values are identified.

## STRATEGIC POLICIES

### Rural Activities

3.3.24 Ensure that the effects of cumulative subdivision and development for the purposes of Rural Living does not compromise:

- a. the protection of the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes;
- b. the maintenance of the landscape character of Rural Character Landscapes; and
- c. the maintenance or enhancement of the visual amenity values of Rural Character Landscapes.

...

**Outstanding Natural Features and Landscapes and Rural Character Landscape**

- 3.3.29 Identify the District's Outstanding Natural Features and Outstanding Natural Landscapes on the District Plan maps. (relevant to S.O.3.2.5.1).
- 3.3.29x For Outstanding Natural Features and Outstanding Natural Landscapes, identify landscape values and related landscape capacity:
- a. for Priority Areas identified in Schedule 21.22, in accordance with the values identification framework in SP3.3.XA and otherwise through the landscape assessment methodology in SP3.3.XB and through best practice landscape assessment methodology where applicable and otherwise through assessment processes; and
  - b. outside of identified Priority Areas, in accordance with the landscape assessment methodology matters in SP 3.3.XB [x.x.x.y] and sound through best practice landscape assessment methodology.
- 3.3.30 Protect the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes.
- 3.3.30x Avoid adverse effects on the landscape values of the District's Outstanding Natural Features and Outstanding Natural Landscapes from residential subdivision, use and development where there is little capacity to absorb change.
- 3.3.31 Identify the District's Rural Character Landscapes on the District Plan maps. (relevant to S.O.3.2.5.2).
- 3.3.31X For Rural Character landscapes, identify landscape character to be maintained, and visual amenity values to be maintained or enhanced and related landscape capacity:
- a. for Priority Areas of the Upper Clutha Basin, in Schedule 21.23,2 where applicable, in accordance with the values identification framework in SP 3.3.XA and otherwise through the landscape assessment methodology in SP3.3.XB and through best practice landscape assessment methodology otherwise through assessment processes; and
  - b. outside of identified Priority Areas, in accordance with the landscape assessment methodology matters in SP 3.3.XB, and sound through best practice landscape assessment methodology; and
  - c. through associated District Plan rules setting measurable spatial or other limits, and related assessment matters, as to cumulative subdivision and development including as to location, quantity, density and design.
- 3.3.32x In any Priority Area of any Rural Character Landscape whose landscape character and visual amenity values and related landscape capacity are identified in Schedule 21.223, ensure that new subdivision and development for the purposes of Rural Living:
- a. maintains that landscape character;
  - b. enhances any visual amenity values that Schedule 21.223 specifies to be enhanced; and



- c. otherwise maintains those identified visual amenity values.

3.3.32y In any Rural Character Landscape that is not a Priority Area, or is a Priority Area that has not achieved all of the requirements of SP 3.3.32x, do not allow new subdivision or development for the purposes of Rural Living except where:

- a. according to the methodology in SP 3.3.XB and having regard to the wider landscape context:
  - i. a landscape character area for assessment purposes is identified at an appropriate landscape scale, including by mapping;
  - ii. the landscape character and visual amenity values of that landscape character area are identified; and
  - iii. the related landscape capacity of that landscape character area is assessed so as to soundly inform a determination that the requirements of SP 3.3.24 are met; and
- b. the approval of new subdivision or development for the purposes of Rural Living maintains the landscape character and maintains or enhances the visual amenity values identified in relation to that landscape character area and the wider landscape context.

...

#### **Values Identification Framework for Priority Areas for Outstanding Natural Features and Outstanding Natural Landscapes**

XA1 Identify in Schedule 21.22 the following Rural Zone Priority Areas [shown in the maps in 3.3.36 [or] shown on maps held on [QLDC referenced file]] within the Outstanding Natural Features and Outstanding Natural Landscapes:

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

XA2\* For Outstanding Natural Features and Outstanding Natural Landscapes Priority Areas, according to SP XA2A, describe in Schedule 21.22 at an appropriate landscape scale:

- a. the landscape attributes (physical, sensory and associative);
- b. the landscape values; and
- c. the related landscape capacity.

