

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA**

**Decision No. [2019] NZEnvC 205**

IN THE MATTER of the Resource Management Act 1991  
AND of appeals pursuant to 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: at Queenstown on 8, 9, 10, 11, 12, 15, 16, 17, 18 April 2019  
6, 7, 8, 9, 10, 13, 14, 15, 16 May 2019; and  
at Christchurch on 24 June 2019  
(Site visits undertaken in the week of 6-10 May 2019)

Appearances: S Scott & M Wakefield for the Queenstown Lakes District Council  
J Gardner-Hopkins for Kawarau Jet Services Holdings Limited &  
Lake McKay Station Ltd  
T J Shiels QC and M G Nidd for Hawthenden Ltd  
J Haworth for Upper Clutha Environmental Society Inc  
M Baker-Galloway for Seven Albert Town Property Owners, Real  
Journeys Ltd, Real Journeys (t/a Go Orange Ltd), Real Journeys  
(t/a Canyon Food and Brew Co.), Jacks Point Residential No.2  
Ltd, Jacks Point Village Holdings Ltd, Jacks Point Developments  
Ltd, Jacks Point Land Ltd, Jacks Point Land No. 2 Ltd, Jacks  
Point Management Ltd, Henley Downs Land Holdings Ltd,  
Henley Downs Farms Holdings Ltd, Coneburn Preserve Holdings  
Ltd, Willow Pond Farm Ltd, Glendhu Bay Trustees Ltd, Darby  
Planning LP, Waterfall Park Developments Ltd, Te Anau  
Developments Ltd, Bill and Jan Walker Family Trust, Darby  
Planning LP, Real Journeys Ltd, Allenby Farms Ltd, NZ Tungsten  
Mining Ltd & others, Mt Christina Ltd, Steve Xin, A B Duncan,  
Gertrude Saddlery Ltd, Sunnyheights Ltd



G M Todd for James W Cooper & SYZ Investments Ltd  
J Leckie for Cardrona Alpine Resort Ltd and Anderson Branch Creek Station, M & C Burgess, Soho Ski Area Limited, Blackmans Creek Holdings No 1 Limited Partnership and Treble Cone Investments Limited  
J Macdonald for the Rob Roy Residents  
P Page & S Peirce for Longview Environmental Trust  
A J Logan for Otago Regional Council  
R Ashton for Remarkables Park Ltd and Queenstown Park Ltd  
Dr J Cossens in person

Date of Decision: 19 December 2019

Date of Issue: 19 December 2019

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**INTERIM DECISION OF THE ENVIRONMENT COURT**  
**Topic 2: Rural Landscapes**  
**Decision 2.2 – Sub-topics 2 – 11**

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- A: The various Topic 2 appeals are allowed in part and/or declined in part as summarised in Annexure 3.
- B: Provisional drafting of changes to Topic 2 provisions of Chapters 3 and 6 of the Decision Version to give effect to the findings in this decision is in Annexure 1.
- C: Further expert conferencing between Messrs Barr and Ferguson, together with Messrs Gilbert, Mellsop and Pflüger, is directed for the purposes described in Part F.
- D: Several associated directions are made in Part F, including to direct QLDC to provide supplementary information and to allow for supplementary closing submissions prior to further decision(s) to finalise the Topic 2 provisions.
- E: Costs are reserved, with a timetable to issue in due course.



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## REASONS

### PART A: INTRODUCTION

#### Background

[1] This is one of two companion decisions on appeals in relation to 'Topic 2 – Rural Landscapes' arising from the review of the Queenstown Lakes District Plan ('ODP').

[2] Queenstown Lakes District Council ('QLDC') is undertaking the review in chapter-related stages ('Plan Review'). It is a partial review in that it does not encompass the entirety of the ODP. Rather, it significantly updates it with various new and revised provisions.<sup>1</sup> However in public notices for the review, QLDC has referred to those changes as a 'proposed district plan'<sup>2</sup> ('PDP'). While that is not precisely correct, it reflects the fact that the partial review seeks a substantially updated ODP.

[3] QLDC's decisions on Stage 1 of the Plan Review were made in 2018. We refer to the plan provisions updated or made by those Stage 1 decisions as the 'DV'.

[4] Appeals against those decisions are being heard and determined in stages and

<sup>1</sup> *Darby Planning Ltd Partnership v Queenstown Lakes District Council* 2019] NZEnvC 133 at [6].  
<sup>2</sup> <https://www.qldc.govt.nz/planning/district-plan/proposed-district-plan-stage-1/>



topic groupings. This decision, like its companion Decision 2.3, is concerned with 'Topic 2' appeals. Those appeals concern the 'Rural Landscapes' provisions of Chapters 3 and 6 of the DV (and associated Rural zone planning maps).<sup>3</sup>

[5] Outstanding Natural Features ('ONFs') and Outstanding Natural Landscapes ('ONLs') (together, 'ONF/Ls') are mapped in the DV for the purposes of s6(b) of the Resource Management Act 1991 ('RMA'). Almost the entire District (97%) is so mapped. Most of the remaining 3% of the District is mapped 'Rural Character Landscape' ('RCL'). That RCL mapping denotes landscapes adjudged to have landscape character and associated amenity values for the purposes of s7(c) RMA.<sup>4</sup>

[6] According to procedural directions made for the hearing of the appeals, Topic 2 is further divided into various sub-topics.

[7] Sub-topic 1 concerns appeals seeking changes to the DV's mapping of ONF/Ls and RCLs. There are six such appeals. Our first substantive decision on Topic 2, issued on 20 September 2019 (*Hawthenden*,<sup>5</sup> 'Decision 2.1'), dealt with three of them. The companion Decision 2.3 deals with the remainder.

[8] This decision deals with the other Topic 2 sub-topics (sub-topics 2 – 10 as detailed in the footnote).<sup>6</sup>

[9] We have issued this decision and Decision 2.3 as separate, companion, decisions for convenience to the parties. In particular, we are mindful that most parties have only confined interests in relation to the several matters that arise in the various sub-topics for consideration. However, both decisions have arisen from the same hearings, and associated deliberations. The reasoning in each decision informs and applies to both.

<sup>3</sup> Our first substantive decision on Topic 1 'A Resilient Economy' was issued in August 2019 (*Darby Planning Ltd Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133, [2019] NZEnvC 142).

<sup>4</sup> Opening submissions for QLDC, dated 8 April 2018, at [2.2].

<sup>5</sup> *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160 (*Decision 2.1*).

<sup>6</sup> The court's 24 August 2018 Minute lists these as sub-topic 2 (SOs 3.2.1.7 – 3.2.1.8, 3.2.5 and 3.2.5.1 – 3.2.5.2) sub-topic 3 (SPs 3.3.20 – 3.3.32, excluding SPs 3.3.27 and 3.3.28), sub-topic 4 (Title, Purpose and Values, 6.1 and 6.2), sub-topic 5 (Rural Landscape Categorisation, P 6.3.1 – 6.3.3), sub-topic 7 (Managing activities in ONLs and on ONFs, P 6.3.12 – 6.3.18), sub-topic 8 (Managing activities on lakes and rivers, P 6.3.30 – 6.3.33), sub-topic 10 (Tourism, Ch 6) and sub-topic 11 (Upper Clutha Basin Land Use Planning Study). The regionally significant infrastructure provisions are not the subject of this decision. As they are the subject of a settlement between relevant parties, they will be determined separately.



### Landscape related terms used in this decision

[10] In this decision, when we use certain terms drawn from the landscape evidence, we intend a particular meaning for them. While we may not always be precisely consistent, our intended meanings are as follows:<sup>7</sup>

- (a) **Landscape capacity** (or 'capacity'):
  - (i) when used in relation to an ONF or ONL, refers to the capacity that the natural feature or natural landscape in question has to accommodate change from land use or development, without those landscape values being destroyed or materially compromised;
  - (ii) when used in relation to an RCL, refers to the capacity of a landscape character area to accommodate change from land use or development, without that area's landscape character or visual amenity values being destroyed or materially compromised;
- (b) **Landscape character** (or 'character'), when used in relation to an RCL, refers to the expression of landscape values, and their associated visual amenity values, that combine to distinguish an area (e.g. as a rural or more urbanised landscape);
- (c) **Landscape character area** refers to a geographic area of an RCL where there is a distinctive landscape character;
- (d) **Landscape values** (or 'values'), whether in relation to ONF/Ls or RCLs, includes reference to biophysical, sensory and associative attributes; and
- (e) **Visual amenity values** (or 'amenity values'), when used in relation to an RCL, refers to those qualities and characteristics that contribute to people's appreciation of the landscape character of a landscape character area.

### Overview of the context and related issues

[11] The Topic 2 provisions in Chs 3 and 6 that are most in issue in the appeals fall into two broad categories:



<sup>7</sup> We also make directions for a number of these terms to be suitably included (subject to final drafting) in provision '3.1B Interpretation and Application of this Chapter'.

- (a) those that set the strategic and District-wide objectives and policy directions concerning ss 6(b) and 7(c) RMA; and
- (b) those that provide for specified exceptions to that overall regime, in Chs 3 and 6, which parties term the 'Carve Out provisions'.

***Provisions as to ss6(b) and 7(c) RMA***

[12] Sections 6(b) and 7(c) of the RMA are relevantly as follows:<sup>8</sup>

**6 Matters of national importance**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...

- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

...

**7 Other matters**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –

...

- (c) the maintenance and enhancement of amenity values:

...

[13] As we have noted, the DV relies on mapping to identify those natural features and landscapes of the District that have been adjudged to qualify as ONF/Ls for the purposes of s6(b) RMA. That is some advance on the pre-review position of the ODP as it did not comprehensively map ONF/Ls of the District.

[14] We are informed through QLDC's evidence that an extensive desk-top analysis, including of several Environment Court appeal decisions, informed QLDC's choice to ascribe that ONF/L mapping in the NV (now essentially carried into the DV).

<sup>8</sup> For completeness, s7(f) RMA refers to the "maintenance and enhancement of the quality of the environment". In landscape terms, that is closely related to s7(c). However, as the DV's RCL regime is described as being for s7(c) purposes, we do not refer to both provisions in this decision (rather, treating matters on the basis that proper response to s7(c) landscape matters effectively covers both provisions).





[15] It is helpful to draw from Ms Scott's<sup>9</sup> opening submissions for QLDC in summary of the overall design of the DV:<sup>10</sup>

... Chapters 3 and 6 seek to appropriately manage the District's rural landscapes ...

... The ONL/F and RCL have been identified in the PDP through plan map annotations and boundaries that demark the extent of ONL/F and RCL landscapes across the District. In addition to a purpose statement, issues and an interpretation section (addressed in detail in Topic 1 but still a live issue), Chapter 3 comprises Strategic Objectives (SO) and Strategic Policies (SP) that have been allocated to this hearing topic. Chapter 6 includes a purpose statement, summary of the values associated with the District's landscapes and policies, all of which are required to achieve the SOs within Chapter 3.

The lower order provisions of the PDP (ie. the various rural zones) contain objectives, policies, activity rules and assessment matters that provide further detailed guidance for decision makers as to whether an activity would be appropriate in the context of these landscapes.

[16] While a natural feature is typically distinct and clearly legible in biophysical terms, the geographic extent of a landscape is typically more subtle and, hence, less readily able to be defined by mapping.<sup>11</sup> Informed judgment is called for. The boundaries of individual landscapes are not shown on the DV's planning maps or elsewhere. Rather, the planning maps show a more general ONL notation over large parts of the Rural zone planning maps. Nor does the DV (or ODP) seek to identify what is sought to be protected for any of the mapped ONL areas, such as through any scheduling of related ONF or ONL values. Rather, the DV provides a generic description of values for the District's landscapes and specifies objectives, policies, assessment matters and other rules of more general application.

[17] That DV's approach to s6(b) RMA, and its mapped ONF/Ls is a significant issue for this decision.

[18] For the DV's 'Rural Character Landscapes', there is a uniform RCL notation on

<sup>9</sup> As with Topic 1, Mr Wakefield was co-counsel for QLDC, with Ms Scott, in Topic 2. Opening and closing submissions are in the name of both counsel. References to Ms Scott throughout this decision (and Decision 2.3) are for convenience, and with acknowledgement of Mr Wakefield's shared responsibility for them.

<sup>10</sup> Opening submissions for QLDC, dated 8 April 2019, at [2.3] and [2.5] – [2.6].

<sup>11</sup> We draw here from the joint witness statement of landscape experts on landscape methodology, dated 29 January 2019 ('Landscape Methodology JWS'), at [1,2].



the planning maps. The DV does not seek to identify individual RCL landscape character areas or their associated character or visual amenity values. As we later discuss, an exception to the generalised RCL notation is the bespoke regime now proposed for the Wakatipu Basin, near Queenstown. That has arisen through a variation, notified on the recommendation of independent hearing commissioners who heard submissions in the Plan Review. Those commissioners recommended further work be done in those terms for the Upper Clutha Basin RCLs. QLDC elected not to take up that recommendation.

[19] The DV's approach to s7(c) RMA and its treatment of RCL areas of the Upper Clutha Basin is a further significant issue for this decision.

[20] The fact that the ODP has a statutory purpose of fleshing out and providing local context to ss6(b) and 7(c) is not, of itself, contentious. Rather, as parties perceive it, the central issue concerns how that is most appropriately done.

[21] In opening for QLDC, Ms Scott emphasised the need for a "balance to be found", including:<sup>12</sup>

... the PDP must ensure bottom lines in sections 6 and 7 are achieved by setting a 'threshold' for development in the s 6(b) landscapes and features, and importantly ensuring there is sufficient direction as to what is inappropriate ...

... the maintenance and enhancement of the s7(c) landscapes is balanced against providing for additional (appropriate) development such as tourism, land use diversification and rural living. The provision of... [this] must be balanced against section 7 requirements ...

[22] As QLDC's opening submissions also acknowledge, there is an "obvious tension" in providing for ss6(b) and 7(c) matters in regard to landscapes in light of "the current development pressure experienced within the District".<sup>13</sup> Later in this decision, we discuss evidence on the importance of tourism to the local economy and the reliance of tourism on the safeguarding of the ONF/L resource. Decisions 2.1 and 2.3 discuss how

<sup>12</sup> Opening submissions for QLDC on Topic 2, dated 8 April 2019, at [2.4(a), (b)]. Ms Scott also referred, in that submission to the need to consider "the important role of infrastructure" including "where that infrastructure must be located within these landscapes and the rural environment more generally". Pertaining to that, Ch 3 and 6 provisions on regionally significant infrastructure are the subject of consent memoranda as between QLDC and relevant infrastructure parties. These present an agreed position on some changes to those provisions. According to directions made in discussion with those parties, the court's determination of those provisions remains on hold pending the issuance of this decision. Related directions are made.

<sup>13</sup> Opening submissions for QLDC on Topic 2, dated 8 April 2019, at [2.2].



productive farming is another source of that tension. The attractiveness of RCL areas of the District for residential lifestyle living, particularly near urban areas in the Upper Clutha Basin, is another such issue in regard to rural landscape character and visual amenity values.

[23] A number of parties say the DV has failed to strike the proper balance in the terms QLDC describes. Some see this for both ONF/Ls. Others are more specifically concerned about the Upper Clutha Basin RCLs. Prominent amongst those parties are the 'Darby Group'<sup>14</sup> and Upper Clutha Environmental Society Inc ('UCESI'), although each seeks quite different outcomes.

[24] The Darby Planning Limited appeal criticises the lack of proper landscape assessment underpinnings of the DV and characterises its approach to landscapes as flawed.

[25] Central to Darby Group's case is that a directive policy framework needs to be included in the ODP. The essence of the approach they seek is to require a District-wide landscapes' assessment so that, through further Sch 1 RMA plan changes, schedules would be added to the ODP that identify relevant landscape values and landscape capacity. That is for both s6(b) and 7(c) purposes.

[26] Other appellants express similar concerns although they target their requested relief to ONF/L and RCL mapping changes. Decisions 2.1 and 2.3 address those sub-topic 1 appeals.

[27] UCESI is also concerned about the DV's regime for ONF/Ls but opposes what Darby Group proposes for these s6(b) RMA matters. They also have particular concerns about the DV's RCL regime for the Upper Clutha Basin. Dr John Cossens, as a s274 party, opposes what UCESI seeks but is similarly concerned about the lack of clear direction given by the DV's Upper Clutha RCL regime.

[28] Several other parties support or oppose these various positions and/or seek or oppose relief on particular related matters. These include matters such as productive

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<sup>14</sup> Referring to Darby Planning Limited ENV-2018-CHC-150 and related parties noted in the 15 April 2018 opening submissions of counsel, Ms Baker-Galloway, referring to related companies in the so-called 'Darby Group' and also the 'Real Journeys Group'.



agriculture, the visitor industry and other commercial activities including resorts. Some parties seek greater enablement of development within ONF/Ls and/or RCLs. Others seek greater protection and more stringency in regard to development. A strong theme across many parties is that the DV needs to provide better certainty as to its driving intentions.

[29] QLDC defends much of the substance of the DV's regime.

### ***Carve Out provisions***

[30] As noted, Carve Out essentially refers to a regime of specified exceptions to that overall regime for ss6(b) and 7(c) RMA. Carve Out is premised on a theory that those provisions have already been accounted for in the ODP zones and sub-zones to which Carve Out would apply. We discuss the various zones and sub-zones to which Carve Out would apply later in this decision.

[31] The issues, whilst complex, are essentially about ensuring that the intentions for the relevant excepted zones or sub-zones are properly and effectively expressed in Chs 3 and 6. That is, it is accepted by all relevant parties that the ODP should have such a regime of exceptions to the relevant Ch 3 and Ch 6 provisions.

### ***Other issues***

[32] Related and further issues raised in closing submissions are also addressed where relevant.

### **Adoption of reasons in Decision 2.1 on statutory framework and principles**

[33] Decision 2.1 traverses and makes findings on a range of matters relevant to this decision. We adopt our reasons at:

- (a) [6] – [12] (under the heading 'statutory framework and general principles');
- (b) [13] – [33] (under the heading 'is the lack of a District-wide landscape assessment fatal to the PDP maps?');
- (c) [35] – [81] (under the heading 'principles for landscape assessment').



## Scope

[34] In a plan appeal, leaving aside s293, the court may “confirm, amend, or cancel” a decision to which the appeal relates (s290). The scope of plan appeals is specified in Sch 1 cl 14 RMA. The law is well settled. In relevant terms, for the appeals in issue, this is to be fairly and reasonably within the general scope of the original submission, the NV, or somewhere in between.<sup>15</sup>

[35] A related issue for this decision concerns the scope available to the court to determine the most appropriate set of Topic 2 provisions in issue in the appeals, in circumstances where parties seek a variety of different, sometimes consistent and other times conflicting, planning outcomes. The general test applied is whether any proposed amendment goes beyond what is reasonably and fairly raised in the original submission and notice of appeal.<sup>16</sup>

[36] Several appeals state relief in broad terms, whereas others also seek provision-specific relief. That is similarly the case for how various s274 parties express their positions in support of, or opposition to, relief pursued in appeals for Topic 2. Added to that, several parties have called planning evidence in which opinions on the best expression of changes to the DV does not always align precisely with how specific relief as to various DV provisions is expressed in their notices of appeal. Furthermore, in several cases, initial planning opinions about these matters has been overtaken by outcomes of planning witness conferencing, as recorded in joint witness statements. Through the hearing, such opinions evolved further in many cases, in response to cross-examination and court questioning of witnesses. The extent of that evolution is reflected in QLDC’s closing version of provisions, and closing submissions for various parties.

[37] Ch 3 is on Strategic Directions and has a related overarching role in the design of the PDP’s modifications to the ODP. Similarly, Ch 6 specifies policies of District-wide application to the consideration of landscapes. Those design purposes of Chs 3 and 6 in the ODP cannot be sensibly put aside when considering the relief in specific appeals. Nevertheless, we have scrutinised our findings on provisions against the relief sought in

<sup>15</sup> See *Vivid Holdings Ltd (Re an application)* (1999) 5 ELRNZ 246, [1999] NZRMA 467; and as usefully discussed more recently in *Church of Jesus Christ of Latter Day Saints Trust Board v Hamilton City Council* [2015] NZEnvC 166 at [19].

<sup>16</sup> *General Distributors Ltd v Waipa District Council* (2008) 16 ELRNZ 1 (HC); see also *Mawhinney v Auckland Council* (2011) 16 ELRNZ 608 at [111] (HC).



appeals in relation to Topic 2. Annexure 3 summarises our conclusions. We are satisfied that our decision is, in all respects, within the scope available in the relevant appeals. That is the case even though, in many cases, the relief sought is partly declined and/or partly allowed (and, in no cases, fully allowed).

[38] In particular, we are satisfied that no relevant appeal seeks relief beyond the scope of their originating submissions. Furthermore, we find, in substance, the determinations we reach are fairly and reasonably raised by the relevant appeals, considered both individually and collectively. That is not to say those determinations reflect the specific changes to the DV that some notices of appeal specified. To seek to do that would be unrealistic, given the overall imperative of ensuring a sound overall planning outcome. However, as noted, during the course of the hearing (including in QLDC's closing version), we have been offered various other prescriptions that, in detail, do not necessarily reflect what original notices of appeal specified as appropriate. Furthermore, we are satisfied that our determinations all fairly and reasonably respond to the broad range of matters raised in the appeals by UCESI and Darby Group. Hence, Annexure 3 sets out our summary of how our determinations would allow in part, and at other times, decline in part, the relief sought in the appeals.

[39] Nevertheless, if we are wrong in our understanding that our determinations are all within scope, we are satisfied on the evidence that there is available capacity to make directions under s293 to achieve the same substantive outcomes for Chs 3 and 6. We reserve our capacity to do so, subject to directions we make in Part F.



**PART B: PROVISIONS CONCERNING SECTIONS 6(b) AND 7(c) RMA****Does the pRPS give relevant directions?**

[40] Section 75(3) RMA is to the effect that district plans must give effect to relevant policy instruments that sit above the district plan in hierarchy, including the RPS. However, the pRPS has not become a fully operative RPS. In his opening submissions for Otago Regional Council ('ORC'), Mr Logan provided a helpful status update on those relevant pRPS provisions currently before the Environment Court on appeal (although generally no longer in contention between the parties). Mindful that key relevant pRPS provisions are essentially beyond contention, we accord those provisions significant weight.

[41] Of particular relevance are the following objective and policies (and associated 'issue', 'method' and other provisions):

**Objective 3.2** Otago's significant and highly-valued natural resources are identified, and protected, or enhanced where degraded.

...

**Policy 3.2.3** **Identifying outstanding natural features, landscapes and seascapes**

Identify areas and values of outstanding natural features, landscapes and seascapes, using the attributes in Schedule 3.

**Policy 3.2.5** **Identifying highly valued natural features, landscapes and seascapes**

Identify natural features, landscapes and seascapes, which are highly valued for their contribution to the amenity or quality of the environment

[42] ORC and QLDC interpret those provisions as allowing for the approach that the DV takes both for ONF/Ls and RCLs. That is, they read them as allowing for judgment as to whether a district plan identifies ONF/L and RCL values or leaves their identification to resource consent application processes. They draw on some related 'methods' statements in the pRPS which they interpret to colour how the objective and policies are properly read. Queenstown Park Limited ('QPL') and Remarkables Park Limited ('RPL')



concur in that interpretation. We do not set out those method statements. However, whilst we find their wording not entirely clear, we acknowledge that they offer some support for these parties' interpretation.

[43] Darby Group take a different view. They interpret the pRPS provisions as directing that district plans identify ONF/L values. They submit that this is the plain intention on the face of the provisions. As such, they submit there is no need to consider whether the 'methods' statements colour that meaning (pointing out that aspects of the methods statements are not clear in any case). Hawthenden essentially concurs in Darby Group's interpretations. Putting aside the method statements, there is some strength in this plain reading interpretation. In addition, it is more consistent with our interpretation of the statutory purpose of the ODP in relation to s6(b) RMA.

[44] Ultimately, we do not need to decide which of these alternative interpretations of the pRPS is the correct one. That is because we can safely determine the most appropriate ODP response to ss6(b) and 7(c) on the evidence, and in light of Higher Court authority. As the pRPS has region-wide application, nor do we consider it appropriate that we reach any definitive view on its interpretation in this case.

### **Landscape expert evidence**

#### ***Yvonne Pflüger (called by Darby Group)***

[45] Landscape expert, Yvonne Pflüger, gave evidence for Darby Group. She considers it is as important for a district plan to respond to s6(b) RMA by identifying landscape values as it is for a plan to map ONF/Ls. She commented that, without values schedules being included for mapped ONF/Ls, there would be a "very high" "potential for inconsistency in assessment methodology and subsequent risk of inconsistent findings", contrary to best practice in New Zealand. Furthermore, she considers it important for values' schedules to address landscape capacity.<sup>17</sup>

#### ***Tony Milne (called by Cardrona Alpine Resorts and Real Journeys)***

[46] Mr Milne concurs with Ms Pflüger both as to the importance of identifying ONF/L

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<sup>17</sup> Evidence of Ms Pflüger, for Darby Group, dated 9 November 2018, at [10(a)].





values in the ODP and landscape capacity. In particular, he adds that:<sup>18</sup>

... These values underpin the objectives and policies that dictate or guide what activities a landowner can or cannot undertake.

The appropriateness of activities at the time of resource consenting, the absorption capacity of the landscape and effects of a development on that landscape, simply cannot be determined without identifying the landscape character values and their importance (i.e. knowing what the landscape is valued for and why), ...

...the nub of the matter is that given the varying landscape quality between ONLFs it is difficult to determine the effects of development on the receiving environment, if the landscape values have not been determined for each. This leaves decision makers in a resource consenting context without appropriate guidance as to how an activities' effects on a landscape are to be assessed.