- XA2A\* To achieve SP XA2 for each Priority Area:
- a. identify the key physical, sensory and associative attributes that contribute to the values of the feature or landscape that are to be protected;
  - b. describe in accordance with SP XXXX, and rate those attributes; and
  - c. assess and record the related landscape capacity for subdivision, use and development activities including but not limited to:
    - i. commercial recreational activities;
    - ii. visitor accommodation and tourism related activities;
    - iii. urban expansions;
    - iv. intensive agriculture;
    - v. earthworks;
    - vi. farm buildings;
    - vii. mineral extraction;
    - viii. transport infrastructure;
    - ix. utilities and regionally significant infrastructure;
    - x. renewable energy generation;
    - xi. forestry;
    - xii. rural living.

**Values Identification Framework for Priority Areas for Rural Character Landscapes**

XA4 Identify in Schedule 21.23 the following Rural Zone Priority Areas within the Upper Clutha Rural Character Landscapes [shown in the maps in 3.3.37 [or] shown on maps held on [QLDC referenced 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.

XA5\* For the Upper Clutha Basin Rural Zone Rural Character Landscape Priority Areas, according to SP XA5A, describe in Schedule 21.23 at an appropriate landscape scale:

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

XA5A\* To achieve SP XA5 for each Priority Area:

- a. identify and describe key public routes and viewpoints both within and in proximity to the Priority Area (including waterbodies, roads, walkways and cycleways);
- b. identify the key physical, sensory and associative attributes that contribute to the landscape character and visual amenity values of the Priority Area;
- c. describe in accordance with SP XXXX and rate those attributes;

- d. assess and record the relationship between the Priority Area and the wider Rural Character Landscape context;
- e. assess and record the relationship between the Priority Area and the Outstanding Natural Features within the Upper Clutha Basin;
- f. assess and record the relationship between the Priority Area and the Outstanding Natural Landscapes that frame the Upper Clutha Basin; and
- g. assess and record the related landscape capacity for subdivision, use and development activities including but not limited to:
  - i. commercial recreational activities;
  - ii. visitor accommodation and tourism related activities;
  - iii. urban expansions;
  - iv. intensive agriculture;
  - v. earthworks;
  - vi. farm buildings;
  - vii. mineral extraction;
  - viii. transport infrastructure;
  - ix. utilities and regionally significant infrastructure;
  - x. renewable energy generation;
  - xi. forestry;
  - xii. rural living.

XA [xxx] The Council shall ~~amend~~ notify a proposed change to the District Plan by 31 March 2022 to implement SPs XA1, XA2, XA4 and XA5.

#### **Outstanding Natural Features, Outstanding Natural Landscapes and Rural Character Landscapes**

XXXX In applying the Strategic Objectives and Strategic Policies on landscape values and related landscape capacity of Outstanding Natural Features, Outstanding Natural Landscapes and Rural Character Landscapes, including the values identification frameworks in SP XA2 and SP XA4 and the landscape assessment methodology in SP XB1, have regard to the following attributes:

- a. Physical attributes:
  - i. geology, geomorphology and topography;
  - ii. ecology;
  - iii. vegetation cover (exotic and indigenous);
  - iv. the presence of waterbodies including lakes, rivers, streams, wetlands, and their hydrology;
  - v. land use (including settlements, buildings and structures); and
- b. Sensory (or experiential) attributes:
  - i. legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;
  - ii. aesthetic values including memorability and naturalness;
  - iii. wild or scenic values;
  - iv. transient values including values at certain times of the day or year;  
and

- c. Associative attributes:
- i. whether the attributes identified in (a) and (b) are shared and recognised;
  - ii. cultural and spiritual values for Tangata Whenua;
  - iii. historical and heritage associations;
  - iv. recreational values.

XA7\* Where any or any part of an Outstanding Natural Feature or an Outstanding Natural Landscape or a Rural Character Landscape is not identified as a Priority Area in Schedules 21.22 or 22.23, 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 any or any part of an Outstanding Natural Feature or Outstanding Natural Landscape;
  - ii. landscape character and visual amenity values, in the case of any or any part of a Rural Character Landscape; or
- b. is more or less vulnerable to subdivision, use and development.

### Landscape Assessment Methodology

XB1\* Landscape assessments shall:

- a. in the case of Outstanding Natural Features and Outstanding Natural Landscapes:
  - i. identify landscape attributes and values; and
  - ii. assess effects on those values and on related landscape capacity;
- b. in the case of Rural Character Landscapes:
  - i. define a relevant landscape character area and its wider landscape context;
  - ii. identify the landscape character and visual amenity values of that landscape character area and within its wider landscape context; and
  - iii. assess effects on that character and those values and on related landscape capacity;
- c. in each case apply a consistent rating scale for attributes, values and effects.

Note: QLDC may, from time to time, promulgate and update guidelines that provide assistance in the application of best practice landscape assessment methodologies by publication on the QLDC website. Access will be via this link *[Add URL link.]*

[Insert in Chapter 3 at 3.1B.7]

In this Chapter

...

- e. 'Best practice landscape methodology' in relation to the identification of landscape values or related landscape capacity or their assessment includes a methodology produced or recommended by a reputable professional body for landscape architects.

XB2\* The Landscape Assessment Methodology required by SP 3.3.XB is to be implemented when assessing:

- a. a proposed plan change affecting the rural environment;
- b. a resource consent application for the subdivision, use or development of land where:
  - i. the application is for a restricted discretionary, discretionary or non-complying activity; and
  - ii. the proposal is in relation to land within an Outstanding Natural Feature or Outstanding Natural Landscape or gives rise to landscape effects and is on land with Rural zoning; or
- c. a notice of requirement where the proposal is in relation to land within an Outstanding Natural Feature or Outstanding Natural Landscape or gives rise to landscape effects and is on land with Rural zoning; or
- d. a resource consent where the proposal (or part thereof) is in an Exception Zone in 3.1B.5 and gives rise to landscape effects on the receiving environment that includes an Outstanding Natural Feature or Outstanding Natural Landscape on land with Rural zoning outside that Exception Zone.

#### Rural Zone Landscape Monitoring

XC1 The Council shall monitor the efficiency and effectiveness of the Rural Zone provisions and whether SO 3.2.5 is being achieved at intervals of not more than two and a half years, as follows:

- a. for those areas identified in Schedule 21.22 or 21.23, from *[insert date that any area is added to a schedule is made operative]*; and
- b. for those areas not identified in Schedule 21.22 or 21.23, from *[insert date determinative decision on Topic 2 issued]*.

XC2 Procedures for monitoring shall include:

- a. keeping records, including compiling photographs, gathering information and undertaking or commissioning research addressing resource consent decisions granted for restricted discretionary, discretionary and non-complying activities, including evaluation of the commentary in those decisions to assess the implementation of the relevant provisions of Chapters 3, 4, 6 and 21, and policies of Chapters 3, 4 and 6;

- b. for those areas identified in Schedule 21.22, whether subdivision, use and development has protected the identified landscape values, having regard to (d) below;
- c. for those areas identified in Schedule 21.23, whether subdivision, use and development has maintained the identified landscape character, and maintained or enhanced visual amenity values;
- d. where the following activities have been approved, evaluating whether SO 3.2.5 is being achieved and related landscape capacity has not been exceeded as it relates to the areas surrounding that development:
  - i. commercial recreational activities;
  - ii. visitor accommodation and tourism related activities;
  - iii. intensive agriculture;
  - iv. earthworks;
  - v. farm buildings;
  - vi. mineral extraction;
  - vii. transport infrastructure;
  - viii. utilities and regional significant infrastructure;
  - ix. renewable energy generation;
  - x. forestry;
  - xi. rural living;
- e. identification of areas that are subject to particular development pressure including field reports to evaluate the implementation of the relevant provisions of Chapters 3, 4, 6 and 21.

### Key for Chapter 6

- Council decision: black text.
- Decision 2.2: underlined and ~~struck through~~ black text.
- Decision 2.7: underlined and ~~struck through~~ red text.

Topic 2 Subtopic 9, Activities on Lakes and Rivers: provisions confirmed by the consent order dated 11 September 2020 are highlighted grey.

## 6 Landscapes and Rural Character

### 6.1 Purpose

The purpose of this chapter is to provide greater detail as to how the landscape, particularly outside urban settlements, will be managed in order to implement the strategic objectives and policies in Chapter 3. This chapter needs to be read with particular reference to the Chapter 3 strategic objectives and policies in Chapter 3, which identify the outcomes the policies in this chapter are seeking to achieve. The relevant Chapter 3 objectives and policies are identified in brackets following each policy.

Landscapes have been categorised to provide greater certainty of their importance to the District, and to respond to regional policy and national legislation. Categorisations of landscapes will provide decision makers with a basis to consider the appropriateness of activities that have adverse effects on those landscapes.