***Diane Lucas (called by UCESI)***

[47] Ms Lucas noted concerns about the inadequacies of the landscape analysis underpinning the NV and DV. These include a lack of strategic direction for much of the ONL and RCL landscapes below 1100 masl (which face the more significant development pressure).<sup>19</sup> Furthermore, she considers there has not been an adequate assessment as to the "spectrum of landscape attributes or the appropriate landscape scale".<sup>20</sup> She also considers that there has been an inadequate consideration of how RCLs and ONF/Ls interrelate. As she describes it, much of the 3% of the District's land area that has been mapped RCL sets the scene or context for how natural attributes of the remaining 97% of the District mapped ONF/L are enjoyed. She comments:<sup>21</sup>

... The PDP does not, in my opinion, allow adequately for addressing the maintenance and enhancement of the naturalness of the context lands, particularly in the RCL.

I am concerned the PDP addresses areas excluded from ONF/L as separate urban areas or rural landscapes and not as integral to the major predominantly natural landscapes or which they are part or adjoin. The PDP instead addresses landscape components as landscapes and ignores the landscapes of which they are part. By focussing on components, much of the PDP ignores the context landscapes that are potentially adversely affected from

<sup>18</sup> Evidence of Mr Milne, for Cardrona Alpine Resort Limited and Real Journeys Limited, dated 30 November 2018, at [8], [12] – [14].

<sup>19</sup> Evidence of Ms Lucas, for UCESI, dated 14 November 2018, at [15] – [19], [22].

<sup>20</sup> Evidence of Ms Lucas, for UCESI, dated 14 November 2018, at [30], [31].

<sup>21</sup> Evidence of Ms Lucas, for UCESI, dated 14 November 2018, at [33] – [35].



development and use undertaken within components.

[48] Furthermore, Ms Lucas recommends that a comprehensive Upper Clutha Basin Land Use Planning Study ('UCBLUPS') be undertaken.<sup>22</sup>

[49] However, she does not favour the scheduling of ONF/L values, primarily in view of the risks of being overly prescriptive or missing things.<sup>23</sup>

***Helen Mellsop and Bridget Gilbert (called by QLDC)***

[50] Ms Gilbert peer reviewed Ms Mellsop's work. She endorses Ms Mellsop's methodology and does not materially differ from her on matters of substance. In addition, in regard to the issues associated with RCLs, Ms Gilbert offered insights drawing from relevant background experience in having led the Wakatipu Basin Study (which informed QLDC's notification of the PDP variation for that Rural area). Like Ms Lucas, she noted the importance of treating ONF/Ls and RCLs on a properly integrated basis (given their strong visual connections and associated aesthetic values).<sup>24</sup> She observed that most RCL areas are surrounded by ONF/L and that there is a "strong visual connection" between these landscape areas and associated aesthetic values that needs "a reasonably high level of protection".<sup>25</sup>

[51] Like Ms Lucas, Ms Gilbert spoke of the risk of cumulative degradation of RCL landscape character through progressive subdivision and development in Rural areas (which can mean that RCL areas no longer read as rural landscapes but as a form of more spacious suburbia).<sup>26</sup> She also observed that, in her experience, cumulative landscape effects are "notoriously difficult" to accurately assess and the "actual tipping point" is "extremely difficult to determine" on a site by site basis required by the DV. That bears in mind that, except for the Wakatipu Basin, the DV provides for a discretionary activity regime where there is no specified minimum lot size. She recommends "a relatively cautious approach with respect to providing for rural living".<sup>27</sup>

<sup>22</sup> Evidence of Ms Lucas, for UCESI, dated 14 November 2018, at [69].

<sup>23</sup> Transcript, p 930, l 25 – 32, p 938, l 28 – p 939, l 13 (Transcript uses the word 'defence' as last word l 6. We treat the intention as 'development', given s6(b) RMA).

<sup>24</sup> Transcript, p 219.

<sup>25</sup> Evidence-in-chief of Ms Gilbert, for QLDC, dated 12 October 2018 at [5.17 and [9.6].

<sup>26</sup> Evidence-in-chief of Ms Gilbert, for QLDC, dated 12 October 2018 at [9.4(b)].

<sup>27</sup> Evidence-in-chief of Ms Gilbert, for QLDC, dated 12 October 2018 at [9.5], [9.6].



[52] She illustrated her concern with some examples of areas north of Auckland whose landscapes are under such development pressures.<sup>28</sup>

[53] Ms Gilbert favours QLDC undertaking a study of land uses and landscape character for the Upper Clutha Basin RCL ('UCBLS'). She envisages that part of such an UCBLS would be a "mapping exercise". That was to identify "various character units" or "characteristics" that would allow for cross-referencing to an ODP policy that would help elicit what is sought to be maintained or enhanced in the mapped character area of the RCL.<sup>29</sup>

[54] Related to those matters, at our request, Ms Gilbert prepared two documents:<sup>30</sup>

- (a) a possible methodology for an UCBLS, developed in consultation with most<sup>31</sup> other landscape experts for Topic 2, and based on her similar work for the Wakatipu Basin for the above-noted ODP variation and designed to assist to identify:
  - (i) the landscape characteristics and amenity values that should be maintained or enhanced;
  - (ii) landscape capacity, in essence to identify those areas capable of absorbing additional rural living development whilst not compromising those values and those areas not so capable; and
- (b) "guidelines for the assessment of landscape and visual effects" ('LVA Guidelines'), based on a document presently being used by Auckland Council and intended to "improve consistency with the assessment of landscape and visual effects for resource consent and plan change applications within the District".

[55] As to the detail of any approach to landscape assessment for scheduling purposes, Ms Gilbert does not favour the individual landscape character unit scale proposed by Ms Pflüger. Rather, she considers it important that a broader landscape

<sup>28</sup> Transcript, p 223, l 19 – 33.

<sup>29</sup> Transcript, p 250, l 30 – p 252, l 22.

<sup>30</sup> Supplementary statement of evidence of Ms Gilbert, for QLDC, dated 29 April 2019. The methodology for UCBLS is Annexure 1 and LVA Guidelines are Annexure 2. Annexure 3 is a copy of a NZILA memorandum of understanding, dated 27 February 2019, as to the status of draft NZILA landscape assessment guidelines on which Ms Gilbert's LVA Guidelines are based.

<sup>31</sup> Ms Gilbert noting that Ms Smetham was not available.



scale be applied.<sup>32</sup>

[56] Ms Gilbert has similar concerns to Ms Lucas about risks associated with scheduling of ONF/L values and whether the effort of doing so is warranted. Part of her concern is as to the scale of work involved, given the huge area of the District mapped ONF/L (a "herculean task"). Nor does she regard ONF/L scheduling as materially assisting consent decision-making.<sup>33</sup> She offered examples of other district plans to illustrate her point. One is of a schedule she considers to have missed important values. Another is of a case in which she was involved where her impression was that the submitters were left with the burden of calling evidence on further values (the applicant not having an incentive and the Council choosing not to do so).<sup>34</sup> Somewhat forcefully, she said:<sup>35</sup>

... If I may Sir, I mean this has caused me a lot of angst thinking about this. I'm doing two landscape assessments, district-wide landscape assessments elsewhere at the moment and my evidence has been discouraging away from the scheduling and hearing the exchange earlier today, I'm really concerned that there's what I believe, well consider to be a misunderstanding that schedules will solve all the problems with landscape assessment. ...

...

... I can't emphasise it enough, as a landscape architect, I consider this is our national taonga in terms of landscape and it does really worry me that the thinking emerging is that the schedules will solve the problems in the district in terms of landscape arguments.

## Housing capacity evidence

### *Ms Hampson and Dr Fairgray (called by QLDC)*

[57] The *Darby Planning* decision (on Topic 1) includes findings on how the PDP responds to the policy directions of the National Policy Statement on Urban Development Capacity 2016 ('NPSUDC') concerning business land. The NPSUDC also gives directions on urban housing capacity. Although that is not directly relevant to Rural landscapes, QLDC offered some evidence about it as the court had requested. This was through Ms Hampson and Dr Fairgray. We accept the evidence that QLDC has duly analysed these matters for the purposes of the NPSUDC and to inform provisions of the

<sup>32</sup> Transcript, p 1378, l 1 – 18.

<sup>33</sup> Evidence-in-chief of Ms Gilbert, for QLDC, dated 12 October 2018, at [7.5].

<sup>34</sup> Transcript, p 1378, l 31 – p 1379, l 25.

<sup>35</sup> Transcript, p 1378 l 31 – p 1379 l 4 and p 1379, l 25 – 28.



PDP.

[58] Dr Fairgray also addressed demand and capacity issues for the Rural areas. That is relevant to our consideration of the most appropriate landscape management approach, particularly for the RCL.

[59] He explained that the District has sufficient feasible Rural residential development capacity for expected dwelling growth within the District until at least 2046.<sup>36</sup> His opinion on those matters draws from analysis he undertook for QLDC. As compared to Urban areas, he explained that there is significantly less “physical” restraint on such growth.<sup>37</sup> In cross-examination by Ms Baker-Galloway (on behalf of Darby Group), he acknowledged that his rural demand assessment includes several areas that are types of Special Zone with sections of a smaller size (e.g. in the vicinity of Hāwea, as well as the Bendemeer, Kingston Village, Millbrook, Mt Cardrona, Waterfall Park and Jacks Point<sup>38</sup> special zones).<sup>39</sup> We accept his evidence.

### **Economics evidence**

#### ***Philip Osborne (called by QLDC)***

[60] Mr Osborne explained how tourism is the present and foreseeable “primary driver” of the District’s economy (contributing >30% to GDP, 25% of all jobs) and is reliant on the ONF/L resource being protected under the ODP. He emphasised that perceptions of the qualities of ONF/Ls are important in the tourism market.<sup>40</sup> He commented that residential development in RCL areas also poses a risk in economic terms. He explained this risk arises due to pressures that such development can put on what he termed “natural” landscapes (in addition to exacerbating infrastructure costs and capacity and decreasing land productivities).<sup>41</sup>

[61] While Mr Osborne is not qualified as a planner, he also offered his opinion on how the planning relief pursued under appeals compares to the DV’s provisions in benefit/cost

<sup>36</sup> Evidence-in-chief of Dr Fairgray, for QLDC, dated 23 October 2018, e.g at [3.5].

<sup>37</sup> Transcript, p 21, 19 – 27.

<sup>38</sup> Albeit acknowledging Jacks Point as within the urban growth boundary.

<sup>39</sup> Transcript, p 22, 17 – 31, p 23, 15 – 25.

<sup>40</sup> Evidence-in-chief of Mr Osborne, for QLDC, dated 15 October 2018, at [3.4].

<sup>41</sup> Evidence-in-chief of Mr Osborne, for QLDC, dated 15 October 2018, at [3.7].



terms. Part of that was in rebuttal of Mr Ballingall's opinions on these matters. In essence, he weighed in support of the DV status quo.

***John Ballingall (called by QPL/RPL)***

[62] Mr Ballingall criticised the robustness of Mr Osborne's analysis. He does not dispute the drawcard importance of the ONF/L resource for tourists. However, he characterised Mr Osborne's evidence as overly simplistic in not revealing the marginal costs and benefits, particularly in the trade-offs as between the protection of ONF/L values and the enablement of use and development.

[63] Mr Ballingall is not qualified as a planner. However, he offered the opinion that "some rebalancing of land use provisions to be more favourable to development/tourism is likely to deliver greater marginal social benefits than marginal social costs". As such, he considers such rebalancing would improve the efficiency of resource allocation and lift community wellbeing.<sup>42</sup> In essence, he weighed in opposition to the DV's status quo.

***Observation***

[64] In terms of s25 of the Evidence Act 2002 ('EA') and our overall discretion, we set aside the opinions offered by Messrs Osborne and Ballingall on planning implications. That is because those opinions are in essence conclusory advocacy, going beyond their relevant expertise and contrary to the Code of Conduct. Therefore, they are not substantially helpful. For similar reasons, we discard Mr Osborne's evidence on the risks posed by residential developments within the RCL. His characterisation of RCL's as "natural" landscapes is not consistent with their planning function for visual amenity landscapes and goes beyond his relevant expertise. We recognise that part of the responsibility lies with counsel for how evidence is briefed. We refer to the recent Court of Appeal decision in *Horton v R* as instructive in these matters.<sup>43</sup> While it concerned a District Court RMA sentencing matter, we find it offers guidance for our purposes in that our discretion to accept evidence does not exclude the relevance of s23(5) EA.

[65] However, we accept the economists' qualifications properly underpin their remaining opinions and assist our findings as we discuss.

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<sup>42</sup> Evidence-in-chief of Mr Ballingall, for QPL/RPL, dated 9 November 2018, at [4.4] – [4.8].

<sup>43</sup> *Horton v R* [2019] NZCA 239.



## Evidence and representations from non-experts with relevant experience

### *Julian Haworth, UCESI*

[66] In regard to ONF/Ls, UCESI opposes scheduling of landscape values and landscape capacity. Mr Haworth refers to the answers given by Ms Lucas and Ms Gilbert as demonstrating the “clear danger” of such an approach. In particular, he submits that it could be used to facilitate inappropriate development within ONF/Ls “contrary to s 6(b)” RMA. As an alternative, Mr Haworth says UCESI supports monitoring within ONF/Ls along the lines proposed by Mr Barr (in his second supplementary evidence).<sup>44</sup> This monitoring would audit granted consent applications, and include the production of “data, maps, and reports on the cumulative effects of rural living developments granted consent” and “field reports from practitioners who were not involved in the relevant application” to evaluate the “efficiency of PDP Chapters 3, 6 and 21 objectives, policies, assessment matters and rules”.<sup>45</sup>

[67] In regard to the Upper Clutha RCLs, Mr Haworth explained that UCESI’s concerns centre on the failure of the DV to “control the adverse cumulative effects on RCL landscape values of rural living subdivision and development”. Mr Haworth submits that the ODP’s discretionary regime “has largely failed to control cumulative effects in the RCL landscapes” and is, therefore, inconsistent with s7 RMA. In particular, he noted concern about the cumulative degradation of rural character and amenity values through “semi-rural” “small-lot residential development” (also pointing out that only a small fraction of applications are appealed, a position aggravated by the lack of public notification under s95A RMA). He observes:<sup>46</sup>

Council chose to act on the recommendation of the PDP Hearing Panel to commission a [Wakatipu Basin Land Use Planning Study (‘WBLUPS’)] and implement a 1ha/80ha regime in the PDP as Chapter 24.

Council chose not to act on the recommendation of the PDP Hearing panel to commission an [Upper Clutha Basin Land Use Planning Study (‘UCBLUPS’)]. This is despite the fact that landscape evidence for the Council, in particular that of Ms. Gilbert is sceptical about the effectiveness of the discretionary regime.

<sup>44</sup> Second supplementary evidence of Mr Barr, for QLDC, dated 7 May 2019.

<sup>45</sup> Closing submissions of UCESI, dated 31 July 2019, at [17] – [31].

<sup>46</sup> Opening representations for UCESI, dated 7 May 2019, at [6] – [20], [67], [68].



[68] As a lay witness with significant experience of Upper Clutha Basin landscape matters, Mr Haworth offered helpful insights into how a proper land use and landscape study of the Upper Clutha Basin RCL might be approached. That included his tabling of an overlay map of Rural areas in and around Wanaka township which, drawing from information sourced from QLDC, depicted the pattern Mr Haworth has observed of development pressures in those RCL areas. The fact that Mr Haworth is not a landscape expert does not mean his material on these things is not of value. Indeed, we observe that, conceptually, it is closely aligned to the supplementary evidence we received from Ms Gilbert on these matters (and which we discuss).

[69] Mr Haworth submits that the Wakatipu Basin approach should be extended to the Upper Clutha Basin. He says the predominant "working farm" character of much of the Upper Clutha Basin does not count against doing so. He submits that the evidence demonstrates that the Upper Clutha Basin RCL areas "are under significant development pressure" and "need to be protected by an 80ha minimum lot size, while 1ha average lot size precincts are identified where a great deal of development can be accommodated in RCL". He notes that QLDC's argument to the effect that a discretionary regime is appropriate for dealing with cumulative effects is contradicted by the landscape evidence (including from Ms Gilbert) that controlling for such effects is notoriously difficult.<sup>47</sup>

***Dr Cossens, s274 party to UCESI's and Darby Group's appeals***

[70] Dr Cossens offered a perspective as a longstanding resident and business owner in Upper Clutha who has experienced uncertainty, cost and delay in seeking development consent in the Rural zone (albeit under the prior ODP regime). As he acknowledged, he shares common ground with UCESI about the uncertainty of the Upper Clutha RCLs. He also sees value in an Upper Clutha Basin Land Use Planning Study that engages with the community. He parts company with Mr Haworth on preferred planning outcomes.<sup>48</sup>

[71] Dr Cossens expressed concern about the inadequacies in the DV's Rural and RCL provisions, particularly their lack of clear direction. He described the regime as too simplistic and generalised ("broad brush"). He noted that the DV does not recognise the

<sup>47</sup> Opening representations for UCESI, dated 7 May 2019, at [73] – [86]. On UCESI's request for a 1ha/80ha regime, we record that our determination of appropriate Rural zone rules is reserved as these are matters to be addressed in later Topic hearings.

<sup>48</sup> Closing submissions for Dr Cossens, dated 14 August 2019, at [87] – [92].





proper role of "relevant publics" (e.g. visitors, locals, residents) in determining sensory and perceptual values. In addition, he is concerned that the DV does not make clear what constitutes a 'rural character landscape' and how cumulative effects are measured. He also referred to its lack of identification of "significant future threats to this environment". Related to those concerns, he commented about a lack of any "real substantive research into perceptual and sensory values associated with the landscapes of this area". He urged that any work to remediate these deficiencies should include proper gauging of public perceptions.<sup>49</sup>

[72] On the matter of cumulative effects, he added:<sup>50</sup>

... all landscape experts highlight the difficulty in defining and measuring 'cumulative effect' yet the Council has tried to make it a cornerstone of their PDP policy, objectives and rules in the rural zone. Without sufficient clarification of how to define and measure 'cumulative effect' the vagueness of the concept will only be perpetuated, and inconsistency will remain.

[73] Despite their different aspirations, we observe that both Mr Haworth and/or Dr Cossens seek the common currency of a more certain Upper Clutha RCL regime.

***Johannes May (Longview Environmental Trust)***

[74] Mr May established Longview Environmental Trust ('LET') in 2010 and remains on its board. He explained that LET seeks the protection of natural landscape and related environmental values, generally in regard to the Upper Clutha. He said LET strongly supports the DV's Chs 3 and 6 objectives and policies. He spoke about LET's related concerns in regard to developmental pressures, including at Glendhu Bay and in the environs of Wanaka. Those concerns prompted LET to make a submission in the review and participate before the court, engaging planning expertise and legal counsel. By way of illustration of these concerns, Mr May commented:<sup>51</sup>

In recent years I have observed a worrying trend in resource consent applications. There is an increasing tendency for the consulting community ... employing spending power or economic arguments to justify a proposal as being "exceptional" within ONLs or on ONFs. ... In my view the protection of ONL and ONF values in this District ought to be regarded as bottom lines. ...

<sup>49</sup> Statement of evidence of Dr Cossens, s274 party, dated 30 November 2018, at [10] – [15].

<sup>50</sup> Statement of evidence of Dr Cossens, s274 party, dated 30 November 2018, at [26].

<sup>51</sup> Evidence-in-chief of Mr May, for LET, dated 31 May 2018, at [9] – [12].



I have observed poor landscape assessment and site selection decisions being justified on the basis of vast sums being spent on retirement of farm land from grazing or, more commonly, a commitment to plant native vegetation. Of course these things may well be worthwhile exercises as part of a well considered proposal, but I sense a growing trend to using the ability to fund "positive effects" as the justification for doing things that should not be allowed. I am therefore very anxious that the policy framework in the District Plan should protect the integrity of ONLs and ONFs in their own right and not simply be tradeable values to be weighed in the exercise of discretion.

... There is a finite tipping point in terms of the capacity for further development within this District's sensitive landscapes. Once this tipping point is passed the fundamental characteristics of what makes this District so special will be lost for ever. It is critical the planning provisions of the PDP are worded in manner that will not let this scenario occur.

LET strongly supports the landscape objectives and policies (Chapter 3 and Chapter 6) of the PDP ... .

***Bridget Legnavsky (Cardrona Alpine Resort Limited)***

[75] Ms Legnavsky is the General Manager of Cardrona Alpine Resort Limited ('CAR'), the operator of the Cardrona snow sports and summer adventure tourism resort. Cardrona is located within an ONL. Ms Legnavsky spoke about why CAR relies on its continued ability to operate and develop its facilities there. Having started some 30 years ago as a club-field, Cardrona is now a large and active "four-season alpine resort". Ms Legnavsky explained why CAR considers its business is driven by a concept of respectful guardianship of the mountain and significantly relies on a planning framework that allows for sound flexibility. In particular, she described the longstanding Ski Area sub-zones of the ODP as "special" and providing "a framework that allows for ski areas to operate, maintain infrastructure, and balance growth while maintaining the overall values of the landscape". She said that planning framework allows CAR "to invest and make long-term decisions that enhance not only the business but the environment we work and play in".<sup>52</sup> We return to these and other aspects of Ms Legnavsky's evidence later in this decision.

**Planning evidence**

[76] We acknowledge that the different planning opinions of Messrs Barr and

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<sup>52</sup> Evidence-in-chief of Ms Legnavsky, for CAR, dated 29 October 2018, at [1] – [20].



Ferguson are properly based on differences in the opinions of landscape experts on whom they rely.

***Christopher Ferguson (called by Darby Group)***

[77] Mr Ferguson agrees with Mr Barr that, should the court decide in favour of scheduling:

- (a) plan change processes, under Sch 1 RMA, should be used to incorporate schedules into the ODP, with the role of new SPs being to guide and direct how and when future plan changes are undertaken,<sup>53</sup> and
- (b) scheduling should be targeted to Priority Areas.

[78] Unlike Mr Barr, Mr Ferguson recommends in favour of the scheduling of landscape values for both ONF/Ls and RCLs, and considers that an important prerequisite to this is a full District-wide landscape assessment.<sup>54</sup> In essence, his rationale is that such an assessment is needed on a proper first principles analysis, in order to inform a sound planning judgment on what natural features and landscapes are sought to be protected as ONF/Ls. That is in terms of both geographic extent and landscape values. Hence, he considers that a District-wide landscape assessment should extend to a re-appraisal of the current ONF/L mapping.<sup>55</sup>

[79] We set out Mr Ferguson's drafting in Annexure 2. As we understand it, Mr Ferguson's recommended policy framework would:

- (a) prescribe a landscape assessment methodology, based on pRPS Sch 3 (including its reference to the assessment of biophysical, sensory and associative attributes) and the Landscape Methodology JWS,<sup>56</sup>
- (b) direct aspects of the approach to Sch 1 plan change processes to include ONF/L and RCL values' schedules in Ch 21 (and, for 'Priority Areas', also

<sup>53</sup> Second supplementary statement of evidence of Mr Ferguson, for Darby Group, dated 10 May 2019, at [17].

<sup>54</sup> Second supplementary statement of evidence of Mr Ferguson, for Darby Group, dated 10 May 2019, at [17].

<sup>55</sup> In her closing submissions for Darby Group, Ms Baker-Galloway explained that more "detailed mapping" should occur "at the boundary where less modified areas abut an area of more intense modification": closing submissions for Darby Group, dated 31 July 2019, at [31].

<sup>56</sup> Second supplementary statement of evidence of Mr Ferguson, for Darby Group, dated 10 May 2019, at [13] – [15].



address capacity of the landscape to absorb change);<sup>57</sup>

- (c) specify a timeline for the undertaking of assessments to identify ONF/Ls and RCLs using the process contained within SP 3.3.29, namely within 12 months of the policy becoming operative for listed "High Priority" areas and two years for other areas.<sup>58</sup>

***Craig Barr (called by QLDC)***

[80] Mr Barr does not support scheduling of ONF/L values in the ODP. In his evidence, he explains his concerns about this approach as follows:<sup>59</sup>

- (a) The assessment matters in Part 21.21 (Rural Zone) that are applicable to discretionary and non-complying activities already require that the various matters that make up outstanding attributes of the landscape need to be evaluated, with assessment required as to the extent an activity would affect those attributes.
- (b) The area of ONL in the District is rather vast, comprising approximately 97% of the area of the District, of which 45% is located within the conservation estate, mostly Mt Aspiring National Park. While the Council's functions and jurisdiction includes conservation land, there could result in a considerably large and unwieldy amount of information and text that in some areas or situations may be of little use given the mountainous nature and potentially unlikely opportunities for development proposals in such areas.
- (c) Conversely, if the schedules and particularisation of the respective landscape areas encompass large sections or units, the descriptions in each could be too broad as to be of any real assistance for meaningful guidance.

[81] He also supports the DV's approach to the Upper Clutha RCL as appropriate and sufficient.

[82] Not resiling from those opinions, Mr Barr accommodated the court's request for supplementary evidence that provided indicative drafting of possible new Ch 3 Strategic Policies for ONF/L scheduling and enhancement of the Upper Clutha RCL regime.<sup>60</sup> We thank him for doing so.

<sup>57</sup> Second supplementary statement of evidence of Mr Ferguson, for Darby Group, dated 10 May 2019, at [16] and following.

<sup>58</sup> Second supplementary statement of evidence of Mr Ferguson, for Darby Group, dated 10 May 2019, at [16] and following.

<sup>59</sup> Evidence-in-chief of Mr Barr, for QLDC, dated 15 October 2018, at [10.64].

<sup>60</sup> Second supplementary statement of evidence of Mr Barr, for QLDC, dated 7 May 2019.



[83] As with Mr Ferguson, his drafting approach to these policy frameworks assumes their intention is to give direction for the purposes of changing the ODP via Sch 1 plan change processes.<sup>61</sup>

[84] In regard to ONF/Ls, Mr Barr considers that any schedules of values in the ODP should be treated as only "a starting point". He noted that, of necessity, their descriptions of values would be "relatively broad". He termed scheduling as "a location specific benchmark for assessments to draw upon when utilising the landscape assessment matters in Part 21.21". He urged that any drafting should make clear that descriptions of values in a schedule are not to be "interpreted as an exhaustive characterisation of the potential effects of activities at a fine-grained scale within a landscape",<sup>62</sup>

[85] Mr Barr's drafting reflects those intentions. It also reflects his view that any policy for scheduling ONF/L values should be confined to identified Priority Areas where "the highest level of development pressure currently is".<sup>63</sup> He offered a tentative view that those areas should include:<sup>64</sup>

- (a) Mt Iron ONF (Wanaka);
- (b) the area either side of Wanaka – Mt Aspiring Road (i.e. the lower slopes of Mt Alpha and Lake Wanaka) from the ONF/L boundary near Waterfall Creek, northwards to Glendhu Bay and Parkins Bay, including the Roys Peninsula ONF);
- (c) the ONL area adjacent to the southern edge of Lake Hāwea, near the RCL boundary with Hāwea Flat;
- (d) Dublin Bay;
- (e) the Cardrona Valley;
- (f) the "rezonings sought to the Cardrona and Treble Cone Ski Area Subzones";<sup>65</sup>
- (g) the inner Wakatipu Basin, in particular Mt Dewar;
- (h) the lower slopes of the Remarkables Range in the vicinity of Coneburn (i.e. eastern side of SH6 opposite Jacks Point), and either side of the Kawarau

<sup>61</sup> Second supplementary statement of evidence of Mr Barr, for QLDC, dated 7 May 2019, at [4.3].

<sup>62</sup> Second supplementary statement of evidence of Mr Barr, for QLDC, dated 7 May 2019, at [3.7].

<sup>63</sup> Second supplementary statement of evidence of Mr Barr, for QLDC, dated 7 May 2019, at [3.8].

<sup>64</sup> Second supplementary statement of evidence of Mr Barr, for QLDC, dated 7 May 2019, at [3.9] and [3.10].

<sup>65</sup> Mr Barr offered the qualification that, if the rezonings are successful, then any inclusion as a higher Priority Area may be redundant.



River; and

- (i) the ONL within the Jacks Point Zone (noting that particular ONL is not within the Rural zone).

[86] We set out Mr Barr's drafting in Annexure 2. We understand his new SPs for ONF/Ls:<sup>66</sup>

- (a) would only apply to Priority Areas that QLDC would select on the basis of its judgment on where the highest demand for development would occur over the life of the ODP;
- (b) would specify a required methodology for how the values of ONF/Ls would be identified based on pRPS Sch 3 (by reference to their biophysical, sensory and associative attributes);
- (c) would direct that Sch 1 RMA plan change processes would be followed to incorporate the schedule of those values into Ch 21 of the ODP; and
- (d) would require monitoring by QLDC of whether SO 3.2.5 is being achieved (including by regular auditing and review of consents and applications and "field reports from practitioners who were not involved in the processing of the applications").

[87] For the Upper Clutha Basin RCL areas, Mr Barr's drafting provides for two alternative approaches (i.e. SPs directed only to Priority Areas within the Upper Clutha RCL, or application to the entire Upper Clutha RCL).<sup>67</sup>

### ***Other planning experts***

[88] Other planning witnesses offered a range of views for or against scheduling. For example:

- (a) Ben Farrell, who gave evidence for the Real Journeys group of tourist operation companies, support's Mr Ferguson's opinion in favour of identifying ONF/L values (recommending this be by means of schedules or

<sup>66</sup> Second supplementary statement of evidence of Mr Barr, for QLDC, dated 7 May 2019, at [3.1] – [3.5].

<sup>67</sup> Second supplementary statement of evidence of Mr Barr, for QLDC, dated 7 May 2019, at [5.1] – [6.1].



- supporting documentation);<sup>68</sup>
- (b) Dave Serjeant, planner for QPL/RPL, agrees with Mr Barr that scheduling of ONF/L values is not necessary or appropriate;<sup>69</sup>
  - (c) Scott Edgar, planning witness for LET supports the value of a “complete schedule of values” for ONF/Ls including in the sense that it would “assist the consistent implementation of” the ODP’s provisions. However, his provisos are that scheduling needs to be “suitably comprehensive and completed to a level of detail adequate to identify key landscape values that are to be protected” and that it “should not be taken as an exhaustive list”. He shares Mr Barr’s opinion that schedules should be regarded as “the starting point for landscape assessment and should complement or guide, rather than replace”, detailed assessment according to the PDP’s relevant assessment matters and any guidelines”. He does not consider there should be any prioritisation of any areas for the development of schedules, being concerned that this could be misread as a form of ranking of value of specified ONF/L areas.<sup>70</sup>

## Legal submissions

### *Darby Group*

[89] In her opening for Darby Group, Ms Baker-Galloway submitted that the role of the PDP’s Chs 3 and 6 provisions in regard to s6(b) RMA is to “provide key direction as to what in particular is to be protected, and what is otherwise inappropriate, either in terms of effects or activities”.<sup>71</sup> Counsel referred to the *Matakana* decision as supporting her submissions, and in particular the following passages (counsel’s emphasis):<sup>72</sup>

[110] This interpretation of “inappropriate” must now be read in light of the Supreme Court’s approach in *Environmental Defence Society v NZ King Salmon* [61]. In that case the Supreme Court was considering the appropriateness of a plan change which would enable intensive fish farming in an existing ONL. **The Supreme Court held that the correct approach is to interpret the word “inappropriate” in its context by reference to what it is that is sought to be protected.** The Supreme Court also held that in doing so it is no

<sup>68</sup> Evidence-in-chief of Mr Farrell, for Real Journeys, dated 12 November 2018, at [4(b)].

<sup>69</sup> Supplementary evidence of Mr Serjeant, for QPL/RPL, dated 10 May 2019, at [2.1].

<sup>70</sup> Supplementary evidence of Mr Edgar, for LET, dated 10 May 2019, at [9] – [15].

<sup>71</sup> Opening submissions for Darby Group, dated 15 April 2019, at [6].

<sup>72</sup> *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147.



longer lawful to adopt a "broad overall judgment" to the application of any relevant statutory planning document to which effect must be given (such as the NZCPS or the RPS) where the relevant terms of that document are directive, unless it is found that the document or the relevant part of it is invalid, incomplete or uncertain. As we understand the Supreme Court's decision, if there is no relevant policy in directive terms, then the approach to be taken to the application of Part 2 RMA in assessing a plan provision is still as set out in the passages from *New Zealand Rail v Marlborough DC* quoted in [79] and [109] above.

[111] Our task in this case is to decide whether all or part of Matakana Island is an ONFL. We are not concerned with the terms of any restriction that may apply to it if it is, **although if it is identified as an ONFL then we should be concerned to ensure that its attributes as such, and those things that would be inappropriate given those attributes, are clearly identified in the RCEP. This is necessary so that the attributes can be protected from inappropriate subdivision, use and development.**

...

[160] ... As we have discussed, the extent and degree of any potential restrictions may be addressed by clearly stating what values and attributes of an ONFL are sought to be protected, or by other methods.

...

[166] We think that the statement of attributes and values could provide better guidance for users of the RCEP if the listing in the schedule were focussed more on the particular attributes and values of the ONFL which make it outstanding and are sought to be protected. In setting out these matters, we think that the text should break down the elements so that the particular adverse effects which are to be avoided can be readily identified. These elements could be described in terms of their landscape capacity and resilience, so that issues of vulnerability and sensitivity can be identified. If done in a consistent way, we think that such descriptions would be more useful than a description of the landscape itself.

[90] In closing, Ms Baker-Galloway submits that the national significance of the District's landscapes is an important reason why it is appropriate to go to the effort of properly identifying ONF/L values in the ODP "in order to determine and provide the evidential basis and support for a clearer direction as to what important values of the landscapes are to be protected, and what types of effects and activities are appropriate within those landscapes, in the context of this District's particular circumstances". Acknowledging the very large area involved, counsel submits that this "significant resource area" "should not be 'locked up' by inelegant broad policy drafting with minimal evidential basis".<sup>73</sup>

[91] In terms of the s32 RMA dimensions of benefit, cost and risk, Ms Baker-Galloway

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<sup>73</sup> Closing submissions for Darby Group, dated 31 July 2019, at [26].





submits that the DV's approach would impose "significant uncertainty and unjustifiably high transaction costs" and undue risk of "consent being declined for what are clearly appropriate activities". Whilst acknowledging that the cost of undertaking the work required to identify ONF/L values in the ODP has not been assessed, Ms Baker-Galloway points out that "neither has the direct cost of rolling over the ODP discretionary regime that sees this cost fall onto consent holders and submitters on a piecemeal basis".<sup>74</sup>

[92] Ms Baker-Galloway submits that the benefit of Mr Ferguson's recommended policy framework is to "establish a consistent methodology for landscape identification and a process-oriented policy to drive a programme for further changes based on identified priority areas". She submits that this would help remediate the inconsistencies inherent in the work QLDC undertook for the NV (in essence "collating court decisions and making interpolations from desktop analysis").<sup>75</sup>

[93] Ms Baker-Galloway notes that a number of experts appeared to oppose this approach out of a distrust about what public processes could lead to. In particular, she refers to Ms Mellsop's observations to the effect that such a process would "open up for another round of submissions where people seek more intensive zoning for their rural land opening matters up for parties to then pursue".<sup>76</sup> However, Ms Baker-Galloway submits that we should give greater sway to the significant benefits over time "of having the important values and attributes of the district's very important landscapes consistently and thoroughly tested, identified and therefore managed".<sup>77</sup>

### ***Longview Environmental Trust***

[94] LET is a s274 party to the Darby Group appeal. Counsel, Mr Page, emphasises two aspects of Mr Edgar's evidence. Firstly, ONF/L schedules need to be "suitably comprehensive and detailed in order to identify the key landscape values that are to be protected". Secondly, they should not be treated as an "exhaustive list" as it is unlikely that the values schedule will "adequately capture and describe all the relevant values of a particular site".<sup>78</sup> LET agrees with QLDC that there is no scope to allow reconsideration of mapping of ONF/Ls via a scheduling approach and submits that, in any case, this

<sup>74</sup> Closing submissions for Darby Group, dated 31 July 2019, at [24] – [28].

<sup>75</sup> Closing submissions for Darby Group, dated 31 July 2019, at [32], [33].

<sup>76</sup> Closing submissions for Darby Group, dated 31 July 2019, at [29], referring to Transcript, p 95, l 6.

<sup>77</sup> Closing submissions for Darby Group, dated 31 July 2019, at [30].

<sup>78</sup> Closing submissions for LET, dated 14 August 2019, at [5], [6].



would be inappropriate.<sup>79</sup>

### QPL/RPL

[95] QPL/RPL take a similar position to LET in questioning the utility of including schedules of ONF/L values in the ODP.<sup>80</sup>

### QLDC

[96] QLDC defends the DV's approach as most appropriate. However, it accepts that there is no jurisdictional constraint to including provisions that will "provide for a listed schedule ... which specifically identifies all ONLs and ONFs in the District and their individual characteristics / values".<sup>81</sup> As such, it also accepts there would be no need to invoke s293 RMA in order to provide for such scheduling.<sup>82</sup>

[97] In her opening submissions for QLDC, Ms Scott referred to the Supreme Court decision in *King Salmon*<sup>83</sup> as to the interpretation of 'inappropriate' in s6(b). Counsel noted the finding in that decision 'inappropriate' is "heavily affected by context" and that "inappropriateness" should be assessed by reference to what it is that is sought to be protected (i.e. with appropriate qualification that reflects the resource being protected).<sup>84</sup>

[98] Ms Scott submits that the evidence does not support Darby Group's case for greater enablement and flexibility for either residential development or commercial recreation/tourism type activities in Rural areas.<sup>85</sup> Counsel argues that there is not sufficient utility in requiring scheduling of values for ONF/Ls.<sup>86</sup> In particular, Ms Scott notes that various parties have pointed out that it would not remove the need for landscape assessments to be completed in the context of specific proposals (whether for consent, plan change or designation).<sup>87</sup> Counsel submits that the evidence does not

<sup>79</sup> Closing submissions for LET, dated 14 August 2019, at [11], [12].

<sup>80</sup> Closing submissions for QPL/RPL, dated 31 July 2019, at [2.9].

<sup>81</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.59].

<sup>82</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.59].

<sup>83</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38; [2014] 1 NZLR 593.

<sup>84</sup> Opening submissions for QLDC, dated 8 April 2019, at [7.7], referring to *King Salmon*, at [101].

<sup>85</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.1] – [2.7].

<sup>86</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.14].

<sup>87</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.10], referring to the closing submissions for LET, Darby Group at [13] and RPL/QPL.



support Darby Group's claims as to inefficiency in "relying on the 'individual resource consent application' process to wholly identify those values". Ms Scott points to the lack of evidence quantifying costs savings to consent applicants, interested parties and QLDC. On the other hand, counsel submits that requiring scheduling in these ODP appeals would impose costs on QLDC and interested/affected parties in regard to their preparation for inclusion in the ODP.<sup>88</sup> As for benefits, Ms Scott submits that scheduling offers little if any value for tracking cumulative effects on landscapes. That is in the sense that values change over time, with or without development taking place.<sup>89</sup>

[99] Counsel challenges aspects of Mr Ferguson's recommended policy framework as being beyond the scope of relief in Darby Group's appeal. One aspect is that it would require inclusion in schedules of the "types of effects and activities" appropriate within landscapes. Counsel submits that this is more appropriately the role for a resource consent application assessment "where the effects of the proposed activity, work or plan change will be considered against what is sought to be protected (i.e. the values of an ONF/L)". Furthermore, Ms Scott submits there is no scope to allow ONF/L boundaries to be revisited as Mr Ferguson's drafting would allow, and that this could lead to ongoing litigation (in essence, returning to the pre-review position under the ODP). Counsel submits that the DV is preferable to the pre-existing ODP regime, noting Mr Ferguson's concession that the present ODP framework is "highly inefficient".<sup>90</sup>

[100] Should the court decide that scheduling of ONF/L values is to be provided for, counsel made a number of observations about how best to do so. Schedules "should be focused on" identifying the values that make a feature or landscape an ONF/L. As some landscape and planning experts noted, Ms Scott submits that the proper role of any schedule is as a "guide", or "starting point" to assist secondary assessment in specific consent application processes, but on a basis that those processes can reveal further values.<sup>91</sup> Ms Scott also cautions against requiring any fine-grained assessment in order to inform ONF/L schedules, noting the length and complexity of the schedule specified in *Matakana*.<sup>92</sup>

[101] While QLDC remains opposed to scheduling, Ms Scott agrees with Darby

<sup>88</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.13].

<sup>89</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.29] – [2.30].

<sup>90</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.47] – [2.50].

<sup>91</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.32] – [2.35].

<sup>92</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.36], [2.37].



Planning that Sch 1 RMA should be used to include them in the ODP. Part of the reason for that is the inherently subjective nature of the assessment and identification of ONF/L values. Ms Scott points out that there has not yet been sufficient work undertaken to confirm ONF/L values for inclusion in any schedules. Counsel observes that, given that QLDC is the statutory functionary, it is "best placed to undertake the initial assessment of ONF/L (whether on a priority basis or otherwise) ahead of any contestable process".<sup>93</sup> Furthermore, Ms Scott emphasises the importance of ensuring policy is directed to targeted Priority Areas. Priority Areas may be only a proportion of particular ONF/Ls and/or extend across ONF/L boundaries. Counsel submits that Mr Ferguson's broader District-wide approach is not supported on a benefit/cost analysis and nor does it duly recognise QLDC's planning authority responsibilities.<sup>94</sup>

[102] As for the appropriate scale for assessment purposes, Ms Scott notes that 6(b) RMA requires the protection of "landscapes" (not landscape character units, as Darby Group pursues).<sup>95</sup>

## Discussion

### *Overarching principles for evaluation of ss6(b) and 7(c) provisions*

[103] The issues we are considering at this stage concern the most effective and appropriate objectives and policies in response to ss6(b) and 7(c) RMA.

[104] Before evaluating the evidence and provisions, there are some preliminary matters concerning the relative roles of district plans and resource consents in relation to ss 6(b) and 7(c), RMA. Our analysis of those matters is on the basis that there are no relevant directives under any NPS, the RPS or the pRPS.

### *Relevant principles as to the roles of plans and consent processes*

[105] In Decision 2.1, we refer extensively to the Court of Appeal decision in *Man*

<sup>93</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.60].

<sup>94</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.38] – [2.39].

<sup>95</sup> Second supplementary closing submissions for QLDC, dated 4 September 2019, at [2.42] – [2.49]. On the last point, QLDC records that RPL/QPL accepts, relevantly, that QLDC "is best placed to identify Priority Areas that are likely to be subject to particular demand".



*O'War*,<sup>96</sup> on the proper interpretation of s6(b) RMA. In particular, we take guidance and direction from its findings that:

- (a) 'outstanding' in s6(b) imports "special quality" and is a word that involves a reasonably direct appeal to the judgment of the decision-maker;<sup>97</sup>
- (b) s6(b) requires an essentially factual assessment based on a landscape's inherent qualities and necessarily involves comparison with other landscapes;<sup>98</sup>
- (c) in developing a regional policy statement, the regional council (or unitary authority) concerned is engaged on a task that is based upon its stewardship of the region.<sup>99</sup>

[106] In applying that guidance and direction, we treat the ODP as an instrument of such stewardship in the District, in regard to its ONF/L resources.

[107] The Court of Appeal's reference to "special quality" draws from the *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* decision.<sup>100</sup>

[108] As did the court in *Matakana*, so do we draw particular guidance and direction from *King Salmon* in our analysis of the proper role of the ODP in relation to ss 6(b) and 7(c) RMA.<sup>101</sup> In particular, we rely on observations in *King Salmon* to the following relevant effect:

- (a) "inappropriate", in s6(b) RMA, should be assessed by reference to what is sought to be protected;<sup>102</sup>
- (b) s5 RMA is not intended to be an operative provision, in the sense that it is not a provision under which particular planning decisions are made; rather, it sets out the RMA's overall objective;<sup>103</sup>

<sup>96</sup> *Man O'War Station Limited v Auckland City Council* [2017] NZCA 24.

<sup>97</sup> *Man O'War*, at [86].

<sup>98</sup> *Man O'War*, at [61] and [86].

<sup>99</sup> *Man O'War*, at [87].

<sup>100</sup> *Man O'War*, at [84] – [86], discussing *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* [2000] NZRMA 59 (EnvC) at [82].

<sup>101</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38. We note that s7(f) on particular regard to the maintenance and enhancement of the quality of the environment is also relevant, but address matters primarily in terms of s7(c) given the PDP characterises the RCLs as rural amenity landscapes.

<sup>102</sup> *King Salmon*, at [101].

<sup>103</sup> *King Salmon*, at [151].



- (c) the RMA's "cascade of" RMA planning documents form an integral part of the legislative framework of the RMA. Ultimately, each is intended to give effect to s5, and to pt 2 more generally. These documents give substance to the RMA's purpose by identifying objectives, policies, methods and rules with increasing particularity both as to substantive content and locality;<sup>104</sup>
- (d) reflecting the open-textured nature of pt 2 RMA, Parliament has provided for a hierarchy of planning documents the purpose of which is to flesh out the principles in s5 and the remainder of pt 2 RMA, in a manner that is increasingly detailed both as to content and location. It is those documents that provide the basis for decision-making, even though pt 2 remains relevant.<sup>105</sup>

[109] Guided by *King Salmon*, we find that the ODP is part of the intended RMA legislative framework to flesh out, and give local context to, ss 6(b) and 7(c). In those terms, the ODP's proper roles can include:

- (a) identifying what is sought to be protected in regard to natural features and landscapes, both in a geographic and values sense, and what subdivision, use and development is, therefore, inappropriate, for s6(b) purposes;
- (b) identifying the geographic extent of rural character landscapes and those of their related landscape character and amenity values intended to be maintained or enhanced, including so as to effectively protect against cumulative degradation of those identified values, for s7(c) purposes.<sup>106</sup>

[110] We are also assisted by the observations of the Environment Court in *Matakana* to the effect that it is important for a district plan to identify not only ONF/L values but also "those things that would be inappropriate" given those values. The latter reference picks up on the Supreme Court's interpretation, in *King Salmon*, that "inappropriate subdivision, use, and development" in s6(b) RMA is to be understood with reference to what is sought to be protected. A related construct we find helpful is 'landscape capacity', as we have defined that term in Part A.

[111] Those findings are consistent with the following observations in Decision 2.1:

<sup>104</sup> *King Salmon*, at [30].

<sup>105</sup> *King Salmon*, at [151].

<sup>106</sup> We have not lost sight of s7(f) as to the quality of the environment, but the DV is framed with reference to s7(c).



[30] As *Man O'War Station Limited v Auckland City Council*<sup>107</sup> recognised (in the context of a policy instrument that enunciated related values), much turns on what is sought to be protected.<sup>108</sup> Mapping only assists in identifying the geographic extent of what is sought to be protected. Listing those values that inform why a feature or landscape is an ONF or ONL is an important further element of setting out what is sought to be protected. That is particularly given the significant element of judgment required to select features and landscapes as "sufficiently natural" to warrant identification as ONFs or ONLs. In particular, that selection includes choices as to the significance or otherwise of human modifications to a feature or landscape. Associated with those choices are judgments as to the resilience, or otherwise, of the feature or landscape to further human modification. Transparency in the ODP about those choices is highly desirable, in terms of certainty, in that it helps inform what is inappropriate subdivision, use and development.

[31] Objectives, policies, assessment matters and other rules are relatively limited in their capacity to enunciate particular ONF or ONL values because they are designed to apply generically. The listing of relevant values, provided it is properly informed and expressed, helps plug that gap. As such, scheduling values would assist the ODP to fulfil its protective purposes.

[32] The related objectives, policies and rules (including on assessment matters) will be the subject of our further Topic 2 decision(s) (for which we have now received closing submissions).

### ***Evaluation of options in light of those principles and the evidence***

[112] We accept QLDC's opening submission that the ODP must ensure "bottom lines" including "sufficient direction as to what is inappropriate".

[113] However, the principles we have discussed favour a greater degree of direction than the DV provides.

[114] For ONF/Ls, those principles favour an approach that goes significantly beyond the use of planning maps to identify the geographic extent of ONF/Ls (in conjunction with the DV's objectives, policies and rules), in order for the ODP to properly give direction for the purposes of s6(b) RMA.

[115] For the Upper Clutha RCLs, those principles favour an approach that goes

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<sup>107</sup> *Man O'War*.

<sup>108</sup> *Man O'War*, at [65].



significantly further in identifying valued landscape characteristics and visual amenity values.

[116] We acknowledge that resource consent application processes can address ss 6(b) and 7(c) even without a district plan direction. In particular, in regard to the s104 direction that the consideration of consent applications is to be "subject to Part 2", the Court of Appeal, in *R J Davidson*, observed:<sup>109</sup>

If a plan that has been competently prepared under the Act it may be that in many cases the consent authority will feel assured in taking the view that there is no need to refer to pt 2 because doing so would not add anything to the evaluative exercise. Absent such assurance, or if in doubt, it will be appropriate and necessary to do so. That is the implication of the words "subject to Part 2" in s 104(1), the statement of the Act's purpose in s 5, and the mandatory, albeit general, language of ss 6, 7 and 8.

[117] However, we are of course concerned with the issue of the most appropriate approach in terms of policy direction, in relation to ONF/Ls and RCLs. It is in that sense that we find the principles in the other noted authorities call for a more sophisticated approach than the DV presently provides.

[118] Furthermore, we bear in mind several limitations of resource consent application processes for responding to ss6(b) and 7(c) in the absence of effective district plan direction.

[119] As compared to planning instruments, consent application processes are inherently limited in their capacity to determine what is sought to be protected in an ONF/L<sup>110</sup> or the landscape amenity values sought to be enhanced or maintained in an RCL. One inherent limitation concerns the different context of a consent application process. It is fundamentally concerned with the proposal at issue. Typically, a proposal would concern a much more confined land area than a landscape (or even a feature). Furthermore, landscape assessments, in consent application processes, are not designed to serve the purposes of the district plan *per se*. Rather, the application AEE generally serves to advance the case for consent, landscape evidence by submitters to test that case, and s42A reports to assess the application (including the extent to which

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<sup>109</sup> *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316; [2018] 3 NZLR 283, at [75].

<sup>110</sup> A matter we also address in Decision 2.1 (*Hawthenden*).





it reflects, rather than supplements, the plan's intentions). We recognise that a district plan's policies and assessment matters may influence that to some extent. However, consent application findings on the values of particular features and landscapes for s6(b) RMA purposes, or landscape character and amenity values for s7(c) RMA purposes, do not have necessary statutory relevance beyond the consent decision itself. Even assuming findings from successive consent applications are collated by QLDC, that collation is not a legally valid supplement to what the ODP itself specifies for protection. That is in the sense that plans are an intended part of the RMA's legislative framework, but resource consents, and related findings in consenting processes, are not.

[120] Unless a district plan gives proper strategic direction on its s6(b) RMA protection intentions, resource consent application processes are not an assuredly reliable means of discerning that, nor what is inappropriate by way of subdivision, use or development. Hence, for a district whose economy is so reliant on the protection of ONF/Ls, the DV does not adequately provide for integrated management or, ultimately, sustainable management.

[121] The position is similar for RCLs. Unless the ODP is clear in its identification of relevant landscape amenity values to be maintained or enhanced, resource consent application processes are not likely to be reliable in guarding against cumulative degradation of those values through successive developments in the Rural area, particularly in the Upper Clutha Basin.