### 6.2 Values

The District's landscapes are of significant value to the people who live in, work in or visit the District. The District relies in a large part for its social and economic wellbeing on the quality of the landscape, open spaces and the natural and built environment. Those landscapes also have inherent values, particularly to Tangata Whenua.

The landscapes consist of a variety of landforms created by uplift and glaciations, which include mountains, ice-sculpted rock, scree slopes, moraine, fans, a variety of confined and braided river systems, valley floors and lake basins. These distinct landforms remain easily legible and strong features of the present landscape.

Indigenous vegetation also contributes to the quality of the District's landscapes. While much of the original vegetation has been modified, the colour and texture of indigenous vegetation within these landforms contribute to the distinctive identity of the District's landscapes.

The open space or open character of rural land is are key elements of the landscape character that can be vulnerable to degradation from subdivision, development and non-farming activities. The prevalence of large farms and landholdings contributes to the open space and rural working character of the landscape. The predominance of open space over housing and related domestic elements is a strong determinant of the character of the District's rural landscapes.

Some rural areas, particularly those closer to the Queenstown and Wanaka urban areas and within parts of the Wakatipu Basin and Upper Clutha Basin, have an established pattern of housing on smaller landholdings. The landscape character of these areas has been modified by vehicle accesses, earthworks and vegetation planting for amenity, screening and shelter, which have reduced the open space character exhibited by larger scale farming activities.

While acknowledging these rural areas have established rural living and development, and a substantial amount of further subdivision and development has already been approved in these areas, the landscape values of these areas are vulnerable to degradation from further subdivision and development. Areas where rural living development is at or is approaching the finite capacity of the landscape need to be identified if the District's distinctive rural landscape values are to be sustained. Areas where the landscape can accommodate sensitive and sympathetic rural living developments similarly need to be identified.

The lakes and rivers both on their own and, when viewed as part of the distinctive landscape, are a significant element of the national and international identity of the District and provide for a wide range of amenity and recreational opportunities. They are nationally and internationally recognised as part of the reason for the District's importance as a visitor destination, as well as one of the reasons for residents to belong to the area. Managing the landscape and recreational values on the surface of lakes and rivers is an important District Plan function.

Private, commercial and public operators rely on the use, occupation of and access to lakes and rivers for a wide range of activities including recreation, commercial recreation, tourism, transport services and infrastructure. These activities could also include both temporary and permanent structures on the surface, and on the margins, of lakes and rivers.

Activities on the surface of lakes and rivers and their supporting infrastructure can have adverse effects on nature conservation values, amenity values, the quality of the environment, navigational and congestion safety (including on other commercial operators and recreational users). New activities also have the potential to adversely affect established activities for example by detracting from the experience enjoyed by the users of existing activities and generating adverse safety effects.

## 6.3 Policies

### 6.3.1 Rural Landscape Categorisation

6.3.1.1 Classify Categorise the Rural Zoned landscapes in the District as:

- a. Outstanding Natural Feature (ONF);
- b. Outstanding Natural Landscape (ONL);
- c. Rural Character Landscape (RCL) ~~(3.2.5.1, 3.2.5.2, 3.3.29, 3.3.31).~~

6.3.1.2 Exclude identified Ski Area Sub-Zones and the area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps from the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories applied to the balance of the Rural Zone and from the policies of this chapter related to those categories. (3.2.1.1, ~~3.4.4.4, 3.3.21,~~ 3.3.1A-C, 3.2.5.1A, 3.2.5.1B).

6.3.1.3 Provide a separate regulatory regime for the Gibbston Valley (identified as the Gibbston Character Zone) Rural Residential Zone, Rural Lifestyle Zone, Resort Zones and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories and the policies of this chapter related to those categories do not apply unless otherwise stated. (3.2.1.1, 3.2.1.7, 3.2.1.8, ~~3.2.5.2,~~ 3.2.5.1A, 3.2.5.2B, 3.3.20 -24, 3.3.32).

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### **6.3.2 Managing Activities in the Rural Zone, the Gibbston Character Zone, the Rural Residential Zone and the Rural Lifestyle Zone**

- 6.3.2.14 Avoid urban development and subdivision to urban densities in the rural zones. (3.2.2.1, 3.2.5.1, 3.2.5.2, ~~3.3.13-15, 3.3.23~~, 3.3.30, 3.3.32A).
- 6.3.2.25 Ensure that the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and of landscape character, including of the sense of remoteness where it is an important part of that character. (~~3.2.5.1, 3.2.5.2,~~ 3.3.19, 3.3.20, 3.3.30, ~~3.3.32~~).
- 6.3.2.36 Ensure the District's distinctive landscapes are not degraded by production forestry planting and harvesting activities. (3.2.1.8, ~~3.2.5.1, 3.2.5.2~~, 3.3.19, 3.3.29, 3.3.31).
- 6.3.2.47 Enable continuation of the contribution low-intensity pastoral farming in the Rural Zone and viticulture in the Gibbston Character Zone on large landholdings makes to the District's landscape character. (3.2.1.7, 3.2.5.1, ~~3.2.5.2~~, 3.3.20).
- 6.3.2.58 Avoid indigenous vegetation clearance where it would significantly degrade the visual character and qualities of the District's distinctive landscapes. (3.2.1.8, 3.2.5.1, ~~3.2.5.2~~, 3.3.19, 3.3.30, 3.3.32A).
- 6.3.2.69 Encourage subdivision and development proposals to promote indigenous biodiversity protection and regeneration where the landscape values and nature conservation values would be maintained or enhanced, particularly where the subdivision or development constitutes a change in the intensity in the land use or the retirement of productive farm land. (3.2.1.7, 3.2.4.1, 3.2.5.1, ~~3.2.5.2~~, 3.3.1A, 3.3.19, 3.3.20, 3.3.30, 3.3.32A).
- 6.3.2.710 Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes adjacent in proximity to an Outstanding Natural Features or Outstanding Natural Landscape does not compromise have more than minor adverse effects on the landscape quality, character and visual amenity values of that the relevant Outstanding Natural Feature(s) or Outstanding Natural Landscape. (~~3.2.5.1, 3.3.30~~).
- 6.3.2.811 Encourage any landscaping to be ecologically viable and consistent with the established character of the area. (3.2.1.8, 3.2.5.1, ~~3.2.5.2~~, 3.3.30, 3.3.32A).

### **6.3.3 Managing Activities on Outstanding Natural Features Landscapes and in Outstanding Natural Landscapes Features**

- 6.3.3.112 Recognise that subdivision and development is inappropriate in almost all locations in Outstanding Natural Landscapes and on Outstanding Natural Features, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change and where the buildings and structures and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site the subject of application. (~~3.2.1.1, 3.2.5.1, 3.3.21, 3.3.30~~).

Recognise that subdivision and development is inappropriate on Outstanding Natural Features and in Outstanding Natural Landscapes unless:

- a. ~~landscape values are protected; and~~
- b. ~~in the case of any subsequent subdivision or development, all buildings and other structures and all changes to landform or other physical changes to the appearance of land will be reasonably difficult to see from beyond the boundary of the site in question.~~

6.3.3.213 Ensure that the protection of Outstanding Natural Features and Outstanding Natural Landscapes includes recognition of any values relating to cultural and historic elements, geological features and matters of cultural and spiritual value to tangata whenua, including tōpuni and wahi tūpuna. (3.2.3.1, 3.2.5.1A, B, 3.2.7.1, 3.3.16, 3.3.30, 3.3.33 - 35, Chapter 5).

6.3.3.314 ~~[subject to s293 directions]~~

6.3.3.415 The landscape ~~character and amenity~~ values of Outstanding Natural Landscapes are a significant intrinsic, economic and recreational resource, such that new large scale renewable electricity generation or new large scale mineral extraction development proposals are not likely to be compatible with them. (3.2.5.1A, B, ~~3.3.25, 3.3.30~~).

6.3.3.516 Maintain the open landscape character of Outstanding Natural Features and Outstanding Natural Landscapes where it is open at present. (~~3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1, 3.3.20-21, 3.3.30~~).

#### **6.3.4 Managing Activities in Rural Character Landscapes**

6.3.4.119 Recognise that subdivision and development is unsuitable in many locations in Rural Character Landscapes and successful applications will need to be, on balance, consistent with the objectives and policies of the Plan. (3.2.1.1, 3.2.1.7, 3.2.5.2A, B, 3.3.20- 24, 3.3.32A).

6.3.4.220 Encourage plan changes applying Rural Lifestyle and Rural Residential Zones to land as the appropriate planning mechanism to provide for any new rural lifestyle and rural residential developments in preference to ad-hoc subdivision and development and ensure these zones are located in areas where the landscape can accommodate the change. (3.2.1.8, 3.2.5.2A, B, 3.3.22, 3.3.24, 3.3.32A).