### ***Evaluation of options in light of the evidence***

[122] The evidence of Ms Lucas and Ms Gilbert indicate that there are particular rural amenity areas in the Upper Clutha Basin that are at risk of degradation under the DV. On the other hand, Dr Cossens' evidence indicates, from his personal experience, that there may be a number of other areas less sensitive to those cumulative effects but, nevertheless, within the DV's RCL overlay. Mr Haworth also gave perspectives, as a local resident, about these matters. Again, as the DV has not been duly informed by proper land use planning study, its objectives, policies and assessment matters are not well attuned to cumulative effects and related tipping points.

[123] The evidence reveals that an important dimension to the Queenstown District's extensive landscapes is the inter-related nature of several ONF/Ls and RCLs. In essence, as both Ms Lucas and Ms Gilbert observed, nature does not pay much respect



to lines on planning maps. Rather, the image from Denis Glover's poem, *Arawata Bill*, "this country crumpled like an unmade bed", is apt. Hence, an integrated management approach is needed that responds to the nature of those landscapes.<sup>111</sup>

[124] Whilst Ms Lucas and Ms Gilbert each opposes ONF/L scheduling, we find this a helpful mechanism to better provide for the integrated management of ONF/Ls and RCLs in the Upper Clutha Basin. That is in the sense that ONF/L schedules would bring to light those values vulnerable to inappropriate development in the RCL settings of those features and landscapes.

[125] We prefer Ms Pflüger's and Mr Milne's opinions in favour of ONF/L scheduling. We agree with Mr Milne that, in order that the appropriateness or otherwise of activities can be adjudged at the time of resource consenting, the absorption capacity of the landscape and effects of a development on that landscape need to be known.

[126] As to 'absorption capacity', we prefer the construct of 'landscape capacity' (which we define in Part A). It requires that the plan sets quantifiable tolerances, underpinning its rules, and capable of measurement over time in order that cumulative effects can be assessed as change and development in the relevant Priority Areas of ONF/Ls and RCLs occurs.

[127] Landscape capacity cannot be known unless there has been an identification of the landscape character values and their importance (i.e. knowing what the landscape is valued for and why). Evaluating a landscape is inherently an exercise where different landscape experts have different opinions. That is why it is important that a district plan identifies both landscape values and landscape capacity in that both of these are part of the plan's intended statutory authority in regard to ss6(b) and 7(c).

[128] Ms Gilbert spoke with some force about her concerns that scheduling would result in important values being overlooked. However, with respect, we observe that she would appear not to have duly appreciated the intended statutory function of a district plan to make choices about the matters to which s6(b) applies, including how much land is to be classed as ONF/L, what associated landscape values are sought to be protected and, related to that, what is inappropriate subdivision, use and development. All of those are

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<sup>111</sup> Borrowed via *Wakatipu Environmental Society Incorporated*, at [1], the reference for which is in Decision 2.1 at [4].



dimensions of fleshing out and contextualising s6(b), according to the guidance of *King Salmon, Man O'War, R J Davidson* and *Matakana*.

[129] We accept that district plans can make choices that landscape experts may later disagree with. However, conceptually, that is no different from the choices that are made by mapping ONF/L areas in a district plan. Provided that the choices for or against protection made by district plan mapping and scheduling are soundly informed by expert and other s32 analysis, those choices help to fulfil the RMA's purpose.

[130] We acknowledge the risk that ONF/L schedules may be poorly drafted or not properly underpinned by landscape assessment. However, managing those risks is an inherent aspect of the planning authority's responsibilities under s32, RMA. As the responsible planning authority, QLDC is in a position to ensure choices about what is to be protected are properly informed. Planning processes allow ample opportunity for contested consideration of these matters, through submissions and further submissions, and hearings. Furthermore, properly drafted descriptions of landscape values in schedules can allow for what is intended. Language can be readily and deliberately prescriptive or open-textured, depending on the intention. Hence, we do not accept Ms Gilbert's recited examples as demonstrating that scheduling has no value.

[131] Nor do we accept arguments to the effect that the task of assessing relevant ONF/Ls and scheduling their values is too large. Rather, the task is part of QLDC's planning authority responsibility. In any case, once we have a clearer understanding of the Priority Areas, where development pressures are more significant, our intended new Strategic Policies will provide for an approach that prioritises where Sch 1 processes to provide for scheduling would be undertaken (according to specification of areas and a timetable).

#### ***Evaluation of benefits and costs of scheduling v not scheduling values***

[132] We adopt the analysis of s32 RMA at [26] – [40] of our Topic 1 (*Darby Group*) decision.<sup>112</sup> As part of that analysis, we noted that we consider s32 in our appellate role (by contrast to QLDC's statutory planning authority role).

[133] The evidence reveals that the DV ONL/F and RCL provisions are based on

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<sup>112</sup> *Darby Planning Ltd Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133.



relatively confined landscape analysis in informing the choices made in the NV concerning the mapping of ONF/Ls and Upper Clutha Basin RCLs. Specifically, the election to have resource consent processes used to determine ONF/L and Upper Clutha RCL values has been made without meaningful evaluation of transactional efficiency, as to the relative benefit/cost implications.

[134] For context, we refer to QLDC's opening submissions which emphasise "the obvious tension", concerning ss6(b) and 7(c) landscape matters, given the "current development pressure" experienced within the District.<sup>113</sup>

[135] While QLDC has mapped 97% of its District ONF/L, and much of the balance RCL, it is self-evidently the case that development pressure is in much more confined areas. As a gauge on that, Mr Barr indicated nine discrete areas across the District as Priority Areas in terms of where "the highest level of development pressure currently is".

[136] Yet, QLDC did not call evidence to assist us to understand how the approach of the DV would compare, in benefit/cost terms, to one where the ONF/L values sought to be protected were identified. Mr Osborne's evidence did not traverse those matters in any detail. Mr Ballingall properly drew attention to the fact that Ms Osborne did not offer any proper marginal benefit/cost evaluation of the various planning options. We record that QLDC ought to have been alert to these matters, given the Darby Group appeal.

[137] Notwithstanding the lack of such evidence from QLDC, we are in a position to safely infer (as we do) that scheduling of ONF/L values would offer material economic efficiencies over the DV. We infer that from the evidence we have heard for this and companion Decision 2.3 and our findings in Decision 2.1. In particular, we rely on:

- (a) the findings in Decision 2.1 in relation to the sub-topic 1 appeals by the Seven Albert Town Property Owners (and Otago Regional Council as s274 party to that appeal), and James Cooper, insofar as those findings pertain to the uncertainty of the DV's regime for natural hazard infrastructure and productive farming;
- (b) the findings in Decision 2.3 on similar matters for the productive farming operations at Hawthenden Farm and Lake McKay Station;
- (c) the evidence and representations of Mr Haworth for UCESI and Dr

<sup>113</sup> Opening submissions for QLDC, dated 8 April 2019, at [2.2].



Cossens. Each is informed by local experience, albeit with significantly different perspectives and interests in regard to the use, development or protection of RCL land of the Upper Clutha Basin. Each expresses valid concerns about the present uncertainty in the DV's RCL regime for the Upper Clutha; and

- (d) the significant consensus amongst the landscape experts as to the value, in principle, of scheduling of ONL/F values and of a further landscape and land use analysis in order to better inform the ODP on the character areas, associated values, and cumulative effect and other risks from subdivision and land development pressures for the Upper Clutha Basin.

[138] A further important consideration is as to how the different options would *allocate* costs and benefits. As Ms Baker-Galloway has noted, the DV would transfer the costs of identifying landscape values to resource consent applicants. QLDC raise concerns about the potentially significant costs that would be imposed on participants in the current proceedings, were the court to direct scheduling in determination of these appeals. However, as we have noted, district plans have a statutory purpose of fleshing out and contextualising pt 2 RMA (including ss 6(b) and 7(c)). While there would be transactional costs for ratepayers in Sch 1 plan changes, those are as a consequence of the proper exercise of QLDC's planning authority responsibility.

***The DV regime for ss6(b) and 7(c) is not appropriate***

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

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

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

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



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

***Reversion to the pre-NV position of the ODP is not appropriate***

[142] We find it would not be appropriate to revert to the pre-NV position under the ODP. Decision 2.1 (*Hawthenden*) gives reasons why we rejected UCESI's relief in essence to require reversion to the ODP's prior ONF/L mapping regime. Whilst the Darby Planning appeal essentially alleges that the NV is fundamentally unsound in the absence of any proper district-wide assessment of landscape values, the case Darby Group has presented is in favour of a policy response to this (as advanced by their planning witness, Mr Ferguson). No other party seeks that we entirely reject the DV.

[143] In any case, on the evidence, we are satisfied that the serious design flaws of the DV's approach are capable of being satisfactorily remedied, through changes to Ch 3 to guide and direct QLDC's further exercise of its planning authority responsibilities, by Sch 1 plan change(s) (possibly in tandem with s293 directions as we shortly discuss).

***Directing that QLDC undertake an UCBLUPS as UCESI seeks is not appropriate***

[144] A potentially available course would be to direct that supplementary planning and landscape evidence be provided, informed by the undertaking of an UCBLUPS, as UCESI seeks. We decline to take that course as we find it would intrude too much into QLDC's planning authority role.

[145] Therefore, we decline this aspect of UCESI's related relief.

**Should the court make all ONF/L and RCL changes now?**

[146] Given the scale of change to the DV that this option could require, we find it would be more appropriately pursued through s293 RMA. Although we agree with QLDC that



we may have sufficient scope within relevant appeals, we are mindful that Darby Group's closing position favours narrower relief than what its appeal sought (although, we understand Darby Group has not sought to formally resile from its original appeal relief in doing so). A further consideration is as to due process, bearing in mind the significant public interest in how the ODP provides for ONF/L and the Upper Clutha RCL. Given both of those factors, we find that s293 directions should be made if this option were to be pursued.

[147] Considering the ONF/L first, there are a number of reasons why we find it would not be appropriate to make a s293 direction for all ONF/Ls. While the court's 11 July 2019 Minute invited parties to consider the potential for a s293 direction, no party sought such directions in closing submissions. Furthermore, opening up such an extensive further aspect to the court's inquiry in regard to the PDP appeals would give rise to significant further costs (both for parties and the taxpayer) and significantly delay resolution of appeals, not only for Topic 2, but for several other topics. Furthermore, there is the important dimension of QLDC's statutory planning authority and stewardship responsibilities in relation to s6(b), RMA. Especially for those ONF/Ls on which the court has not received evidence as to landscape values, it is more properly the role of QLDC, than it is for the court, to initiate the identification of those values. That is particularly in the sense that the identification of landscape values should be part of what informs the planning authority's initiating judgments on what is sufficiently special so as to be mapped ONF/L for the purposes of s6(b).

[148] A possible exception to that concerns the ONF/Ls on which the court has made evidential findings, in Decision 2.1 and Decision 2.3, about landscape values. The directions we make in Part F allow relevant parties to make supplementary submissions on whether s293 directions are appropriate for those cases, such that the court can determine that in due course.

[149] In regard to the Upper Clutha Basin RCL's, there is a stronger case for considering s293 directions as a means of achieving a more certain regime, particularly for those areas where development pressures is higher. In particular, given the evidence of Mses Gilbert and Lucas and Mr Haworth, we are concerned that leaving remediation to later plan change processes poses a significant risk of a loss of landscape character and related amenity values in the meantime. An additional consideration is the uncertainty of the present regime as Dr Cossens' evidence identifies. On the other hand, encompassing the entire Upper Clutha Basin in such an exercise would give rise to the



cost and delay issues we have noted. However, to the extent that s293 could be confined to identified and confined high priority landscape character areas, this could be an appropriate option.

[150] Therefore, the directions we make in Part F allow relevant parties to make supplementary submissions on whether s293 directions are appropriate for the Upper Clutha Basin or any identified priority landscape character area(s) of it.

### **Evaluation of option of new Ch 3 SPs for Values' Identification Frameworks**

[151] Subject to those observations, we find the most appropriate approach to remediating the DV in regard to how it addresses ss6(b) and 7(c) is to:

- (a) add to Ch 3 SPs that will direct how Sch 1 plan change(s) are to be pursued ('Values' Identification Frameworks'); and
- (b) improve, as best we can, the regime in Chs 3 and 6 for case-by-case landscape assessment and monitoring pending Sch 1 plan change(s).

[152] The new Strategic Policies (for the Values' Identification Frameworks) would serve to give policy direction to future plan change(s) for the following purposes:

- (a) for the ONF/Ls, to add to Ch 21 schedules of landscape values and landscape capacity for identified mapped Priority Areas (possibly in tandem with s293 directions in relation to particular ONF/Ls); and
- (b) for the Upper Clutha RCL, to add maps identifying priority landscape character areas and to add to Ch 21 schedules identifying landscape character, visual amenity values, and landscape capacity for those areas (subject to determining whether or not, and to what extent, these matters are better addressed through s293 RMA).





***Findings on key elements of Strategic Policies offered by Messrs Barr and Ferguson***

[153] The alternative drafting approaches provided in evidence by Messrs Barr and Ferguson are set out in Annexure 2.<sup>114</sup> They are evaluated in Part C together with related Ch 3 objectives and policies. At this stage, we give reasons for why we agree, or disagree, with various elements of their reasoning.

***Preliminary issues as to scope in regard to Mr Ferguson's policy framework***

[154] We must first address QLDC's and LET's submissions as to the scope limitations of Darby Planning's appeal. For the reasons we now give, we are satisfied that there are no material scope limitations to our ability to consider Mr Ferguson's recommended Values' Identification Framework.

[155] Darby Planning's notice of appeal includes an Appendix A that sets out the "specific provisions of" Chs 3 and 6 "and the relief sought".<sup>115</sup> We acknowledge that the relief specified in its Appendix A is relatively confined. In particular, it does not extend to revision of the DV's planning maps. Instead, it seeks changes (shown tracked) to particular provisions.

[156] However, in addition to its Appendix A, the text of the notice of appeal includes the following statements (under the heading 'Chapter 6 Landscapes'):

- 20 DPL considers that the PDP is fundamentally flawed in recognising that over 97% of the District is classified as a section 6(b) landscape and requests that landscape mapping be undertaken from a first principles landscape basis, applying the criterion that such landscapes to qualify must be 'outstanding or preeminent within the District'.
- 21 Where landscapes are specifically mapped in the PDP these should also be further particularised in the text of the plan so as to detail those characteristics and features which are existing in the landscapes. Such characteristics and features will better inform future decision making and assessments as to appropriateness of effects.

[157] In addition, there is the following broad statement as to relief:

<sup>114</sup> We have not included Mr Barr's drafting of an approach for ONF/L scheduling without Priority Areas, as we find Priority Areas should be specified.

<sup>115</sup> Darby Group notice of appeal, at [12], [22].



DPL opposes any further provisions and seeks alternative, consequential, or necessary additional relief to that set out in this appeal and to give effect to the matters raised generally in this appeal and DPL's PDP submissions.

[158] Read as a whole, we find the scope of Darby Planning's relief is not entirely confined to what is set out in Appendix A and broader than QLDC and LET have interpreted it to be. Specifically, we find Mr Ferguson's Values' Identification Framework can be construed as a form of "alternative ... necessary additional relief ... to give effect to the matters raised" in its paragraphs 20 and 21.

[159] As to mapping, we point out that the effect of Mr Ferguson's policy is not to require any change to the DV's ONF/L or RCL maps, but rather to give direction to Sch 1 plan change processes on a basis that allows for revisiting of those maps. Given that the NV and DV's mapping of ONF/Ls and RCLs was not on a basis that was informed through identification of associated values, we do not find that a surprising proposition.

[160] Nor do we see any difficulty in the fact that Mr Ferguson's drafting would allow scrutiny of what constitutes "inappropriate" subdivision, use and development".<sup>116</sup> In this aspect, his drafting is simply responding to this relevant dimension of s6(b) RMA.

### ***Separate Frameworks***

[161] As our following findings signal, we agree with Mr Barr that there should be separate sets of new Strategic Policies for ONF/L scheduling and the Upper Clutha RCL.

### ***Targeted to Priority Areas***

[162] We agree with both witnesses that the ONF/L and Upper Clutha RCL Values' Identification Frameworks should be targeted to Priority Areas.

[163] We do not agree with Mr Barr that we should leave QLDC to decide on the Priority Areas to which the Values' Identification Frameworks would apply. Rather, we find that these are matters more properly directed by our decision on the evidence such that the Priority Areas are specified in the relevant Ch 3 policies for Sch 1 plan changes. Otherwise, there is an undue risk that matters will not be followed through as our

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<sup>116</sup> Darby Group notice of appeal, at [19] – [21].



reasoning intends, in granting this aspect of the relief in Darby Planning's appeal.

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

***Schedules to be informed by landscape assessment and landscape capacity assessment***

[165] We agree with Mr Ferguson that landscape assessments and landscape capacity assessments are both important and should be recognised in the new Strategic Policies.

[166] In principle, in the development of a district plan, there should be an iterative relationship between landscape assessment and landscape capacity assessment in calibrating the plan's response to ss6(b) and 7(c), RMA as follows:

- (a) landscape assessments serve to elicit values sought to be protected, for s6(b) purposes, or maintained or enhanced for s7(c) purposes so as to help test the settings in the district plan for enablement of subdivision, use and development in ONF/Ls and RCLs;
- (b) landscape capacity assessments serve to test the capacity of initially identified values to tolerate land use change or development, particularly as may be anticipated over the life of the district plan;
- (c) both landscape assessment and landscape capacity assessment serve to ensure judgments on what the district plan seeks to protect, for s6(b) purposes, or maintain or enhance for s7(c) purposes, are properly informed.

[167] Given the stage now reached in the updating of the ODP through this review, we find it particularly important that those principles can be applied to the further remediation of the ODP, through Sch 1 plan change processes in relation to Priority Areas that the new strategic policies will specify. As noted, those Priorities Areas are to be determined by reference to where the most significant development pressures are anticipated during



the life of the ODP. The identification of an area as a Priority Area is not intended to connote any higher relative ONF/L or RCL quality rating. If need be, the SPs could make that explicit.

[168] Those findings leave aside the broader issue of what other aspects of the ODP QLDC may need to change in conjunction with Sch 1 changes as would be subject to the directions in the Values' Identification Frameworks. However, the RMA's purpose and principles, and s32 and other directions as to planning processes would govern those matters (rather than the new Strategic Policies for the Values' Identification Framework).

***Assessment methodology and scale to be specified***

[169] We agree with both witnesses in finding that Values' Identification Frameworks (i.e. for the ONF/L and the Upper Clutha RCL in the Priority Areas) should prescribe landscape assessment methodology that reflects professional good practice in landscape assessment. Their opinions on that are well supported on the evidence.

[170] We acknowledge Ms Gilbert's supplementary evidence on these matters as relevant to how this could be approached for the Upper Clutha RCL Priority Areas. That is one reason why we have directed that further expert conferencing between Messrs Barr and Ferguson include Messrs Gilbert, Mellsop and Pflüger take place.

[171] In the case of ONF/Ls, we agree with Mr Barr that this landscape assessment methodology should direct that assessment be undertaken at a scale sufficient to account for the feature or landscape as a whole (rather than at the smaller landscape character unit preferred by Mr Ferguson).

[172] Hence, assessments need to determine the geographic extent of related landscape(s) and/or feature(s). We accept Ms Scott's point that such an approach properly responds to s6(b) RMA.

[173] The position is different for the Upper Clutha RCL Framework. A fundamental weakness of the present RCL regime is its failure to identify relevant landscape character areas. That is important for properly fleshing out s7(c). That is because the proper identification of the geographic extent of character areas is needed for understanding where the maintenance or enhancement of related scheduled landscape character and visual amenity values are important.



### ***Mapping***

[174] On the evidence, particularly that of Ms Gilbert, we find it appropriate that the Upper Clutha Plan Values' Identification Framework provide for the mapping of RCL character areas in the ODP.

[175] We go further in finding mapping in the ODP also has an important role for ONF/L Priority Areas. That is because the identification of Priority Areas needs to be at a proper geographic landscape scale.

### ***Cumulative degradation focus***

[176] In the case of the Upper Clutha RCL Values' Identification Framework, the evidence demonstrates the importance of establishing a proper benchmark for the measurement of additive cumulative degradation of identified character and amenity values through land use change arising through subdivisions and developments over time.

### ***Consideration of integrated management approach to RCL/ONFL landscapes***

[177] Similarly, the evidence (particularly of Ms Gilbert and Ms Lucas) identifies the importance of the Upper Clutha RCL Values' Identification Framework directing that consideration be given to the integrated nature of landscapes, including the relationships between RCLs and ONF/Ls.

### ***Monitoring***

[178] Monitoring is clearly appropriate. However, in Part D we discuss why we do not favour aspects of what Mr Barr proposes.

### ***Date(s) by which related Sch 1 plan changes will be notified should be notified***

[179] Subject to those findings, we agree with Mr Ferguson that the Values' Identification Frameworks should prescribe dates by which relevant steps are taken and Sch 1 plan changes are expected to be notified. Similar to the case for the targeting of Priority Areas, this is a matter on which we can inform our findings on the evidence and



which is important for the efficacy of such policies. We make directions for supplementary evidence from QLDC on this matter to inform our final decision on the new Strategic Policies.

***Relationship to our findings on drafting of the Frameworks***

[180] Those findings respond to the key elements of the Values' Identification Frameworks offered by Messrs Fergusson and Barr. There are some additional elements we consider need to inform the development of new Strategic Policies for the Values' Identification Frameworks. All elements are addressed together in Part D.



## PART C: EVALUATION OF TOPIC 2 PROVISIONS: PRELIMINARY MATTERS

### Introduction

[181] There are several provisions and other matters to address in our evaluation of the various Topic 2 provisions. That evaluation is in Parts D and E. In this part, we make some overarching observations about:

- (a) relevant principles;
- (b) the planning evidence as to the provisions;
- (c) our intended staged approach to the finalisation of these Topic 2 provisions; and
- (d) the order in which our evaluation of provisions proceeds In Parts D and E.

### RMA principles as to the relationships between plan provisions

[182] Our evaluation of all provisions bears in mind the RMA's intended inter-relationships as between objectives, policies and rules. The RMA refers to policies as serving to implement related objectives (and rules serving to implement policies) (see s75). The *Darby Planning* decision discusses the related design of the PDP, including of the relationships between Ch 3's 'Strategic Objectives' ('SOs') and 'Strategic Policies' ('SPs') and other PDP chapter provisions (including the policies of Ch 6<sup>117</sup> that we are concerned with in this Topic 2 decision).

### The planning evidence on Ch 3 and Ch 6 provisions

[183] We received a significant body of evidence from the planning witnesses offering opinions on the most appropriate Topic 2 provisions. This occurred through different stages of evidence preparation and the hearing. It included provision of a joint witness statement of planners who participated in facilitated conferencing, dated 2 April 2019 ('2 April Planners JWS').

[184] A limitation on the value of that evidence is that, with the exception of Mr Barr, each of the planning witnesses was briefed on matters of particular relevance to their

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<sup>117</sup> Ch 6 specifies policies but not objectives.



client's case. Appellants have generally sought confined relief and s274 parties have responded accordingly. When cross-examined or questioned, planning witnesses offered answers on broader matters, as the Code would direct. Nevertheless, as that evidence was by way of oral answers to questions (rather than considered drafting analysis), it is of limited value.

[185] Mr Barr took a broader approach reflective of QLDC's position as respondent to appeals. Even so, his evidence is qualified in that he has offered drafting on the central questions of ONF/L values' scheduling and the Upper Clutha RCL on the footing that he does not support these changes to the DV. Our impression of how he answered questions is that he remained clearly of the view that the DV remains appropriate in relevant respects.

[186] Given the scope of Darby Group's appeal, Mr Ferguson was in a position to offer his considered opinion on how the Values' Identification Frameworks should be drafted. However, the scope of his drafting brief was also limited insofar as Darby Group has confined interests in regard to Chs 3 and 6.

[187] Those observations do not intend to direct criticism to any of the planning witnesses. On the contrary, we found them all properly respectful of their Code of Conduct obligations.

[188] However, it leaves the Court with a more challenging task in ensuring the most appropriate set of Ch 3 and 6 provisions, giving proper effect to our evidential findings. Of course, the Court has significant experience in these drafting matters. Fundamentally, we are concerned with the proper application of statutory interpretation principles.

### **Our intended staged approach to finalising the Topic 2 provisions**

[189] We find merit in Mr Logan's suggestion, in closing submissions for ORC, that we should allow sensible opportunity for further input from parties in order to ensure a sound outcome overall. That is particularly given our findings as to the need for new Strategic Policies for the Values' Identification Frameworks (and related provisions, and our directions for further expert witness conferencing). Therefore, we approach our task as follows:





- (a) we use the version of the Chs 3 and 6 provisions in QLDC's 4 September 2019 closing submissions ('QLDC closing version') as a baseline set of provisions;
- (b) we consider the drafting approaches of various witnesses, and draw from our own experience. On the basis of our evidential findings in this decision, we set out preliminary drafting in Annexure 1 (giving reasons for it in following parts of this decision);
- (c) we make directions for further expert witness conferencing to develop drafting recommendations for some provisions;
- (d) we give opportunity to parties to make supplementary legal submissions on that drafting (in light of the outcomes of the further expert witness conferencing) so as to better inform our final decision to be issued in due course.

#### **Order of evaluation of provisions in Parts D and E**

[190] Rather than approach our evaluation of the Ch 3 and Ch 6 provisions sequentially, it is more logical to do so according to their related issues. Our evaluation in Parts D and E proceeds as follows:

- (a) Part D is our evaluation of the provisions for ss6(b) and 7(c) RMA, encompassing:
  - (i) Ch 3 introductory provisions, SOs and SPs, including as to the Values Identification Frameworks;
  - (ii) related Ch 6 policies (noting there are no Ch 6 objectives);
- (b) Part E is our evaluation of:
  - (i) 'Carve Out' regimes in Chs 3 and 6; and
  - (ii) remaining provisions and matters.

[191] Annexure 1 sets out the relevant Chs 3 and 6 provisions for this decision. As noted our drafting in Annexure 1 is provisional, subject to our directions allowing for supplementary submissions.



**PART D: EVALUATION OF PART 2 PROVISIONS FOR SECTIONS 6(b) AND 7(c)*****Related definitions to include in 3.3.1B Interpretation and Application***

[192] Before we evaluate the various Ch 3 provisions on ss 6(b) and 7(c), we note that a number of definitions should be added to 3.1B Interpretation and Application. These pertain to various revised or additional SOs and SPs we find appropriate.

[193] These terms are:

- (a) 'Landscape Capacity';
- (b) 'Landscape Values';
- (c) 'Rural Living'; and
- (d) 'Priority Area'.

***'Landscape Capacity'***

[194] We are assisted by the LVA Guidelines produced by Ms Gilbert.<sup>118</sup> In particular:

... Cumulative effects come into play in particular circumstances where an additional effect takes the landscape beyond a 'tipping point' – which would normally require a benchmark against which the effects are to be measured. Such benchmarks might include the character envisaged in the District Plan, or the 'capacity' of a landscape to accommodate development before compromising its valued characteristics and qualities. This is a matter of judgment.  
...

[195] Where Ms Gilbert refers to 'development', we would refer to subdivision also. The only other point of substantial difference we would have with Ms Gilbert on that explanation is that the district plan is a statutory instrument for expressing that judgment, as we have earlier discussed in this decision.

***'Landscape Values'***

[196] There is an inconsistency in how Ch 3 refers to landscape values. As we have used this term we intend it to encompass landscape attributes.

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<sup>118</sup> Supplementary evidence of Ms Gilbert, for QLDC, dated 29 April 2019, Annexure 2.



*'Priority Area'*

[197] The need for this definition is simply one of drafting convenience, such that the repetition of more wordy concepts in relevant SPs can be avoided. In essence, it refers to our intention that the SPs for the Values' Identification Frameworks be targeted to identified Priority Areas of ONF/Ls and the Upper Clutha RCL.

*'Rural Living'*

[198] The DV's SP 3.3.24 uses the undefined words 'rural living'. By contrast, we note the concept of 'residential development' is used in other SPs (e.g. SP 3.3.25 which is to be considered in Stage 2 appeals).

[199] Mr Ferguson considers that 'rural living' is residential-type development occurring within a rural setting but not strongly associated with farming, horticulture or other rural uses. He comments that it is typically located within the Rural Residential, Rural Lifestyle zones as well as in the Lifestyle Precinct of the Wakatipu Basin Rural Amenity Zone. Messrs Barr and Brown generally agree with Mr Ferguson. We are not entirely clear about whether it is relevant for us to consider other Special Zones of a rural living nature in the DV's Part Six (i.e. Jacks Point, Waterfall Park, Millbrook). However, our directions allow parties to respond on whether or not we are correct in the drafting construct we have derived for this term.

*Our definitions*

[200] Therefore, on that preliminary basis, we find that we should include in 3.3.1B Interpretation and Application, the following definitions:

3.3.1B.x In this Chapter:

- a. 'Landscape capacity':
  - i in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means the capacity of a landscape or feature to accommodate subdivision or development without compromising its identified landscape values;
  - ii in relation to a landscape character area in a Rural Character Landscape, means the capacity of the landscape character area to accommodate subdivision or development for Rural Living



without compromising its identified landscape character or its identified visual amenity values.

- b. 'Landscape values' in relation to any Outstanding Natural Feature, Outstanding Natural Landscape or Rural Character Landscape includes biophysical, sensory and associative attributes (and 'values' has a corresponding meaning;
- c. 'Rural Living' means residential-type development in a Rural Character Landscape, or an Outstanding Natural Feature or Outstanding Natural Landscape, including of the nature anticipated in a Rural Residential or Rural Lifestyle zone but excluding residential development for farming or other rural production activities.
- d. 'Priority Area':
  - i in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means an area listed in SP x.x.x.x and shown on the maps in Schedule 21.
  - ii in relation to the Upper Clutha Rural Character Landscape, means an area listed in SP x.x.x.x and shown on the maps in Schedule 21.

[201] There will be a need to audit all Ch 3 provisions so that these defined terms are used where appropriate. Our directions in Part F provide for that. Those directions also allow leave to QLDC and other parties to propose further definitions.

## Chapter 3 Introductory Provisions

### 3.1.a Purpose

[202] In the DV and other iterations of 3.1.a Purpose, including QLDC's closing version, the word 'dramatic' is used as the adjective qualifying "lakes, rivers, alpine and high country landscapes free of inappropriate development".

[203] We find 'dramatic' is an unhelpful qualifier. For example, does someone enjoying an early morning canoe excursion to Ruby Island find Lake Wanaka's waters dramatic or still and peaceful? Greater consistency with SO 3.2.3 (and Ch 6 policies) also favours changing this word to 'distinctive'. We make that change accordingly.



### **3.1A Strategic Issues**

#### *'b. Strategic Issue 2'*

[204] In this renamed and renumbered Issue, we make a minor refinement to better align with the language of s6(b), RMA.

#### *Strategic Issue 4(d)*

[205] The DV's expression of this is as follows:

The District's natural environment, particularly its outstanding landscapes, has intrinsic qualities and values worthy of protection in their own right, as well as offering significant economic value to the District.

[206] QLDC's closing version is as follows:

Inappropriate activities (subdivision, use and development) have the potential to affect the intrinsic qualities and values of the District's natural environment, particularly its outstanding landscapes, which are valued by the community and from which the District derives significant economic value.

[207] Particularly in an approach that provides for the scheduling of ONF/L values, it is unhelpful to have 'values' used in two different senses, i.e. one in regard to ONF/L values and the other in regard to 'economic value'. It is also untidy to have no reference to ONFs in the Issue. Nor should ONF/L values be put alongside a further construct of 'qualities'.

[208] The elements of the original DV expression of this Issue are relatively clear, namely that the District's natural environment, particularly its ONF/Ls are important both for their intrinsic qualities and economic importance. QLDC's closing version confuses this somewhat, including by re-focussing the Issue on inappropriate activities and introducing a further concept of "valued by the community".

[209] Therefore, we consider the following amendment to the expression of the DV more appropriate:

Some resources of the District's natural environment, particularly its outstanding natural



features and outstanding natural landscapes and their landscape values, require effective identification and protection in their own right as well as for their significant contribution to the District's economy.

### Chapter 3 Strategic Objectives

#### ***The values of ONF/Ls and RCLs: SO 3.2.5.1 and SO 3.2.5.2***

##### *Background*

[210] The DV versions of SO 3.2.5.1 and SO 3.2.5.2 relevantly read:

- 3.2.5.1 The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration.
- 3.2.5.2 The rural character and visual amenity values in identified Rural Character Landscapes are maintained or enhanced by directing new subdivision, use or development to occur in those areas that have the potential to absorb change without materially detracting from those values.

[211] The 2 April Planners JWS<sup>119</sup> includes recommendations for amendments to SO 3.2.5.1 and a new SO 3.2.5.1B, as follows:

- 3.2.5.1 The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from inappropriate adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration.
- 3.2.5.1B In the Rural Zone Outstanding Natural Landscapes and Outstanding Natural Features, new subdivision use and development may only be appropriate, in very limited circumstances, including where activities and their effects are temporary in duration or are otherwise well designed, located and undertaken so that landscape values are protected, enhanced or restored.

[212] QLDC's closing version of the various SOs is as follows:

- 3.2.5.1 The landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected from inappropriate [footnoted] subdivision, use and development.

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<sup>119</sup> Joint witness statement of planners, Topic 2 (sub-topics 2 – 3), dated 2 April 2019.



- ...
- 3.2.5.1B Within the Rural Zone Outstanding Natural Features and Outstanding Natural Landscapes (other than for the Sub-Zones subject to SO 3.2.5.1A), new subdivision, use and development is only appropriate, in exceptional cases where the landscape values are protected, enhanced or restored where:
- (a) activities and their effects are temporary; or
  - (b) activities are otherwise well located, designed, and undertaken.
- 3.2.5.2 The landscape character and visual amenity values in Rural Zoned Rural Character Landscapes are maintained or enhanced by directing new subdivision, use and development to occur in those areas that have the potential to absorb change.

[213] QLDC's footnote to SO 3.2.5.1 would read:

Rural Zone Assessment Matter 21.21.1.3 provides elaboration on the attributes of relevance to landscape values.

#### *Evidence*

[214] The 2 April Planners JWS criticises the use of the words 'landscape and visual amenity values and the natural character of', in SO 3.2.5.1. The planners prefer the use of more general words such as 'landscape values'. The JWS points out that this would mean SO 3.2.5.1 would work effectively in tandem with related other provisions in the PDP, including in Chs 6 and 21.

[215] The 2 April Planners JWS also records an agreed position of the planners that the word 'inappropriate' should be used sparingly so as not to simply replicate s6(b) RMA with the potential for insufficient guidance. It recommends in favour of the use of a footnote on the intended meaning of 'inappropriate' as an expansion of what the term 'landscape values' includes. It also points out that the PDP should adequately elaborate on what constitutes an 'inappropriate' activity.

[216] Some variations on the drafting in the 2 April Planners JWS are preferred by some planners and/or parties. One of the refinements sought by LET (with support of its planning witness, Mr Edgar) is the removal of the words "enhanced or restored" from SO 3.2.5.1B. A concern in relation to those words is that they could encourage practices of trading off ONF/L values by claimed enhancements or restorations (e.g. plantings in exchange for loss of openness).



[217] On the other hand, Mr Farrell (planner for Cardrona Alpine Resorts Limited) prefers some greater flexibility in the expression of SO 3.2.5.1B. Specifically, this would be achieved by dropping qualifying words such as "only" and "in very limited circumstances".<sup>120</sup> In addition, he seeks the addition of the following further SO 3.2.5.2A, as originally proposed in a joint witness statement produced by planners (including Mr Farrell) to the Topic 1 hearing:

3.2.5.2A New subdivision, use or development in identified Rural Character Landscapes is well designed and located in areas that have the potential to absorb change without creating significant adverse effects on those values that contribute to the Rural Character Landscape being highly valued.

*Evaluation of SOs 3.2.5.1, 3.2.5.1B as to ONF/L values*

[218] These SOs have particular importance pending effective scheduling of ONF/L values in the ODP through plan changes under Sch 1 RMA. That is in the sense that they operate to give direction to related SPs and Ch 6 policies so as to flesh out s6(b) RMA.

[219] Starting with the DV, we find constructs of "more than minor" and "not temporary in duration" inherently uncertain and unsatisfactory for inclusion in a strategic objective.

[220] QLDC's closing version of SO 3.2.5.1 removes those problematic dimensions to the DV's objective. However, it does little more than replicate s6(b) RMA. A further problem with QLDC's closing version of both SOs is that they are not soundly informed by any understanding of what is sought to be protected. Given that there has been no process to date of identifying relevant landscape values, it is not sound to presume that either ss6(b) or 7(c) would be effectively addressed by focussing on the noted parameters of 'temporary' and 'exceptional' (quite apart from the inherent uncertainty of those words).

[221] QLDC's closing version of SO 3.2.5.1 footnotes the word "inappropriate" with the following:

Rural Zone Assessment Matter 21.21.1.3 provides elaboration on the attributes of relevance to landscape values.

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<sup>120</sup> Joint witness statement of planners, Topic 2 (sub-topics 2 – 3), dated 2 April 2019.





[222] However, that ought not to be taken as a statement that r 21.21.1.3 identifies such attributes or values. Rather, it is a rule that does little more than set out dimensions of ONF/L assessment methodology in order to adjudge whether a proposal materially accords with, or degrades, landscape values.

[223] Therefore, we find that neither the DV nor the other versions offered of SOs 3.2.5.1 and 3.2.5.1B is appropriate for the Rural zone. Outside the Rural zone, we have no evidential basis for finding the DV or other versions of SO 3.2.5.1 are inappropriate (and consider QLDC's closing version the clearest, accepting that it does not significantly advance upon s6(b) RMA).

[224] An option for the Rural zone, pending plan change(s) in response to the Values' Identification Framework SPs, would be to leave the SOs unchanged on the basis that the ODP would be treated as not sufficiently complete, in terms of *R J Davidson*, such that recourse to pt 2 RMA would be required. That may well be the inevitable position, in any case, until the ODP is effectively remediated.

[225] However, we find we can improve on that outcome. Our evidential findings lead us to also find that, especially pending the inclusion in Ch 21 of ONF/L schedules as to landscape values and landscape capacity, Ch 3 needs to give clear direction that:

- (a) ONF/L landscape values are to be protected; and
- (b) therefore, the processes of identifying them (through consent application processes) need to be sound.

[226] A starting point for that is to ensure that the SOs as to protection of ONF/L values are clear and uncluttered. That allows for related SOs (and SPs) on enablement of activities in relation to ONF/Ls to be properly subordinate to that protection intention.

[227] Therefore, for the Rural zone, we find it appropriate to:

- (a) add a new SO on the identification of landscape values;
- (b) not include QLDC's new SO 3.2.5.1B (nor its predecessor);
- (c) amend SO 3.2.5.1 to apply only to areas other than in Rural zones (and consequentially renumber it).

[228] Those changes are intended to work in tandem with the new and amended SPs,



including on landscape assessment methodology that, in Part F, we direct be addressed in further expert witness conferencing (along with the drafting of new SPs for the Values' Identification Frameworks and new monitoring SPs).

[229] We find SO 3.2.5.1B an unnecessary and inappropriate addition to the amended SO 3.2.5.1 (renumbered SO 3.2.5.xxx), in view of the various amended and additional SOs and SPs we have determined should be specified for the Rural zone, for the reasons we have explained.

[230] Our preliminary drafting is as follows (deleting the footnote in QLDC's version of SO 3.2.5.1 as it pertains to the Rural zone):

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

SO 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 Outstanding Natural Features and Outstanding Natural Landscapes are specified in Schedule 21.22, those values are protected;
- 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 [x.x.x.x the intended new SP on assessment methodology] are protected.

SO 3.2.5.xxx 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.

[231] For those reasons, we find those amended and additional landscape outcomes and assessment methodology SOs are the most appropriate, subject to considering any responses to the directions in Part F.

*Evaluation of SO 3.2.5.2 on RCLs*

[232] While the focus of the evidence has been almost entirely on the Upper Clutha RCL, we bear in mind that the DV Ch 3 provisions apply to all RCLs of the District.

[233] The drafting of SO 3.2.5.2 is on the basis that it would be left to consent authorities



dealing with consent applications to determine what landscape character and visual amenity values are important for consideration, on a case-by-case basis (by reference to Ch 21, assessment matters).

[234] We find SO 3.2.5.2 inherently uncertain. One aspect of that uncertainty is that “the ability to absorb change” cannot be sensibly tested without any clear direction being given in the DV on how cumulative effects, and hence absorptive capacity, can be sensibly gauged on a case-by-case basis. A further uncertainty is in what the SO seeks, by way of its related intention of “directing new subdivision, use and development to occur in those areas that have” that absorptive capacity. The ODP cannot realistically achieve that unless it has rules that, in tandem with zone mapping, effectively preclude new subdivision, use and development in one locality and enable it in another. As we have discussed, a major failing of the DV is that the Upper Clutha RCL does not make such distinctions.

[235] If SO 3.2.5.2 is considered in regard to resource consent applications, it is also ineffective in those terms in that a consent authority cannot direct that an applicant put their subdivision, use or development in a locality other than the one chosen for consenting purposes.

[236] Leaving those matters aside, SO 3.2.5.2 provides direction in regard to s7(c) RMA in the fact that it identifies that landscape character and visual amenity values are to be maintained or enhanced. However, we observe that it uses the same direction of “maintain or enhance” to apply to both landscape character and visual amenity values. ‘Landscape character’ and ‘visual amenity values’ are not one in the same. Rather, ‘landscape character’ refers to the overall character of a landscape character area, whereas ‘visual amenity values’ are particular qualities that help inform that overall character. While s7(c) would allow for a SO that seeks enhancement of visual amenity values, we find it more realistic to set the benchmark for landscape character at simply “maintain”. That is in the sense that it is realistic to try to maintain what characterises a valued landscape but unrealistic to strive to enhance it through RMA regulation of subdivision, use and development.

[237] The evidence demonstrates that, for Upper Clutha RCL areas, the ODP needs to give better direction on landscape character and important visual amenity values. That needs to be by way of supplementary SOs that apply to the Upper Clutha RCL. These



would set strategic objectives for the Upper Clutha RCL as to:

- (a) the identification of priority landscape character areas and their associated visual amenity; and
- (b) the identification of the landscape character and visual amenity values of those Priority Areas to be maintained or enhanced;
- (c) the setting of measurable limits for cumulative effects and giving of direction as to where subdivision and development is located and as to density limits and sound design.

[238] We are assisted by Darby Group's closing submissions concerning cumulative effects, as follows:<sup>121</sup>

For cumulative effects to sensibly relate to landscape absorption it would have to be referenced to landscape values including associative values and what it is about the landscape character that people value, and not incorporate the wider meaning of cumulative effects that could include other natural or physical resources.

[239] Cumulative effects should be more effectively addressed once the ODP has been changed to incorporate the anticipated mapping for landscape character areas and schedules of related landscape character, visual amenity values and landscape capacity. However, in the meantime, it is important that the ODP explicitly acknowledges the role it must play in both anticipating cumulative effects and managing them through related policies and rules, so that tipping points are not reached where character is being irretrievably degraded.

[240] As we have discussed, a further significant issue identified in the evidence of Messrs Lucas and Gilbert, is that the Upper Clutha RCLs have an important contextual relationship to some ONF/Ls. This is recognised, to some extent but only for ONFs, in Ch 6 policy 6.3.2.7 as follows (as per QLDC's closing version):

Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes in proximity to Outstanding Natural Features does not compromise the landscape quality, character and visual amenity of the relevant Outstanding Natural Feature(s). (3.2.5).

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<sup>121</sup> Closing submissions for Darby Group, dated 31 July 2019, at [59].



[241] However, there is no equivalent SO or SP in Ch 3. The evidence satisfies us that this should be addressed by an additional SO that would serve to give direction to an amended 6.3.2.7 applying to both ONFs and ONLs.

[242] Therefore, our preliminary drafting of an amended SO 3.2.5.2 and additional SOs is as follows:

- 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 Zoned Rural Character Landscapes are identified, including by mapping; and
  - b. associated landscape character and visual amenity values are identified.

[243] We find that drafting of those additional SOs most appropriate subject to considering any responses to the directions made in Part F.

### ***Evaluation of SO 3.2.1.7 and SO 3.2.1.8 as to enablement of Rural activities***

#### *Introduction*

[244] These SOs sit as part of a group of SOs for enablement of activities in the Rural zone. Not all of these SOs are part of Topic 2. Given that we have heard evidence and submissions on behalf of visitor industry interests, we note that one SO that is not before us for Topic 2 is SO 3.2.1.1 as to the:

... significant socioeconomic benefits of well-designed and appropriately located visitor industry places, facilities and services are realised across the District”.

[245] As we have also noted, we have yet to consider and determine various Topic 2 provisions on regionally significant infrastructure which are the subject of a settlement



achieved between relevant parties and QLDC.

[246] We also note that there are related SPs on enablement, including as to the visitor industry, that we evaluate later in this decision.

[247] At this stage, we evaluate SO 3.2.1.7 (on agricultural land uses) and SO 3.2.1.8 (on diversification). QLDC's closing version of these SOs is as follows:

- 3.2.1.7 Agricultural land uses consistent with the maintenance of the character of rural landscapes and significant nature conservation values are enabled.
- 3.2.1.8 Diversification of land use in rural areas beyond traditional activities, including farming, provided that the character of rural landscapes, significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintained.

### *Evaluation*

[248] Darby Group and some other parties oppose the favourable status conferred by the DV on agriculture, including in SO 3.2.1.7. We discuss Darby Group's position in our evaluation of related SP 3.3.20.

[249] For the same reasons we state there, we find SO 3.2.1.7 properly consistent with the RPS and pRPS. Furthermore, it is appropriate in light of the unchallenged permitted activity status of farming in Ch 21.

[250] However, we find a need to clarify some aspects of the drafting. In SO 3.2.1.7, there is no reference to ONF/L values. Its reference to "maintenance" of values is more properly consistent with RCL values, rather than ONF/L values. There are similar conceptual difficulties in the expression of the proviso in SO 3.2.1.8 (i.e. "provided that the character of rural landscapes ... [is] ... maintained"). As we discussed in the *Hawthenden* decision (in regard to the Cooper appeal) and in Decision 2.3, there are significant parts of ONF/Ls that are in productive farm use. Vagueness in regard to the enablement of agricultural uses and what is anticipated for ONF/L values is problematic, particularly until such time as scheduling of ONF/L values is completed for those agricultural production areas.

[251] These provisions would be conceptually clearer, and better in keeping with a Values' Identification Framework approach, if they were re-expressed along the following



lines:

- 3.2.1.7 Agricultural land uses are enabled provided those uses are consistent with:
- 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 the maintenance or enhancement of their visual amenity values; and
  - c. the maintenance of significant nature conservation values.
- 3.2.1.8 Diversification of land use in rural areas beyond traditional activities, including farming is enabled provided that:
- a. the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected;
  - b. the landscape character of Rural Character Landscapes is maintained and their visual amenity values are maintained or enhanced; and
  - c. significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintained.

[252] We are mindful that Hawthenden, James Cooper, and Lake McKay Station Limited may have an interest in the final determination of these provisions. Furthermore, we observe that Federated Farmers of New Zealand is an appellant in relation to Stage 1 provisions, but has not appealed relevant aspects of Ch 3.<sup>122</sup> Therefore, our directions seek QLDC's views on whether we should subject consideration of these provisions to s293 directions, and if so, on what basis. In the meantime, our redrafting is offered on a provisional basis, subject to further directions on finalisation of the provisions.

### Chapter 3 Strategic Policies

#### ***Evaluation of SP 3.3.29 and SP 3.3.31 on Identification of ONF/L and RCLs and values***

[253] Our evaluation of these SPs follows on from our findings on related SOs.

[254] The DV includes the following policies on the mapping identification of ONF/Ls and RCLs:

- 3.3.29 Identify the District's Outstanding Natural Landscapes and Outstanding Natural Features on the District Plan maps. (relevant to S.O.3.2.5.1)

<sup>122</sup> Notice of appeal by Federated Farmers of New Zealand Inc, dated 28 May 2018.



- 3.3.31 Identify the District's Rural Character Landscapes on the District Plan maps.  
(relevant to S.O.3.2.5.2)

[255] QLDC's closing version proposes only minor drafting refinements to SP 3.3.29. In essence, those refinements seek to apply a consistent stylistic approach to reference to Outstanding Natural Landscapes Features and Outstanding Natural Features Landscapes. Neither SP is contentious.

[256] To better achieve the related new and revised SOs, we find that these SPs, whilst appropriate insofar as they go, should be accompanied by further SPs as follows:

- (a) an SP as to the identification of ONF/L landscape values and landscape capacity, that acknowledges the intended new role of Sch 21 for these purposes and the importance of applying sound landscape assessment methodology;
- (b) an SP for similar purposes in regard to the identification of landscape character and visual amenity values of RCLs.

[257] It will be important to properly link SPs 3.3.29 and 3.3.31 and the new SPs 3.3.29x and 3.3.29y to related policies and rules, including in Ch 21. On this matter, we reserve capacity to revisit this question in light of our consideration of appeals on Ch 21.

[258] Therefore, to better achieve the related new and revised SOs and for the reasons given, we find that SP 3.3.29 and SP 3.3.31 of QLDC's closing version are appropriate but are to be accompanied by further SPs our preliminary drafting of which is set out at [312].

[259] We find that drafting of those additional SPs most appropriate subject to considering any responses to our directions at Part F.

### ***Evaluation of SPs on Values' Identification Frameworks***

#### *Introduction*

[260] We now return to evaluate the most appropriate Strategic Policies for Values' Identification Frameworks to give effect to our findings and achieve related SOs. We agree with Messrs Barr and Ferguson that these experts that these Frameworks would





be expressed as Strategic Policies in Ch 3 (rather than as SOs or Ch 6 policies).

### *Evaluation*

[261] By way of an initial observation, we are mindful that neither Mr Barr nor Mr Ferguson had the benefit of our findings on the landscape experts' evidence. Furthermore, while each of them approached their drafting on their understanding of the evidence of the landscape experts called by their respective clients, none of those experts has had the benefit of our findings on their evidence. Given all those matters, we consider it important to direct further facilitated expert witness conferencing of Messrs Barr and Ferguson and Messrs Mellsop, Gilbert and Pflüger. That conferencing will be for the purposes of securing final opinion(s) from Messrs Barr and Ferguson, assisted by the landscape experts, on how best to draft the additional SPs to give effect to the findings in this decision.