6.3.4.321 Require that proposals for subdivision or development for rural living in the Rural Zone:

- a. take into account ~~all subdivision or development that is in existence or is consented for all land within the relevant landscape character area as at 14 May 2021 existing and consented subdivision or development in;~~ and
- b. ~~assessing~~ the potential for adverse cumulative effects ~~on the landscape character of that area and its wider landscape context.~~ (3.2.1.8, 3.2.5.2A, B, 3.3.23, 3.3.32A).

6.3.4.422 Have particular regard to the potential adverse effects on landscape character and visual amenity values where further subdivision and development would constitute sprawl along roads. (3.2.1.1, 3.2.1.7, 3.2.5.2A, B, 3.3.21 A-C, 3.3.24-25, 3.3.32A).

6.3.4.523 Ensure incremental changes from subdivision and development do not degrade landscape ~~quality or~~ character, or important views as a result of activities associated with mitigation of the visual effects of proposed development such as screen planting, mounding and earthworks. (3.2.1.1, 3.2.1.8, 3.2.5.2A, B, 3.3.21 A-C, 3.3.24, 3.3.32A).

- 6.3.4.626 Avoid adverse effects on visual amenity from subdivision, use and development that:
- is highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); or
  - forms the foreground for an Outstanding Natural Landscape or Outstanding Natural Feature when viewed from public roads. (3.2.1.1, 3.2.1.8, 3.2.5.1A, B, 3.2.5.2A, B, 3.3.20-21, 3.3.24-25, 3.3.30, 3.3.32).
- 6.3.4.727 In the Wakatipu Basin, avoid planting and screening, particularly along roads and boundaries that would degrade openness where such openness is an important part of its landscape ~~quality or~~ character. (3.2.1.1, 3.2.1.8, 3.2.5.2, 3.3.20-21, 3.3.24-25, 3.3.32).
- 6.3.4.828 In the upper Clutha Basin, subdivision and development maintains open landscape character where that is the existing character of the Rural Character Landscape, have regard to the adverse effects from subdivision and development on the open landscape character where it is open at present. (3.2.1.1, 3.2.1.8, 3.2.5.2A, B, 3.3.1A-C, 3.3.20-21, 3.3.24-26, 3.3.32A).
- 6.3.4.929 Encourage development to utilise shared accesses and infrastructure, and to locate within the parts of the site where it will minimise disruption to natural landforms and to rural character. (3.2.1.1, 3.2.1.8, 3.3.1A-C 3.3.21, 3.3.24, 3.3.32).

### 6.3.5 Managing Activities on Lakes and Rivers

- 6.3.5.130 ~~Control~~ Manage the location, intensity and scale of buildings, structures on the surface and margins of water bodies including jetties, wharves, moorings and infrastructure on the surface and margins of water bodies recognising the functional needs of these activities, and the importance of lakes and rivers, including as a commercial recreation, tourism, transport and recreational resource, and ensure these structures are at a scale or in a location that, as far as practicable, maintain or enhance the landscape quality and character, and amenity values. (3.2.1.1, 3.2.4.1, 3.2.4.3, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.21A-C, 3.3.26, 3.3.30, 3.3.32A).
- 6.3.5.231 Recognise the character of the Frankton Arm including the established jetties and wharves, and provide for theseir maintenance, upgrade or expansion on the basis that the visual qualities of the District's distinctive landscapes are maintained and enhanced. (3.2.4.3, 3.2.5.1, 3.3.30).
- 6.3.5.332 Recognise the urban character of Queenstown Bay and provide for structures and facilities on the surface and margins of Queenstown Bay within the Queenstown Town Centre Waterfront Subzone providing they protect, maintain or enhance the ability to appreciate ion of the District's distinctive landscapes. (3.2.1.1, 3.2.4.1, 3.2.4.4, 3.2.5.1, 3.2.5.2, 3.3.19, 3.3.21A-C, 3.3.30, 3.3.32).
- 6.3.5.433 Provide for appropriate commercial and recreational activities on the surface of water bodies that do not involve construction of new structures. (3.2.1.1, 3.2.4.4, 3.2.5.1, 3.2.5.2, 3.3.21A-C, 3.3.30, 3.3.32).