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

- (a) the overall purpose of the SPs is to provide policy direction for future Sch 1 plan change processes that would include Ch 21 schedules of landscape values and landscape capacity, informed by assessments, and other related provisions as we describe for Priority Areas;
- (b) there should be separate sets of SPs (rather than one set) for:
  - (i) ONF/L Priority Areas; and
  - (ii) the Upper Clutha RCL Priority Areas;
- (c) each set of SPs should apply only to Priority Areas that are:
  - (i) listed in the applicable SP; and
  - (ii) shown on maps that could be added to Ch 3 (or placed elsewhere in the ODP);
- (d) the SPs should allow some flexibility as to how landscape values and related landscape capacity are described, in the Ch 21 schedules. The choice of prescriptive or flexible language should be dependent on the state of knowledge about landscape values drawn from assessments. However, while schedules can allow for further particularisation of identified value(s) through resource consent application processes, those processes should not be used to add new values or ignore scheduled values in the Priority Areas;



- (e) each set of SPs is to specify an appropriate landscape assessment methodology for the Priority Areas;
- (f) for ONF/L Priority Areas, that methodology is to specify a geographic scale that encompasses relevant landscape(s) and/or feature(s) (not being confined to landscape character units);
- (g) for the Upper Clutha RCL Priority Areas, that methodology should provide for landscape assessment at a relevant landscape character area level;
- (h) the set of SPs for the Upper Clutha RCL Priority Areas should also give policy direction about cumulative adverse effects on landscape character and visual amenity values from increasing Rural Living subdivision and development. That direction would apply to the ODP's rules that set measurable spatial or other limits, and related assessment matters (including as to location, quantity, density and design);
- (i) the set of SPs for the Upper Clutha RCL should also acknowledge the integrated nature of landscapes, including the relationships of RCLs to ONF/Ls;
- (j) each set of SPs (i.e. for both ONF/Ls and the Upper Clutha RCL) should specify date(s) by which related Sch 1 plan changes are to be notified. We go so far as to observe that a five year timeframe, as indicated by Mr Barr's drafting of his proposed SP 3.3.31D for the Upper Clutha RCLs, would seem unduly long. On the other hand, we have no clear way of gauging, at this stage, whether Mr Ferguson's 12 month timeline for priority ONF/L and RCL areas is unrealistically tight. Hence, we make directions for supplementary evidence from QLDC on these matters and give opportunity for parties to respond.

[263] As we have also noted, monitoring is an appropriate further dimension (and we deal with Mr Barr's recommended monitoring SPs later in this Part D).

[264] For the reasons we have given, we find we should withhold from finalising how these SPs are drafted so as to allow the expert conferencing we have noted. According to our directions, that supplementary evidence will be by way of a joint witness statement, following receipt of which we will allow for supplementary closing submissions on whether the drafting gives effect to the findings in this decision.

[265] Therefore, we go only so far as to find that the sets of SPs for the Values' Identification Frameworks are to be added to Ch 3 in the substantive terms we have set



out. Final drafting will be included in a further Topic 2 decision in due course.

***New Ch 3 SPs as to landscape assessment methodologies***

[266] Some considerable time can be anticipated to elapse before the ODP is changed in response to the intended SPs on Values' Identification Frameworks. In the meantime, the various risks and uncertainties that we find unsatisfactory in regard to the present DV regimes, both for ONF/Ls and the Upper Clutha RCL, will persist (subject to any further remediation we can provide for).

[267] Under s32 RMA, an aspect of the assessment of the efficiency and effectiveness of provisions in achieving related plan objectives is the assessment of "the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions". The risk presented here concerns the present lack of information on the *relevant* landscape values of the ONF/Ls and *relevant* landscape character and visual amenity values of the Upper Clutha RCL. In regard to ONF/Ls, by 'relevant', we mean what informs the DV's choices about what is sought to be protected, for the purposes of s6(b) RMA. For the Upper Clutha RCL, by 'relevant', we mean what particular landscape character the DV seeks be maintained, and what particular visual amenity values it seeks be maintained or enhanced, for the purposes of s7(c) RMA.

[268] As we discuss, potentially the risks could be ameliorated to an extent by s293 directions to bring forward changes that we find appropriate in relation to the Upper Clutha RCL and selected ONFs and ONLs. In Part F, we make associated directions for parties to respond on whether or not s293 directions should be made. However, even assuming directions under s293 are made, and the ODP is changed further through that procedure, management of the risks presented by the present lack of information will be contingent, largely, on the effectiveness or otherwise of resource consent application processes.

[269] We now consider the issue that raises, namely whether more specific policy direction is required than is presently given in the DV on how landscape assessment is to be undertaken for the purposes of resource consent application processes. This is both for ONF/Ls and the RCLs.

[270] We consider this issue in light of the various relevant assessment matters in Ch 21 (in particular those at rr 21.21.1 and 21.21.2). We are mindful that Ch 21 will be the



subject of consideration in later topics and stages in our hearings of appeals. However, we note that, in summary, the DV's assessment matters specify:

- (a) in ONF/Ls, assessment of applications includes whether the proposed development will maintain or enhance their quality and character, taking into account specified physical, visual, "appreciation" and cultural attributes (including any cumulative degradation);
- (b) in RCLs, assessment is to encompass a range of factors, including as to the significance of existing and proposed vegetation, effects on landscape quality and character (and any degradation), adjacent ONF/Ls and visual amenity values (including prominence and capacity for screening);
- (c) effects on visual amenity are to be assessed, including in terms of the "reasonably difficult to see" test; and
- (d) cumulative effects of subdivision and development on the landscape are to be assessed, by reference to existing and consented development and whether there would be degradation of landscape quality or character or visual amenity values (additional degradation to be avoided).

[271] We are assisted by the evidence of Messrs Gilbert and Lucas in finding that there is a need for clearer strategic-level policy direction in relation to the assessment methodology to be applied to landscape assessment. That applies both in regard to ONF/Ls and RCLs.

[272] In respect to ONF/Ls, leaving aside how the content of the Ch 21 assessment matters will be determined in due course, a present deficiency of the DV is that, in the absence of landscape values and capacity schedules in Ch 21, too much discretion is left in regard to:

- (a) how the values of particular mapped ONF/Ls will be determined;
- (b) how relevant boundaries of ONFs and ONLs will be determined for consent application assessment purposes (although this issue may be less for ONFs as they are typically more readily able to be geographically determined); and
- (c) how measurable spatial or other limits will be determined in respect of the cumulative adverse effects of subdivision and development on landscape values (including in terms of consideration of matters concerning location, quantity, density and design treatment).



[273] We find that deficiency needs to be addressed by the addition of suitable new Strategic Policies in Ch 3. We favour including these as SPs, rather than as Ch 6 policies, because of the high strategic importance of ensuring proper direction is given under the ODP in relation to s6(b) RMA.

[274] Similarly, for RCLs, we find there is a need for SPs as to a common and appropriate landscape assessment methodology to provide direction on matters such as:

- (a) how a landscape character area for assessment purposes is to be identified by mapping;
- (b) how the landscape character and visual amenity values of that landscape character area are to be identified;
- (c) how the related landscape capacity of that landscape character area is to be assessed and described for maintaining landscape character and maintaining and enhancing visual amenity values;
- (d) how measurable spatial or other limits are to be resolved in respect of cumulative subdivision and development including as to location, quantity, density and location to maintain landscape character and to maintain or enhance visual amenity values;
- (e) how the relationship with ONF/L values is to be factored into the above.

[275] As for ONF/Ls, we find that Ch 3 is preferable to Ch 6 as the place for this policy direction. In essence, whilst s7(c) gives a lower order 'have particular regard to" statutory direction, the ODP has assigned strategic importance to such 'amenity' landscapes in the District.

[276] As with our findings concerning the need for SPs to provide for our described ONF/L and Upper Clutha Basin RCL Values' Identification Frameworks, we consider we should direct that expert witness conferencing be undertaken to develop drafting recommendations in a JWS. The substance of the task involves a need for input from both planning and landscape experts. As the task is closely related to the development of the SPs for the Values' Identification Frameworks, we consider that the experts should be the same for each task (i.e. Messrs Barr and Ferguson and Mses Gilbert, Mellsop and Pflüger).

[277] We have noted the two background documents on these matters that Ms Gilbert



produced in her supplementary evidence:

- (a) 'A possible methodology for an Upper Clutha Basin Landscape Study' (which Ms Gilbert prepared in consultation with most other landscape experts for Topic 2); and
- (b) 'Guidelines for the assessment of landscape and visual effects' ('LVA Guidelines') covering resource consent applications and plan modifications.

[278] The experts in conferencing should consider these documents in developing their opinions on how best to approach the drafting to give effect to the findings in this decision. We observe that we also find helpful the approach taken in the *Matakana* decision (particularly going further than a short description of biophysical, sensory and associative values). Whilst we are mindful of Ms Scott's criticism of the length of the schedules in *Matakana*, we would note that these appear to be significantly as a result of the important issue in that case of having to capture the relevant iwi whanonga pono (values).

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

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

[280] It is ultimately a question of drafting style whether those different purposes are addressed in different sets of SPs or a single set of SPs.

***Heading to SPs 3.3.20 – 3.3.28 'Rural Activities' appropriate***

[281] As a small point of detail, we find the heading 'Rural Activities' as included in the DV more appropriate than QLDC's closing version ('Rural Environment') in the fact that, in substance, these SPs concern activities.



***Evaluation of QLDC's proposed new SP 3.3.32A and policy 6.3.4.2 on plan changes***

[282] SP 3.3.23 of the DV is as follows:

3.3.23 Identify areas on the District Plan maps that are not within Outstanding Natural Landscapes or Outstanding Natural Features and that cannot absorb further change, and avoid residential development in those areas.

[283] Various iterations of this SP were discussed during the hearing. QLDC's closing version revises and renumbers it SP 3.3.32A as follows:

3.3.32A Encourage plan changes to identify areas on the District Plan maps that are not within Outstanding Natural Features or Outstanding Natural Landscapes and that cannot absorb further change, and avoid residential development in those areas. (relevant to S.O. 3.2.1.8 and 3.2.5.2A)

[284] We can be brief in recording that we find both SP 3.3.23 of the DV and the revised 3.3.32A inappropriate. We do not have a sound evidential basis for supporting such a potentially wide-ranging addition to proposed SP 3.3.32A. In any case, the matter of dealing with cumulative effects in the Upper Clutha RCL areas is more appropriately addressed through the various new SPs for the Values' Identification Frameworks and other SOs and SPs we have discussed.

[285] We note that Ch 6 includes a similarly worded policy as follows (from QLDC's closing version):

6.3.4.2 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, 3.2.5.2 ,A, B, 3.3.22, 3.3.24, 3.3.32 A).

[286] While we see some merit in Mr Haworth's closing submission for UCESI that this policy be discarded, we acknowledge QLDC's closing submission that it is beyond the scope of UCESI's appeal to see it removed. We do not consider there is sufficient evidence to trigger a s293 direction as to its removal. Therefore, we find the more appropriate course is to leave this Ch 6 policy unchanged.



***Evaluation of SP 3.3.24 and SP 3.3.30 and related matters of assessment and protection of values***

*Introduction*

[287] It is appropriate to deal with this collection of matters together, as they concern related themes.

[288] Starting with SP 3.3.24 and SP 3.3.30, these serve to set out directions that constrain subdivision, use and development by specifying limits beyond which effects on landscape values become unacceptable.

[289] These related SPs read as follows in the DV:

- 3.3.24 Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character. (relevant to S.O. 3.2.1.8, 3.2.5.1 and 3.2.5.2)
- 3.3.30 Avoid adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration. (relevant to S.O.3.2.5.1).

[290] SP 3.3.24 is carried forward into QLDC's closing version unchanged. SP 3.3.30 is proposed to be amended in that version as follows:

- 3.3.30 Avoid adverse effects on the landscape, and visual amenity values and natural character of the District's Outstanding Natural Landscapes Features and Outstanding Natural Features-Landscapes from residential subdivision, use and development where there is little capacity to absorb change. (relevant to S.O.3.2.5)

[291] In terms of the RMA's specification that policies implement objectives,<sup>123</sup> SP 3.3.24 is specified as so related to SOs 3.2.1.8, 3.2.5.1 and 3.2.5.2 and SP 3.3.30. We return to the issue of their proper relationships to updated and new SOs and SPs later in this Part D.

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<sup>123</sup> Section 75(1) RMA.





*Evidence*

[292] Mr Barr pointed out that SP 3.3.24 does not halt existing development or zoning within the Rural Lifestyle Zone or Rural Residential Zone where the specified densities are met. Rather, he characterises the policy as setting a framework to manage incremental adverse effects of future development. He does, however, acknowledge that SP 3.3.24 may come into play if an activity exceeds the specified allotment size and is a non-complying activity (or even a discretionary activity of a certain scale and nature).<sup>124</sup>

[293] Mr Barr notes the Rural zone and Gibbston Character Zone as examples of where SP 3.3.24 would be particularly important. This is in the sense that, as he described it, the landscape has reached a capacity limit for absorbing development, such that there would be some significance in carefully testing cumulative adverse effects. He also considers it important cumulative adverse effects are recognised at a strategic directions level, as an issue to manage in the Rural zone (as well as various Special Zones zones).

[294] Mr Barr discusses various changes to these provisions sought by some parties. Some seek that the provisions be recast to more closely align with s6(b) RMA (albeit not on a basis that advances on what that provision already says). Others seek that the provisions use broad discretionary language or otherwise defer more fully to discretionary assessments in resource consent application processes. Others seek full deletion of this policy.<sup>125</sup> As Mr Barr notes, Darby Group seeks that SP 3.3.30 be revised to reflect the relief pursued in the Darby Planning appeal, as follows:

Protect outstanding natural landscapes and outstanding natural features against inappropriate development by maintaining the scheduled outstanding values of the feature or landscape.

[295] Mr Barr recognises that identifying at what point a proposal reaches a cumulative tipping point is difficult. He sees SP 3.3.24 as serving the important strategic level purpose of identifying cumulative effects as a problem and providing guidance on it.

<sup>124</sup> Evidence-in-chief of Mr Barr, for QLDC, dated 15 October 2018, at [11.28] – [11.34].

<sup>125</sup> Burdon (ENV-2018-CHC-091), Allenby Farms Limited (ENV-2018-CHC-148), SYZ Investments Limited (ENV-2018-CHC-130), Real Journeys (ENV-2018-CHC-131), QPL (ENV-2018-CHC-127) referred to in the evidence-in-chief of Mr Barr, dated 15 October 2018, at [11.50] – [11.59].



[296] In regard to SP 3.3.30, Mr Barr explained its relationship to the DV's SO 3.2.5.1 and why he supports it as currently drafted.

### *Submissions*

[297] We have considered the various positions put by parties in legal submissions. Generally, these reflect a spectrum of preferences between protection of landscape values and greater enablement of activities.

[298] As part of UCESI's case for a comprehensively improved regime for the Upper Clutha RCL, Mr Haworth seeks that SP 3.3.30 revert to the DV wording.<sup>126</sup>

[299] Darby Group seeks a less stringent approach. In her closing submissions, Ms Baker-Galloway submits:<sup>127</sup>

The DV already adopts an overly cautious approach to the management of activities within the RCLs. Policies for this landscape establish subdivision and development as being unsuitable in many locations, incorporate visibility tests from the former ONL-WB, and require a consideration of open landscape character. Additionally, the assessment matters for the PDP incorporate a consideration of the values of the landscape, albeit within a framework that does not allow for that to challenge the identified landscape categories identified on the planning maps.

[300] Ms Baker-Galloway goes on to submit that the DV sets a much higher threshold of protection than is required by pRPS policy 3.2.6. Counsel refers to evidence from ORC planner, Andrew McLennan, in submitting that this is such as to potentially affect the establishment of appropriate activities needing to locate in rural areas.<sup>128</sup>

[301] ORC seeks stringent objectives and policies to filter out inappropriate residential development from rural areas. Mr Logan offers various observations on how the court may wish to respond to the relevant pRPS and RPS provisions (i.e. pRPS 3.2.6, RPS objective 4.5 and policy 4.5.1 on urban growth, objective 5.3 on land for economic production, and policy 5.3.1 on management of activities in rural areas to support the regional economy and communities). In regard to what we are now to consider in Topic

<sup>126</sup> Closing submissions for UCESI, on sub-topics 2 – 10, dated 31 July 2019, at [67].

<sup>127</sup> Closing submissions for Darby Group, dated 31 July 2019, at [54].

<sup>128</sup> Closing submissions for Darby Group, dated 31 July 2019, at [55], referring to Mr MacLennan's evidence-in-chief for ORC dated 3 December 2018.



2, the essence of Mr Logan's submission is as follows:<sup>129</sup>

... planning controls for rural living and rural residential zones can set limits to development; ... In rural zones, discretionary activity status for residential activities on its own sets no clear boundaries, cannot effectively manage cumulative effects and allows tipping points to be recognised only in hindsight; ...Residential use of rural land needs to be carefully circumscribed to give effect to the operative provisions of RPS 2019; ...There needs to be a strong and comprehensive set of objectives and policies for the rural zone to filter out residential activities which do not accord with the imperatives of the RPS 2019; ...The synergy between farming and landscape values should be maintained.

[302] Our findings on the landscape expert evidence and planning evidence on ONF/Ls and the Upper Clutha RCLs, and the evidence of Mr Haworth, Dr Cossens and Mr May also informs our evaluation of these provisions.

*Evaluation of SP 3.3.24*

[303] The drafting of SP 3.3.24 reflects the fact that the NV and DV lack the sound underpinning of a thorough strategic landscape and land use study. The DV acknowledges, at a broad level, the risk of cumulative degradation of RCL landscape character but is not informed by any substantive analysis of that risk. It is one part of a wider design deficiency to the Upper Clutha RCL, namely its lack of any effective regime for the measurement and consideration of cumulative effects. Pending resolution of that problem through plan change (and/or s293) there is an enhanced importance in SP 3.3.24 being explicit about the importance of protecting against cumulative degradation of RCL character and rural amenity values, especially as arising from new rural living subdivision and development.

[304] Our determinations concerning SO 3.2.5.2 and related provisions in Annexure 1 will assist, to some degree, to sharpen and direct how SP 3.2.24 is applied. However, we remain concerned that Ch 3 provides less than sufficient strategic direction on these matters, particularly for the Upper Clutha RCL.

*Evaluation of SP 3.3.30*

[305] Similarly, the drafting of SP 3.3.30 reflects the fact that the NV and DV are not

<sup>129</sup> Closing submissions for ORC, dated 4 September 2019, at [87].



informed by any detailed analysis to identify the ONF/L values that the ODP seeks to protect.

[306] There is an inherent lack of direction given by words such as “more than minor or not temporary in duration”. Those words alone provide rich pickings for any advocate in resource consent application processes, whether the intentions of their client are to advance or oppose a proposal in an ONF/L.

*Evaluation of the most appropriate set of SPs in place of SPs 3.3.24 and 3.3.30*

[307] We agree with the substance of Mr Logan’s submissions on what we should seek to achieve in order that the ODP properly gives effect to the RPS and operative provisions of the pRPS. That approach is also consistent with much of what Mr Haworth has submitted, although we respectfully differ as to how the DV’s SP 3.3.30 should be drafted.

[308] At least insofar as SP 3.3.24 and SP 3.3.30 are concerned, we do not agree with Ms Baker-Galloway that the DV’s approach is overly cautious. Rather, its significant deficiency in regard to ONF/Ls is its lack of certainty, for protection and development, in its failure to identify the values it seeks to protect.

[309] The position is similar for the Upper Clutha RCL insofar as the DV fails to give any helpful direction on landscape character and values, and associated landscape capacity for residential development change. Rather, it leaves these matters at significant risk because the DV’s objectives, policies and assessment matters would leave a great deal to discretionary judgment, case-by-case.

[310] Some time can be expected to elapse before Sch 1 plan change(s) to be directed by the SPs are included in Ch 3 for the Values’ Identification Frameworks. That is one consideration that leads us to find the present expression of SP 3.3.24 and SP 3.3.30 is inadequate for the purposes of ss6(b) and 7(c) and to properly give effect to the RPS and operative pRPS provisions. In particular, we find it important to provide clearer strategic direction on the importance of undertaking landscape assessment, particularly for the identification of relevant values, according to sound methodology. In addition, these SPs are intended to implement related SOs that we have amended for greater clarity about intended ODP outcomes. The same clarity should be reflected in these SPs, and we find SP 3.3.24 and SP 3.3.30 deficient in those terms.



[311] SP 3.3.30, whether in the DV or as amended in QLDC's closing version, confuses the clarity of the related protection objective by its qualifying words. We find it inappropriate in those terms. Furthermore, whilst the DV of SP 3.3.24 is less problematic insofar as it goes, we find it would give rise to undue confusion in its words "to the point where the area is no longer rural in character".

[312] For those reasons, we find it appropriate that SP 3.3.24 of the DV be amended, SP 3.3.30 be replaced by a new SP 3.3.30, SP 3.3.31 be confirmed and additional SPs be included in Ch 3, as our preliminary drafting shows:

- 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.
- 3.3.29x For Outstanding Natural Features and Outstanding Natural Landscapes, identify landscape values and landscape capacity:
  - a. in Schedule 21.22 where applicable and otherwise through assessment processes; and
  - b. in accordance with the landscape assessment matters in SP[x.x.x.y] and sound 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.
- 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. in Schedule 21.22 where applicable and otherwise through assessment processes;
  - b. in accordance with the landscape assessment matters in SP x.x.x.x and sound 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 are identified in Schedule 21.22, ensure that new subdivision and development for the purposes of Rural Living:
- a. maintains that landscape character;
  - b. enhances any visual amenity value that Schedule 21.22 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 x.x.x.y:
    - i a landscape character area for assessment purposes is identified at an appropriate scale including by mapping;
    - ii the landscape character and visual amenity values of that landscape character area are identified; and
    - iii the 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 so identified in relation to that landscape character area.

[313] Our use of 'maintains' for landscape character and 'enhances' or 'maintains' for visual amenity values is deliberate. We refer to our related findings earlier in this Part D.

[314] We find that drafting of those additional SPs most appropriate subject to considering any responses to our directions in Part F.

### ***Evaluation of Strategic Policies on enablement of activities in Rural areas***

[315] In these following paragraphs, we evaluate a set of Strategic Policies on enablement of types of activity in RCLs, in particular as to:

- (a) farming activities;
- (b) rural living;
- (c) commercial recreation and tourism; and
- (d) resorts.



***Evaluation of SPs 3.3.20 – 3.3.26 on farming, rural living and other matters***

[316] There are only confined issues with these provisions.

*SP 3.3.20*

[317] SP 3.3.20 is:

Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with significant nature conservation values or degrade the existing character of rural landscapes.

[318] Darby Group's interests are not in regard to farming activities as much as types of rural living and other activities as may seek to be developed in the Rural areas. In that sense, they are concerned to see properly balanced provision for the enablement of Rural activities. Ms Baker-Galloway cross-examined various witnesses about these matters, in view of the relatively favourable treatment that the DV gives to farming activities and the fact that the District's economy is more strongly driven from other sectors. In closing submissions for Darby, Ms Baker-Galloway questioned the "assumption that continuation of farming is appropriate, and is the primary contribution to amenity values in particular", with reference to the DV's approach. Counsel observes:<sup>130</sup>

This ignores the fact that the District's landscapes have been shaped by more than just farming, and have also been shaped by founding industries such as mining and tourism.

In addition blanket approval of farming as being "appropriate" could lead to absurd results – such as diversification and intensification of farming methods that lead to significant changes and adverse effects on the landscape character and values.

[319] We have earlier noted Mr Logan's closing submissions for ORC on this matter, in which he supports the DV's approach on an analysis of related RPS and pRPS provisions. In summary, he submits that those provisions warrant a "synergy between farming and landscape values", as the DV reflects.

<sup>130</sup> Closing submissions for Darby Group, dated 31 August 2019, at [45], [46], referring to cross-examination of Mr Barr, Transcript pp 113 ff, 439 ff.



[320] Similarly, in closing for QLDC, Ms Scott points out the fact that ONF/Ls and RCL landscapes are largely within the Rural zone whose purpose is:<sup>131</sup>

... to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity.

[321] Ms Scott further points out that no appeals challenge the permitted activity status of farming in Ch 21.

[322] We accept Mr Logan's and Ms Scott's submissions in these matters, and find SP 3.3.20 properly consistent with the RPS, pRPS, and unchallenged status of farming as a permitted activity in Ch 21.

[323] However, to ensure proper consistency with our revised SO 3.2.1.7, we find that SP 3.3.20 would be better expressed as:

- 3.3.20 Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with:
- a. protection of the landscape values of Outstanding Natural Features or of Outstanding Natural Landscapes;
  - b. maintenance of the landscape character and maintenance or enhancement of the visual amenity values of Rural Character Landscape; or
  - c. maintenance of significant conservation values or Ngāi Tahu values, interests or customary resources.

[324] As with our revised related SO 3.2.1.7, directions are made in Part F seeking QLDC's (and any other party's views) on whether s293 directions should be made for this revision.

#### SP 3.3.26

[325] SP 3.3.26 is not controversial. It gives direction that subdivision and/or development be designed according to best practice land use management. We find both SPs appropriate as expressed in QLDC's closing version (unchanged from the DV).

<sup>131</sup> Closing submissions for QLDC, dated 4 September 2019, at [4.33] and quoting from PDP Ch 21, 21.1 Purpose.





SP 3.3.22

[326] In addition to SP 3.3.24, SP 3.3.22 concerns "rural living", and is as follows (QLDC closing version):

3.3.22 Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for rural living developments. (relevant to S.O. 3.2.1A, 3.2.1.7, 3.2.5.1 and 3.2.5.2)

[327] As we have noted, Mr Logan submits on behalf of ORC that, on analysis of the RPS and pRPS, residential development should be "carefully circumscribed" before being allowed in the Rural zone and that "there needs to be a strong and comprehensive set of objectives and policies" to "filter out residential activities". On those matters, counsel further submits that:<sup>132</sup>

... non-rural and non-productive activities should be discouraged in rural areas; land fragmentation, loss of rural production and domestication of the rural environment must be constrained ... Residential activities and other land uses which do not need a rural location should be discouraged ... Whether land should be used for rural living has to be tested against the landscape provisions of the pRPS and PDP [and] Residential activity in rural zones must not derogate from the operative directions in the RPS to maintain rural areas for rural purposes, in particular for production. ...

[328] Earlier in this Part D, we discuss the uncertainty in how Ch 3 refers to 'rural living' without more clearly defining what that encompasses. That uncertainty affects SP 3.3.22 and SP 3.3.24. We have indicated our provisional view that a definition would be appropriately included in '3.3.1B Interpretation and Application'. Subject to resolving that matter, we find 3.3.22 properly consistent with the PRS and pRPS.

***Evaluation of SP 3.3.1A (3.3.21 in DV) as to commercial recreation and tourism***

[329] The DV includes the following SP 3.3.21:

3.3.21 Recognise that commercial recreation and tourism related activities seeking to locate within the Rural Zone may be appropriate where these activities enhance the appreciation of landscapes, and on the basis they would protect,

<sup>132</sup> Closing submissions for ORC, dated 4 September 2019, at [85] – [86].



maintain or enhance landscape quality, character and visual amenity values.  
(relevant to S.O. 3.2.1.1, 3.2.1.8, 3.2.5.1 and 3.2.5.2).

[330] Topic 1 concerned 'A Resilient Economy', rather than Rural landscapes. Nevertheless, in planning witness conferencing there was some discussion about SP 3.3.21. The outcome is recorded in a joint witness statement ('Topic 1 JWS').<sup>133</sup> It proposes that SP 3.3.21 be replaced with an SP 3.3.1A as follows:

3.3.1A In rural areas of the district, provide for commercial recreation and tourism related activities in appropriate locations where they enable people to access and appreciate the district's landscapes.

[331] QLDC's closing version of Topic 2 provisions proposes the following revision that can be observed to be less restrictive than the DV's SP 3.3.21 but more restrictive than the Topic 1 JWS version:

3.3.1A In rural areas, provide for commercial recreation and tourism related activities in appropriate locations where they enable people to access and appreciate the district's landscapes provided that landscape quality, character, visual amenity values, and nature conservation values are maintained or enhanced.

#### *Evidence and submissions*

[332] Given that this provision was also considered in Topic 1, we have considered related Topic 1 closing submissions.

[333] In her Topic 1 closing submissions for Darby Group and other parties with commercial recreation, tourism and other development interests, Ms Baker-Galloway offered qualified support for the Topic 1 JWS's proposed replacement SP 3.3.1A. That was to the effect that we should satisfy ourselves on whether the Topic 1 JWS's proposed SP 3.3.1A properly gave effect to the RPS to "address what is otherwise a gap [in] providing for tourism outside of urban areas at the strategic level". Counsel noted, in particular, the RPS definition of "functional need" and its policies 5.3.1(f) and 5.3.5.<sup>134</sup>

[334] Ms Baker-Galloway also addressed these matters in her closing submissions for

<sup>133</sup> Joint witness statement from planning expert conferencing (Topic 1), dated 25 February 2019.

<sup>134</sup> Augmented closing submissions on behalf of various parties regarding Strategic Topic 1: A Resilient Economy, dated 12 March 2019, at [28].



Darby Group in Topic 2. As part of an overall submission on how best to address matters prior to plan changes in response to directions in the SPs on what we have termed 'Values Identification Frameworks', Ms Baker-Galloway submits.<sup>135</sup>

The default position for the ONFL land not excluded from key provisions by the carve outs should be clearly tied to effects on the values and attributes that specifically contribute to the landscape or feature being sufficiently natural and outstanding. Until such time as plan changes are implemented to identify those values in the plan and provisions to specifically manage effects on those values, this is the default position.

Beyond simple effects on values, the type of activity is also relevant to the assessment of appropriateness. For example there are a suite of activities that have a functional need to locate outside urban areas, and on sites with specific attributes beyond just farming. Functional need is defined in the partially operative RPS at p 102 as the locational, operational, practical or technical needs of an activity, including development and upgrades and explicitly or implicitly provided for in the pRPS and RPS in a range of provisions for activities including the national grid, infrastructure of national and regional significance, rural activities, mining and tourism.

[335] On behalf of Kawerau Jet Services Holdings Limited ('KJet'), Mr Gardner-Hopkins submits that this is a form of "enabling" policy that should be drafted in a manner that "resolves tension" with protective policies.<sup>136</sup>

[336] Mr Leckie informs us that CAR supports the Topic 1 JWS version of SP 3.3.1A. Counsel submits that concerns that the policy need to be qualified are misplaced. That is in the sense that, as drafted, the Topic 1 JWS version would require consideration of "appropriate locations" and "enabling access and appreciation of landscapes" and "does not direct unfettered commercial recreation and tourism activities".<sup>137</sup>

[337] In her Topic 1 closing submissions for QLDC, Ms Scott clarifies that QLDC's support for the Topic 1 JWS version of SP 3.3.1A (in place of the more restrictive SP 3.3.21) was subject to the court being satisfied, having heard Topic 2, that a more enabling SP for commercial recreation and the visitor industry is appropriate. She also emphasises that QLDC's support for such a change to this SP is contingent on the court also including QLDC's other recommended Ch 3 SOs and SPs to ensure "appropriate qualifiers are in place that give effect to the RPS and achieve sections 6(b) and 7(c) of

<sup>135</sup> Closing submissions for Darby Group for Topic 2, dated 31 August 2019, at [43] and [44].

<sup>136</sup> Closing submissions for KJet, on Topic 1, dated 27 February 2019, at [17].

<sup>137</sup> Closing submissions for Cardrona Alpine Resort, dated 27 February 2019, at [21] – [24].



the RMA".<sup>138</sup> In counsel's closing submissions for Topic 2, those qualifications are reiterated as also qualifying QLDC's position on its modified closing version of SP 3.3.1A.

### *Evaluation*

[338] We agree with the substance of the observations made by Mr Logan and Ms Scott in closing as to the importance of ensuring this enabling SP is properly subordinate to the ss6(b) and 7(c) intentions of the DV, including in relation to the matters specified in the RPS and pRSP.

[339] As for the DV's SP 3.3.21, we agree with the observation recorded in the Topic 1 JWS as to the inherent lack of clarity in the qualifying words "would protect, maintain or enhance landscape quality, character and visual amenity values". In particular, those qualifying words fail to differentiate circumstances in which individual aspects of 'protect, maintain or enhance' would apply.

[340] We observe that the inclusion of these qualifying words in SP 3.3.21 is one of several examples in the DV of provisions that paraphrase or re-express, and hence change, the intentions of other SPs. A more refined approach to drafting is desirable.

[341] The Topic 1 JWS version of SP 3.3.1A is an improvement, in clarity terms. However, we acknowledge that it requires further refinement so as to be clearly subordinate to SO 3.2.5.xx.

[342] QLDC's closing version, whilst in some respects recognising a need to qualify the JWS version in protection terms, oddly excludes the word 'protect'. That is not appropriate given the SP applies to ONF/Ls. Furthermore, we find it suffers from a similar drafting weakness as does the DV's SP 3.3.21, in that it paraphrases, and hence colours, the intentions of related SPs on the protection of landscape values.

[343] In those terms, we find it preferable for this SP, dealing with protection of ONF/Ls, is to avoid undue re-expression and cross-over between the policies. If the protection SOs and SPs are plainly expressed as dealing with protection of ONF/L values, enabling policies can be expressed more clearly also. That is in the sense that 'inappropriate'

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<sup>138</sup> Closing submissions for QLDC, dated 27 February 2019, at [3.8], [3.9].



subdivision, use and development, under s6(b), is to be determined by reference to what is sought to be protected.

[344] The important rationale of this SP is to give status to the benefits in Rural areas of commercial recreation and tourism related activities that enable people opportunity to enjoy the District's landscapes. That rationale is well supported by the evidence of the economists, Messrs Osborne and Ballingall. The qualification to that enablement is that choices as to location, nature and design must be made in order to determine such activities are not inappropriate given what is sought for landscapes, in terms of ss6(b) and s7(c) RMA.

[345] We find some drafting and structural changes necessary to ensure appropriate consistency with related SOs and SPs. Therefore, we find the further revision of SP 3.3.1A is the most appropriate:

- 3.3.1A In Rural areas, provide for commercial recreation and tourism related activities that enable people to access and appreciate the district's landscapes provided that those activities are located and designed and are of a nature that:
- a. protects the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes; and
  - b. maintains the landscape character and maintains or enhances the visual amenity values of Rural Character Landscapes.

### ***Evaluation of proposed SP 3.3.1B as to resorts***

[346] The DV does not include a specific SP on resorts. However, the DV modified the NV by including the following definition:

**Resort** means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on onsite visitor activities.

[347] At the time of the Topic 1 hearing, there were no appeals against that definition. However, since then, Trojan Helmet Limited ('THL') has been granted leave for its late appeal as to this definition and related aspects of its case in the Stage 2 appeals.

[348] As we discuss shortly, THL made submissions in Topic 2 as to the merits of including in Ch 3 bespoke resorts' SP.



[349] The question of whether or not Ch 3 should include a specific resorts' SP was traversed during planning witness conferencing for Topic 1 (despite that Topic being concerned with 'A Resilient Economy', rather than Rural landscapes). That discussion resulted in two alternative iterations of a new SP for resorts being proposed in the Topic 1 JWS proposed SP 3.3.1A as follows:<sup>139</sup>

(a) Messrs MacLennan, Serjeant and Brown favoured the following:

3.3.1B Provide for resorts while ensuring:

- (a) the landscape, amenity, nature conservation, cultural and heritage values of Outstanding Natural Landscapes and Outstanding Natural Features are protected by maintaining or enhancing those values, including those that contribute to that landscape being outstanding; and
- (b) the adverse effects on landscape, amenity, nature conservation, cultural and heritage values in Rural Character Landscapes are avoided, as a preference, or else remedied or mitigated.

(b) Messrs Farrell and Collins (who was QLDC's planner for Topic 1) favoured the following:

Provide for resorts in appropriate locations with particular consideration of adverse cumulative effects.

[350] Our Topic 1 decision in *Darby Planning* left the determinations concerning these proposed changes to Ch 3 reserved, pending consideration of Topic 2.

[351] That provides some background to the inclusion in QLDC's closing version of the following proposed SP (offered by QLDC subject to some qualifications we discuss shortly):

3.3.1B Provide for resorts in appropriate locations with particular consideration of adverse cumulative effects.

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<sup>139</sup> Mr Ferguson is recorded as finding both options appropriate.



*The evidence and submissions*

[352] THL made closing submissions on this proposed SP in Topic 1. Ms Wolt characterised the lack of a resorts' policy in Ch 3 as a "policy gap". She explained that by reference to the genesis of the definition of "resort" in the DV. She described the effect of adding this definition (in conjunction with the definition of "urban development") as being that resorts are now not a form of "urban development". As a side effect of this, Ms Wolt explained that resorts now fall beyond the Ch 3 provisions on urban development and that they are not picked up by Rural-focussed enabling provisions in Ch 3.<sup>140</sup> In essence, therefore, THL submits there is a lacuna.

[353] Although KJet does not have a direct interest in regard to resorts, Mr Gardner-Hopkins characterised the proposed SP 3.3.1B as another form of "enabling" policy that should be drafted in a manner that "resolves tension" with protective policies.<sup>141</sup>

[354] Counsel for ORC for Topic 1, Mr Anderson, submitted that Option 1 of the proposed resorts policy properly accorded with the RPS and was preferable in being clearer how its enablement is subject to overall protection imperatives in Ch 3.<sup>142</sup>

[355] QLDC's position in support of this additional SP is on the same qualified basis we have recorded in regard to SP 3.3.1B.<sup>143</sup>

*Evaluation*

[356] On the evidence so far considered, we are not satisfied that we have a sufficiently reliable basis for determining that an SP for resorts should be included in Ch 3.

[357] We have noted THL's submissions concerning the genesis of the definition of 'resort' in the DV. Insofar as there is an associated lacuna, in the sense that resorts are not now treated as part of urban development, there may well be a case for remediating this in Ch 3.

<sup>140</sup> Legal submissions for THL, dated 21 February 2019, at [10], [11].

<sup>141</sup> Closing submissions for KJet, on Topic 1, dated 27 February 2019, at [17].

<sup>142</sup> Closing submissions for ORC, dated 27 February 2019, at [15] – [21].

<sup>143</sup> Closing submissions for QLDC, dated 27 February 2019, at [3.8], [3.9].



[358] However, to be satisfied that this remediation should be by way of an additional strategic policy of this nature in Ch 3, we must be satisfied that including it does not give rise to unintended consequences. On the evidence to date, we are not sufficiently satisfied about that. Part of our concern is that the proposed SP 3.3.1B is inherently vague. That is particularly in regard to the meanings of "appropriate locations", "particular consideration of" and "adverse cumulative effects". The vagueness of the drafting of this policy, in regard to "cumulative effects" reflects a similar pattern of vagueness in regard to how cumulative effects are managed in other parts of the DV (particularly as our findings on Upper Clutha RCL regime set out).

[359] We may be better informed of relevant context once we have considered and determined related PDP Chapters (including those in issue in THL's appeals).

[360] Hence, at this stage, we leave reserved the ultimate question of whether such a resorts' policy is included in Ch 3 and, if so, how it will be precisely expressed.

[361] Further consideration of the proposed new policy SP 3.3.1B is adjourned sine die, pending further relevant stage(s) of the appeals being considered and determined (on the basis that relevant parties will have opportunity for supplementary submissions, according to directions issued by Minute).

***Evaluation of QLDC's SP 3.3.32B, SP 3.3.32C and SP 3.3.32D as to monitoring***

[362] As we have explained, QLDC's closing submissions recommend additional SPs on monitoring.

[363] Their essence is to direct QLDC to undertake regular monitoring of the efficiency and effectiveness of the Rural zone provisions, including particular requirements for the Upper Clutha RCLs.

[364] For UCESI, Mr Haworth expresses concern that criticised these SPs as offering little more than is already known in regard to the Upper Clutha RCL. Hence, UCESI see it as an unsatisfactory substitute for the land use planning study that it seeks for the Upper Clutha RCL.





[365] However, in respect to the ONF/Ls, Mr Haworth expresses support for monitoring in the terms he understand Mr Barr to have described in evidence, namely (quoting from Mr Haworth's closing):<sup>144</sup>

- audits of resource consent applications granted
- the production of data, maps and reports on the cumulative effects of rural living developments granted consent
- field reports from practitioners who were not involved in the relevant application to evaluate the efficiency of PDP Chapters 3, 6 and 21 objectives, policies, assessment matters and rules.

[366] The relevant SP in QLDC's closing version is as follows (leaving aside SP 3.3.32C on monitoring in regard to the Upper Clutha RCL):

3.3.32B 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 from [insert date interim decision on Topic 2 issued]. Procedures for monitoring shall include:

- a. keeping records, gathering information and undertaking or commissioning research addressing resource consent decisions granted for discretionary and non-complying activities, in particular residential subdivision use and development including evaluation of the commentary in those decisions to assess the implementation of the relevant provisions of Chapter 21, and objectives and policies of Chapters 3 and 6;
- b. identification of areas that are subject to particular development pressure including field reports to evaluate the implementation of the relevant provisions of Chapter 21, and objectives and policies of Chapters 3 and 6;
- c. recommendations as to the efficiency and effectiveness of the Rural Zone methods, and whether a plan change is necessary to achieve SO 3.2.5.

(Relevant to S.O. 3.2.5, 3.2.5.1, 3.2.5.2B and 3.2.5.2)

[367] QLDC's closing submissions briefly characterise the intention of these SPs as follows:<sup>145</sup>

... proposed new Policies 3.3.32B and C are relevant, as they will require monitoring that ensures Council does not lose sight of the potential for cumulative effects to arise within the

<sup>144</sup> Closing submissions for UCESI, dated 31 July 2019, at [27] – [30].

<sup>145</sup> Closing submissions for QLDC, dated 4 September 2019, at [6.25].



Rural Zone as a result of subdivision, use and development (particularly residential).

[368] We find these proposed SPs add little, if anything, to what the RMA already requires of QLDC in monitoring the performance of the ODP. Specifically, s35 RMA specifies obligations to monitor (amongst other things):

- (a) the state of the whole or any part of the environment of its region or district—
  - (i) to the extent that is appropriate to enable the local authority to effectively carry out its functions under this Act; and
  - (ii) in addition, by reference to any indicators or other matters prescribed by regulations made under this Act, and in accordance with the regulations; and
- (b) the efficiency and effectiveness of policies, rules, or other methods in its policy statement or its plan ...

[369] We do not accept UCESI's closing submission that what QLDC proposes would be an effective substitute for what we have found needs to be included by way of SPs on Values' Identification Frameworks for both ONF/Ls and RCLs. This decision provides for these Values' Identification Frameworks SPs only in relation to what will be specified Priority Areas. However, we find that effective District-wide monitoring is an important accompaniment to the new SPs we have decided are to be included for the Values' Identification Frameworks. Nor do our findings limit QLDC's ability, as the planning authority, to seek Sch 1 plan changes for other ONF/L and RCL areas.

[370] To be effective in informing any plan change response (including for non-prioritised areas), however, monitoring needs to be:

- (a) according to specified outcomes for ONF/L values and RCL landscape character and visual amenity values; and
- (b) by reference to proper benchmarks for the assessment of cumulative degradation of those values and character.

[371] For those reasons, we find it is appropriate that effective monitoring provisions be included in Ch 3. However, we leave reserved, at this stage, how better to frame SPs 3.3.32B – 3.3.32D in terms of those findings, as we consider the better course is to allow for these SPs to be further considered in our directed conferencing as between Messrs Barr and Ferguson and the noted landscape experts. We provide for this in the directions in Part F.



**Chapter 6 policies for ss 6(b) and 7(c) RMA*****Introduction and 6.1 and 6.3 Purpose and Values***

[372] The relationship of Ch 6's policies to Ch 3 is described in its introductory provision 6.1 as follows:

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 objectives 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.

[373] Our Topic 1 decision (*Darby Planning*) replaced similar discussion of the purpose of Ch 3 with a dedicated provision '3.1B Interpretation and application'. Darby Group invites us to replicate that approach in Ch 6. We see some merit in that idea, in terms of enhancing clarity and precision. However, we have elected against pursuing that at this stage as we consider, in the time now available, we should focus more particularly on the policies. We are influenced to that position given that parties are seeking this decision in advance of scheduled mediations early in 2020.

[374] Nevertheless, our directions in Part F leave reserved the capacity of QLDC and other parties to offer further technical drafting clarity improvements to 6.1 and 6.2, including along the lines Darby Group has suggested. One matter of drafting refinement we note, at this stage, is that the above-noted passages should also include reference to "policies" in the words "...to be read with particular reference to the objectives in Chapter 3...".

[375] Subject to those observations, we find 6.1 and 6.2 satisfactory in their current form such that they will be confirmed in our final decision (subject to any technical drafting clarity improvements that are offered and we find appropriate).



***Policies under 6.3.1 Rural Landscape Categorisation***

***6.3.1.1 – 6.3.1.3<sup>146</sup>***

[376] QLDC's closing version of this set of policies is not controversial and substantially the same as the DV but for the addition of reference to 'Resort Zones' in 6.3.1.3 (the DV's equivalent policy 6.3.3 not having reference to this zone). It is unclear what is meant by 'Resort Zones' (beyond the definition of 'resort' now in the DV).

[377] It is not clear, as matters stand, whether we have scope to allow for the addition of reference to Resort Zones. Our directions require QLDC to file supplementary closing submissions on that. Provided we are satisfied we have scope, we see no difficulty in approving this set of policies. Subject to that qualifier, we find them appropriate.

***6.3.2 Policies on managing activities appropriate unless otherwise stated***

[378] This set of policies is under the heading "Managing Activities in the Rural Zone, the Gibbston Character Zone, the Rural Residential Zone and the Rural Lifestyle Zone". On the evidence, except where we state otherwise, we find the QLDC closing version of this group of the policies is appropriate.

***Variance and inconsistency in landscape descriptors***

[379] In this set of policies, we find an unhelpful inconsistency in various references relating to landscape matters. Examples we have identified are as follows (some of which we have amended):

- (a) policies 6.3.2.2 and 6.3.2.4 refer to 'landscape character';
- (b) policy 6.3.2.6 refers to 'landscape and nature conservation values';
- (c) policy 6.3.2.8 refers to 'landscape quality, character and visual amenity';
- (d) policy 6.3.3.3 refers to 'quality and character of the Outstanding Natural Landscape';
- (e) policy 6.3.3.5 refers to 'landscape character and amenity values of Outstanding Natural Landscapes';

<sup>146</sup> Policies 6.3.1.4 – 6.3.1.6 are not part of Topic 2.



- (f) policy 6.3.4.4 refers to 'landscape character and visual amenity values';
- (g) policy 6.3.4.5 refers to 'landscape quality or character'; and
- (h) policy 6.3.4.7 refers to 'landscape quality or character'.

[380] There may be other examples, as we have also noted in several Ch 3 provisions. It is desirable that a careful language consistency check be undertaken by QLDC to minimise unwarranted inconsistencies. Related to that, we note that QLDC needs to carefully check whether various references to ONLs are intended, or not, to refer to ONFs as well. Both should be referenced if that is the intention (subject to highlighting to us any related issues of scope).

#### ***Evaluation of Policy 6.3.2.4***

[381] QLDC's closing version of this policy is as follows (underlining showing changes to the DV which was numbered 6.3.7):

6.3.2.4 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).

[382] We accept Mr Barr's explanation that this policy only applies within the Rural Zone (given residential densities of 4,000m<sup>2</sup> in the Rural Residential Zone and an average of 2ha in the Rural Lifestyle Zone). We agree that viticulture in the Gibbston Character Zone should be specifically referenced.

[383] Therefore, we find this policy as drafted in QLDC's closing version, appropriate (subject to our observations above concerning the need to check drafting consistency in its reference to 'landscape character').

#### ***Evaluation of Policy 6.3.2.7***

[384] QLDC's closing version is as follows (with underlining and strike through showing changes from the DV):

Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes adjacent-in proximity to Outstanding Natural Features does not compromise ~~have more than minor adverse effects on~~ the landscape quality, character and visual amenity of the relevant Outstanding Natural Feature(s). (3.2.5.1, 3.3.30).



[385] Subject to two important qualifications, we find this version a significant improvement on the drafting of the DV.

[386] One qualification concerns the fact that this policy confines its protective focus to ONFs rather than also giving protection to ONLs in the relevant proximity. The Landscape Methodology JWS records a view of the landscape experts that maintaining the integrity of ONFs and ONLs is important to the landscape values of the district. Moreover, we have set out our findings on Ms Lucas' and Ms Gilbert's opinions as to the importance of applying an integrated management approach to RCLs and ONL/Fs in those terms. Subdivision and development has the capacity to affect the landscape values of proximate ONLs as much as proximate ONFs.

[387] Consequentially, we find that policy 6.3.2.7 should be consistent in applying its protection to ONFs and ONLs.

[388] A second qualification concerns the matter of consistency. Rather than the words "landscape quality, character and visual amenity", we find it better to align the expression in this policy with what we have determined as appropriate in various related SOs and SPs.

[389] Subject to those changes, we find all other aspects of QLDC's closing version appropriate and well supported on the evidence. In particular, we agree with Mr Barr that 'in proximity to' is preferable to 'adjacent' (in that there may be material impacts on landscape values even if the subdivision or development is not directly adjacent) and that 'compromise' is preferable to the inherently vague words 'more than minor adverse effects'.

[390] Therefore, we find most appropriate the following re-expression of policy 6.3.2.7:

Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes in proximity to an Outstanding Natural Feature or Outstanding Natural Landscape does not compromise the landscape values of that Outstanding Natural Feature or Outstanding Natural Landscape.



### 6.3.3 Policies on managing activities on ONFs and in ONLs

[391] We find the QLDC closing version of this set of policies appropriate, except where we state otherwise.

#### **Evaluation of Policy 6.3.3.1**

[392] QLDC's closing version of this policy is as follows (underlining and strike-through showing changes from the DV which was numbered 6.3.12):

- 6.3.3.1 Recognise that subdivision and development is inappropriate in almost all locations ~~in~~ on Outstanding Natural Landscapes Features and ~~on~~ in Outstanding Natural Features-Landscapes, 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.~~

#### *UCESI alternative*

[393] UCESI seeks that this policy read as follows, particularly so as to largely reinstate the 'reasonably difficult to see' test of the pre-review ODP as follows:

- 6.3.3.1 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 all attributes of the landscape or feature can absorb the change and:
- (a) Where any built development, associated installations and activity will be reasonably difficult to see due to topography from beyond the boundary of the site the subject of application; and
  - (b) In out-of-the-way locations where built development, associated installations and activity cannot be seen from beyond the boundary of the site, ensure that the adverse effects are not more than minor on remote landscape values and naturalness.

#### *Evidence*

[394] The Landscape Methodology JWS records different perspectives from the landscape experts on the value or otherwise of the 'reasonably difficult to see' test. It



indicates general agreement that the capacity of the landscape to absorb change includes consideration of both visual sensitivity and landscape character sensitivity (both of equal importance). For example, a development that is readily visible may still be appropriately accommodated within an ONL or ONF (such as in some examples within the Cardrona Valley). In those terms, the Landscape Methodology JWS identifies some imbalance in the 'reasonably difficult to see' test in the sense that it emphasises visual aspects, potentially at the expense of others, for example the sense of tranquillity and quietness.

[395] Ms Mellsop and Ms Lucas favour the 'reasonably difficult to see' test for its simplicity and proven success. That is both in determining the appropriateness of development in the ONL-Wakatipu Basin under the ODP and in helping maintain the values of these landscapes. They point out that, under the DV, the test is complemented by assessment of landscape absorption capacity, which takes into account landscape character sensitivity.

[396] On the other hand, Ms Pflüger, Ms Smetham, and Mr Milne note that the test poses a risk of encouraging development to more remote locations that have high naturalness and landscape character but low visibility.

[397] While there was extensive cross-examination of the experts on these matters, we observe that these camps of thought are both valid, albeit informed by different experiences and perhaps perspectives in regard to landscape protection matters. Ultimately, a judgment is called for on which approach is preferable.

[398] Various other opinions have been given on the merits or otherwise of having this test remain in the policy.

[399] Amongst those, Mr Serjeant (planning witness for QPL/RPL) expresses the following opinion on the DV's policy 6.3.12 (and various SOs and SPs on landscape protection matters) including:<sup>147</sup>

In my view, when taken collectively and on balance, these provisions effectively stymie almost all development. The statements that support development are general, weak and conditional. The statements that seek to protect the landscape use strong language and set

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<sup>147</sup> Evidence-in-chief of Mr Serjeant, for QPL/RPL, dated 12 November 2018, at [4.4].





very high hurdles for an application, in that adverse effects more than minor must be avoided or must be temporary, and must be difficult to see beyond the boundaries of the site.

[400] Mr Serjeant recommends the following changes to this provision (and SO 3.2.5.1) of the DV to achieve better consistency with the RMA and give better effect to the pRPS (notably still retaining the 'reasonably difficult to see' aspect, with softening):

- 3.2.5.1 The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from inappropriate ~~adverse effects of~~ subdivision, use and development ~~that are more than minor and/or not temporary in duration.~~
- 6.3.12 Recognise that subdivision and development is generally ~~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).

[401] He considers those changes sufficiently overcome his concerns, concluding:

... these amendments do not 'shut the door' to a proposal ... at an objective and policy level in Chapters 3 and 6, but allow the more detailed assessment to take place pursuant to the assessment criteria in Chapter 21.

[402] In his evidence-in-chief, Mr Barr gives a helpful overview of differing perspectives on the 'reasonably difficult to see' test from appellants and parties (not all of whom appeared before us). Some seek that the test be qualified to be only from public places. Others seek that the policy require that buildings and structures (and associated roading and boundary changes) not be visually prominent, or highly visible, beyond the boundary of the site the subject of the application.

[403] Mr Barr also emphasises the importance, in terms of s6(b) RMA of having a strict policy such that subdivision and development in the ONL/F retains their landscape values. He notes the support that Ms Mellsop and Ms Lucas give to a test of this nature. Were the court to require such a test, he favours that it be with reference to visibility beyond the site, rather than from public places. Mr Barr indicates a preference that the test, if retained, be specified only as an assessment matter related to policy 6.3.3.1. He referred to the following Ch 21 assessment matter in the DV:



- 21.21.1.1 In applying the assessment matters, the Council will work from the presumption that in or on Outstanding Natural Features and Landscapes, the applicable activities are inappropriate in almost all locations and that 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 are reasonably difficult to see from beyond the boundary of the site the subject of application.

[404] Mr Barr acknowledges that relegating the test to an assessment matter lowers the level of protection. Even so, on balance, he recommends that we adopt his amended policy 6.3.3.1 on the basis he considers it to offer sufficient deterrence to inappropriate subdivision, use and development within ONF/Ls. That is on the basis that he reads its reference to "absorb the change" as being sufficiently strong, in conjunction with his other recommended objectives and policies for ONF/L protection.

#### *Evaluation*

[405] Given our findings as to the need to remediate the ODP through plan changes according to the SPs that will provide for an ONF/L Values' Identification Framework, we find that some stringency is called for in this policy. We do not agree with Mr Barr that this test can be safely relegated to an assessment matter. Rules, including on assessment matters, serve to implement policies so as to achieve objectives. Hence, silence on this proven and simple test in the policy would risk it being effectively give no meaningful weight in assessment. In particular, we find the evidence of Ms Mellsope and Ms Lucas favour retention of the 'reasonably difficult to see' test. However, this should not lose sight of what SO 3.2.5.xx seeks to achieve by way of protection of ONF/L values.

[406] We acknowledge the work Mr Haworth has put into formulating a policy approach. Our overall findings are consistent in many respects, but we do not favour adding in the details he has offered as these are better left to contextual assessment in consenting processes.

[407] Considering the wording of 6.3.12, we see no value in retaining the inherently vague word 'exceptional'. For instance, how exceptional is sufficient and how is this adjudged in terms of parameters of quantity and/or quality?

[408] A further deficiency we identify in the DV's version of 6.3.12 is that it uses the



narrow language of consent applications. It should properly encompass plan changes as well.

[409] In other respects, our findings lead us back to more closely reflect the wording of the DV. On the evidence, we find against the arguments put for greater enablement of activities within ONF/L.

[410] Therefore, we find that the most appropriate expression of policy 6.3.3.1 is as follows:

- 6.3.3.1 Recognise that subdivision and development is inappropriate on Outstanding Natural Features and in Outstanding Natural Landscape unless:
- a. landscape values are protected; and
  - b. in the case of any subdivision or development, all buildings and other structures and all changes to landform or other physical changes to the appearance of the land will be reasonably difficult to see from beyond the boundary of the site in question.

### ***Evaluation of Policy 6.3.3.3***

[411] QLDC's closing version of this policy is as follows (underlining and strike-through showing changes from the DV's policy 6.3.14):

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 ~~not adversely affected~~.

[412] Some appeals seek the deletion or amendment of this policy to provide for diversification in the Rural zone. Some consider that the protection and primacy afforded to farming is not justified when there are significant landholdings which do not support economically viable farming and which could provide better for landscape, ecological, and access benefits if farming is not preferred. However, no parties seeking such a significant departure from the DV appeared in the Topic 2 hearing. We reject the relief sought by appellants and parties who did not appear before us, on the basis of the findings we have made informed by the evidence we have heard. We have considered Darby Group's more moderate position, as we have discussed.



[413] Mr Barr considers that policy 6.3.3.3 is important in recognising that farming is a long-established activity that has influenced the landscape (for better or worse) and continues to be valued in those terms. He says that this policy relates specifically to farming in the ONL, and helps implement Ch 3 provisions that provide support for farming. He supports the policy's specific reference to farming as appropriate and properly balanced for the management of activities in the ONL.

[414] Mr Barr recommends an amendment to the policy to provide more consistency with SO 3.2.1.7 as to agricultural land uses (which this policy is to serve to implement). That amendment is in QLDC's closing version, as we have noted. He sees the advantage of this amendment is to allow room for landscape change (and adverse effects) at a small scale providing the quality and character of the ONL is maintained.

[415] As can be observed, policy 6.3.3.3 is confined to ONLs. Mr Barr explains that the lack of reference to ONFs is deliberate. His rationale for supporting this exclusion is that ONFs are generally discrete features located within the ONL and these individual features are more sensitive to the adverse effects of development. However, as Mr Logan observes in his closing submissions for ORC, some ONFs are associated with rivers and not within ONLs. A case in point is the Clutha River/Mata Au as we have discussed in Decision 2.1, on which there is a large productive dairy farming operation (the James Cooper farm).

[416] Consistent with our evidential findings in relation to other provisions where this issue arises, we find it more appropriate that policy 6.3.3.3 references both ONLs and ONFs. Further, its expression should be more consistent with related SO 3.2.1.8 as we have amended it.

[417] We find the drafting of the policy unclear in some respects. Much of its content is in the nature of a statement of fact rather than a policy (i.e. "large parts of the District's Outstanding Natural Landscapes include working farms"). The drivers of the policy are the qualifying words 'recognise', 'accept' and 'providing'. However, those words are not clear as to how farming is intended to be treated. In addition, the word 'providing' is not necessarily the same as a proviso, such as 'provided that'.

[418] We understand the intention is that, unless the quality and character of the ONL is 'maintained', there is no recognition or acceptance of farming as an activity that, to be viable, must modify the landscape. However, it is possible to read policy 6.3.3.3 as not



intending such a strong bottom line. In particular, that vagueness is also promoted by use of the words 'the quality and character' as opposed to landscape values and the word 'maintained', rather than 'protected'.

[419] A further drafting issue is in the use of 'large parts', which connotes size but not necessarily other significant aspects (e.g. small intrusions by farming with a significant influence on values, such as we can observe for the Upper Terrace land of Hawthenden Farm). A qualifier such as 'significant' allows for wider dimensions of relevance to be factored in than simply the geographic extent of working farms (as can be adjudged case by case).

[420] Therefore, we find the following amendment to policy 6.3.3.3 most appropriate in reflecting the drafting intention and better implementing related SO 3.2.1.7:

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.

### ***Evaluation of Policy 6.3.3.5***

[421] The Council's closing version of this policy is as follows (underlining and strike-through showing changes from the DV's policy 6.3.16):

6.3.3.5 Maintain the open landscape character of Outstanding Natural Features and Outstanding Natural Landscapes where it is open at present, taking into account circumstances where the loss of open character is outweighed by substantial indigenous biodiversity regeneration or enhancement that maintains landscape values.

[422] We heard a variety of submissions and opinions from expert witnesses on the merits or otherwise of this addition. Those included opinion from UCESI's landscape expert, Ms Lucas as to the biodiversity benefits of allowing greater encouragement of indigenous biodiversity regeneration or enhancement. Alongside that, UCESI supports retention of the recognition of open space landscape values.



[423] LET strongly opposes this change to the DV. In addition to hearing from Mr May on these matters, we heard from Graham Taylor, a planning expert LET called as a rebuttal witness. The following passages from Mr Taylor's evidence, drawing from his local experience, summarise his concerns:<sup>148</sup>

The concern I have with the suggested re-wording, is the potential for unintended consequences due to inappropriate planting being established in parts of ONL's and ONF's in association with development proposals, which may be in conflict with the particular open space values contributing to the landscape or feature, and thus the matters of national importance required to be provided for by section 6(b) of the RMA. ...

My concern is that the rewording will 'water down' the protection required under s6(b), as it contains an implicit acceptance that open space character values of ONL's and ONF's will be compromised in favour of other outcomes. The wording of the exception in the policy serves to elevate the importance of regeneration and enhancement above that of open landscape character.

[424] Mr Taylor further considers that QLDC's revision of the DV's version of this policy would not properly accord with the pRPS. While he acknowledges the importance of properly providing for the matters in s6(c) RMA (as to indigenous vegetation, habitats and fauna) and biodiversity, he considers this more appropriately done through other provisions.

[425] In his closing submissions Mr Logan explains that the ORC supports LET in its opposition to this proposed change. He describes the change as a mechanism for trading off the degradation of landscape values by undertaking biodiversity projects. He notes the change as sitting uneasily with other policies on biodiversity (including policy 6.3.2.8), which we add are not before us in Topic 2.<sup>149</sup>

[426] Whilst various parties support QLDC's closing version, we find its revision of the DV policy is indefensible for all the reasons given by Mr Taylor and Mr Logan (as well as in Mr Page's submissions for LET).

[427] Indeed, in the face of several Ch 3 and Ch 6 provisions on indigenous biodiversity that are not before us in Topic 2, we are astounded that QLDC has taken the approach it has. To change policy 6.3.3.5 as QLDC proposes would put at significant risk the DV's

<sup>148</sup> Rebuttal evidence of Mr Rutherford Taylor for LET, dated 15 March 2019, extracts from [7], [18].

<sup>149</sup> Closing submissions for ORC, dated 4 September 2019, at [113] and following.



overall strategic intentions for both ss6(b) and 6(c) RMA. That is in the fact that it would open up the trading LET and ORC are concerned about.

[428] For those reasons, we find the most appropriate expression of policy 6.3.3.5 is as the DV expresses it, i.e:

- 6.3.3.5 Maintain the open landscape character of Outstanding Natural Features and Outstanding Natural Landscapes where it is open at present.

***Evaluation of Policies 6.3.4.7 and 6.3.4.8 as to managing activities in RCLs***

[429] With two exceptions, we find QLDC's closing version of the policies under the heading '6.3.4 Managing Activities in Rural Character Landscapes' appropriate. We record those policies were not a matter of contention. The exceptions are the following policies (underlining and strike-through showing changes from the DV's policies 6.3.27 and 6.3.28), where we consider minor drafting change is needed:

- 6.3.4.7 ~~In the Wakatipu Basin, avoid~~ 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.
- 6.3.4.8 In the upper Clutha Basin, ~~have regard to the adverse effects from subdivision and development on the~~ maintains open landscape character where it is an important part [sic] an areas [sic] landscape values open at present.

[430] The Landscape Methodology JWS records some common ground and other opinions of the landscape experts on the concepts of openness and open character. Their consensus position is that open character can be valued in the context of RCL areas for two reasons:

- (a) to maintain views to ONL/F; and
- (b) as its own valued component of rural character.

[431] Mr Barr considers these policies are appropriate, as so revised, to ensure that the benefits of openness to landscape quality or character can be realised (as in the agreed position of the landscape architects). He does not consider the two policies to be contradictory. He considers policy 6.3.4.7 is equally applicable to the types of openness in the upper Clutha Basin and the Wakatipu Basin. As such, he supports it being expressed as a general policy with no geographic limitation.



[432] Whilst we acknowledge the soundness of the consensus of the landscape experts on these matters, we do not agree with Mr Barr on some aspects of his analysis in support of the drafting approach in QLDC's closing version of these policies.

[433] Specifically, we are not satisfied that it is appropriate to simply broaden policy 6.3.4.7 in the way he proposes. Whilst we have not yet heard appeals on the Wakatipu Basin variation, we can infer from our understanding of that part of the District that such plantings and screening has materiality in that landscape setting. However, we do not have a sound evidential basis to simply extend policy 6.3.4.7 to the context of the Upper Clutha Basin. For large parts of the Upper Clutha, such as on working farms, there could well be unintended consequences in doing so. Furthermore, we find real potential for confusion arising from broadening that policy, particularly as to how constructs of 'openness' are to be understood alongside the different language used in policy 6.3.4.8.

[434] For those reasons, we find that the most appropriate approach to these policies is:

- (a) to retain the DV of policy 6.3.4.7 unchanged, pending later determination in the context of considering appeals yet to be heard in regard to the Wakatipu Basin variation, i.e:

6.3.4.7 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.

- (b) to amend policy 6.3.4.8 to read as follows to achieve better consistency with the related SOs and SPs we have found most appropriate:

6.3.4.8 In the upper Clutha Basin, subdivision and development maintains open character where that is the existing character of the Rural Character Landscape.

### ***Evaluation of related definitions***

[435] QLDC's closing version proposes related definitions as follows:





<b>Open Space</b>	Means any land or space which is not substantially occupied by buildings. For the Open Space Zone – Landscape Protection, and the Open Space and Recreation Zone, means any land or space which provides benefits to the general public as an area of visual, cultural, educational, or recreational amenity values. Excludes the presence of centre pivot and linear irrigators
<b>Openness and Open Character</b>	Means any land or space which is not substantially occupied by buildings, structures or trees. The land is likely to include and be characterised by either one of or both of exotic pasture, indigenous grasslands and grey shrubland. Excludes the presence of centre pivot and linear irrigators.

[436] We are satisfied, on the evidence, as to the justification for the exclusions specified. In other respects, subject to our findings on policies 6.3.4.7 and 6.3.4.8, we find the definitions appropriate.

#### ***Evaluation of additional or replacement policies proposed by parties***

[437] We have considered the various requests by parties for additional or replacement Ch 6 policies. That includes UCESI's submissions that several provisions of the pre-review ODP be reinstated. These include the rolling over into Ch 6, with some clarifications and updating, of pre-existing policies 4.2.5.9, 4.2.5.17, 5.2.1.5, 5.2.1.7, 5.2.1.8

[438] Whilst UCESI has presented a carefully considered case, we defer to the planning experts in finding it not appropriate to include such additional and replacement policies in Ch 6. Some of the specific matters they address could, potentially, arise in the context of identifying values for Ch 21 Schedules or in individual consent application from time to time. However, we do not find them of a nature that would warrant expression in policies. That is because we find that none of these changes would better inform the identification of the values of landscapes or what is required to protect, maintain or enhance them. That is on the basis of our extensive findings in this decision on the related evidence. Also, on the basis of those findings, we find against various drafting approaches to Ch 6 that we have not already expressly discussed.



**PART E: EVALUATION OF CARVE OUT OBJECTIVES AND POLICIES AND OTHER PROVISIONS**

***SOs 3.2.5.1A and SO 3.2.5.2A and Ch 6 Policies 6.3.2, 6.3.3***

***Introduction***

[439] One aspect of the ODP regime that has been carried forward and further developed in the review concerns what parties have termed 'Carve Out' provisions. In essence, that term refers to provisions that modify the application of Chs 3 and 6 for specified other parts of the ODP. Were QLDC pursuing a full replacement district plan, a cleaner drafting approach would have been to have avoided 'Carve Out'. However, as we have explained, these appeals concern a partial plan review such that this approach is needed to ensure the ultimately updated ODP works as a coherent whole.

[440] No party seeks that that the Carve Out of Ch 3 and Ch 6 landscape provisions be discarded. Rather, issues centre on ensuring the regime is clear and effective.

***Background***

*NV's overall intentions for 'Carve Out'*

[441] 'Carve Out' was reflected in the NV included in the following introductory provisions to Ch 6 (that also extended to Ch 3):

- 6.4.1.2 The landscape categories apply only to the Rural Zone. The Landscape Chapter and Strategic Direction Chapter's objectives and policies are relevant and applicable in all zones where landscape values are at issue.
- 6.4.1.3 The landscape categories do not apply to the following within the Rural Zones:
  - a. Ski Area Activities within the Ski Area Sub Zones.
  - b. The area of the Frankton Arm located to the east of the Outstanding Natural Landscape line as shown on the District Plan maps.
  - c. The Gibbston Character Zone.
  - d. The Rural Lifestyle Zone.
  - e. The Rural Residential Zone.



[442] The independent commissioners who heard submissions and recommended on these provisions were critical of the Ski Area Sub-Zones Carve Out regime of the NV. They characterised it as anomalous and contrary to case law. That was in the sense that resolution of whether a landscape is ONL should be an initial step to inform what planning provisions should apply as a consequence. However, as no submission sought removal of the Ski Area Sub-Zones Carve Out, they simply recorded this anomaly in view of their lack of jurisdiction to do more than that.<sup>150</sup>

[443] The commissioners acknowledge, however, the exceptional nature of certain categories of existing zone (i.e. Rural Residential, Rural Lifestyle), namely that these are "already developed" or have "the capacity (in landscape terms) to absorb a greater density of development than the balance of rurally zoned areas". They commented that if "more land is identified as appropriately having one or other of these zones ... [applied] to it following the mapping hearings, it will be for the same reasons". They further commented that the objectives and policies of Ch 22 "refer to the potential for such zones to be located in sensitive landscapes, and have provisions to address that situation" but "those provisions are not framed with reference to the landscape categories".<sup>151</sup>

[444] In regard to the Special Zones, the commissioners noted that "the Gibbston Character Zone has its own specific provisions to manage landscape character" and "there might similarly be considered to be a case for it to sit outside the categorisation process as a result".<sup>152</sup> More generally, the commissioners commented on an overall common characteristic of Special Zones, namely that "landscape provisions have already been taken into account in identifying the land as subject to" that class of zone. In any case, they noted that they did not have scope to revisit the Carve Out for Special Zones (for similar reasons, we understand, to why they were not in a position to do it for those classes of Rural zone to which Carve Out applies).<sup>153</sup>

#### *The DV's Carve Out regime*

[445] The DV does not include an equivalent to the NV's 6.4.1.2, including for Ch 3. In place of the NV's 6.4.1.3, it expresses 'Carve Out' regarding Ch 6 in policies 6.3.1.2 and

<sup>150</sup> Independent Commissioner Recommendation Report 03 Stream 1B Chs 3, 4 and 6.

<sup>151</sup> Independent Commissioner Recommendation Report 03 Stream 1B Chs 3, 4 and 6.

<sup>152</sup> Independent Commissioner Recommendation Report 03 Stream 1B Chs 3, 4 and 6.

<sup>153</sup> Independent Commissioner Recommendation Report 03 Stream 1B Chs 3, 4 and 6.



6.3.1.3 as follows:

- 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).
- 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 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).

*What is meant by 'Special Zones' in the DV?*

[446] In our 19 April 2019 Minute, we asked for clarification of Special Zones in the context of Carve Out and how these would be added to the ODP over time.

[447] In a supplementary statement of evidence, Mr Barr explained his understanding that 'Special Zones', as referred to in relevant Ch 6 provisions, encompass all the zones currently in the DV's Part 6. On the copy of the DV's contents page provided to the court by counsel, Part 6 is entitled 'Special Zones' and lists the following:<sup>154</sup>

- (a) Ch 41 Jacks Point;
- (b) Ch 42 Waterfall Park;
- (c) Ch 43 Millbrook.

[448] We understand that Ch 23 Gibbston Character Zone is also a Special zone. The DV contents page also lists Part 3 on 'Urban Environment' and Part 4 on 'Rural Environment'. Part 3 lists generic zones and other site-specific zones (e.g. Queenstown Town Centre, Queenstown Airport Mixed Use). Part 4 includes Ch 21 Rural zone and Ch 22 Rural Residential and Lifestyle zone.

[449] We require confirmation, by memorandum of counsel, of the precise list of relevant candidate zones and sub-zones to which Carve Out is to apply (and be satisfied

<sup>154</sup> We note that QLDC's online Decision Version appears to also list Ch 44 Coneburn Industrial Zone.



of related scope). This is provided for in the directions in Part F.

*Evolution of parties' positions in regard to Carve Out and Ch 3*

[450] The theme of how Carve Out is applied under the DV was a matter addressed in evidence and submissions from various relevant parties. QLDC's opening submissions provides a convenient summary of the position amongst parties with an interest in the Carve Out regime of the DV (and their planning experts), relevantly as follows:<sup>155</sup>

As indicated earlier the Chapter 3 approach has evolved through the Topic 1 hearing, evidence and planning conferencing in the context of both Topics 1 and 2.

In the context of Topic 2, planner conferencing was held on 22 and 29 March 2019, with a joint witness statement filed with the Court on 2 April 2019 (Topic 2 Planner JWS).

Significantly, the Topic 2 Planner JWS outlines broad agreement amongst the Topic 2 planning witnesses in relation to the 'carve-out' approach for Chapter 3, with the provisions building on the proposed amendments made in the Topic 1 JWS and the amendments made by Mr Barr's rebuttal version.

[451] Those submissions go on to explain that, at that stage of the hearing, there was a difference between parties and their planners, on the substance of the relevant Carve Out SOs 3.2.5.1, 3.2.5.1A and 3.2.5.1B. As noted, those differences are about how Carve Out is effectively achieved, rather than whether it should remain.

**SO 3.2.5.1A**

*2 April Planners JWS' version*

[452] SO 3.2.5.1A as recommended by the 2 April Planners JWS is as follows:

3.2.5.1A In existing zones [footnoted to mean as "identified in Policies 6.3.2, 6.3.3 and 6.3.3B"] and the Ski Area Sub-Zones located within Outstanding Natural Landscapes and Outstanding Natural Features, subdivision, use and development is provided for to the extent enabled by those zones and sub-zones, and on the basis that any additional development not provided for by those zones and Sub-Zones protects, enhances or restores landscape values.

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<sup>155</sup> Opening submissions for QLDC, dated 8 April 2019, at [6.1] – [6.3].



[453] As can be observed, the effect of this SO (like companion SO 3.2.5.2A) is to apply a bespoke Strategic Objective for the specified zones and sub-zones ('Exception Zones') where subdivision, use or development would occur within ONF/Ls to the effect that:

- (a) subdivision, use or development is "provided for to the extent enabled by" the Exception Zone;
- (b) on the basis that any additional development not provided for by that Exception Zone "protects, enhances or restores landscape values".

[454] The 2 April Planners JWS records that not all planners support or entirely support this proposed SO, i.e:

- (a) Mr Farrell supports the Topic 1 JWS version (as set out in App 1, page 2 of his Will Say statement for conferencing); and
- (b) Mr Jeff Brown and Mr Ferguson consider that the test in the SO 3.2.5.1A qualifier (that additional development not provided for by those zones and Sub-Zones protects, enhances or restores landscape values) is "more stringent than the test in SO 3.2.5.1B and may potentially conflict with the objectives and policies of" the existing zone or sub-zone. They suggest this would be remedied by the inclusion the words "or otherwise takes into account the relevant objectives and policies of the existing zones or sub-zones" at the end of SO 3.2.5.1A.

[455] With those exceptions, the JWS states that the planners agree to amendments to this drafting of SO 3.2.5.2A.

*Mr Serjeant's supplementary evidence*

[456] In addition to the 2 April Planners JWS, Mr Serjeant proposed the following new SO in supplementary evidence:<sup>156</sup>

- 3.2.1.X The Special Purpose Zones promote sustainable management through a separate regulatory regime which provides for subdivision, use and development in accordance with their zone purpose. The provisions of this

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<sup>156</sup> Second supplementary evidence of Mr Serjeant, for QPL/RPL, dated 16 May 2019, at [4.2].



chapter only apply to resource consent applications for activities not anticipated by these Special Purpose Zones, or plan changes seeking to expand the extent of the zone or the range of anticipated activities.

*QLDC closing version of SO 3.2.1.1B and SO 3.2.5.1A*

[457] QLDC's closing version responded to the 2 April Planners JWS and Mr Serjeant's supplementary evidence by recommending the following SO 3.2.1.1B and SO 3.2.5.1A:

- 3.2.1.1B The Special Purpose Zones and other zones of the rural environment [as identified in Policies 6.3.1.2, 6.3.1.3 and 6.3.1.5.] achieve sustainable management through a separate regulatory regime which provides for subdivision, use and development in accordance with their zone purpose, objectives and policies. The strategic objectives and strategic policies of this chapter only apply to resource consent applications for activities not anticipated by these Special Purpose Zones, or plan changes seeking to expand the extent of the zone or the range of anticipated activities.
- 3.2.5.1A Within Special Zones, other zones [as identified in Policies 6.3.1.2, 6.3.1.3 and 6.3.1.5.] and the Ski Area Sub-Zones located within Outstanding Natural Features and Outstanding Natural Features, subdivision, use and development is provided for to the extent anticipated by those zones and sub-zones, and on the basis that any additional subdivision, use and development not provided for by those zones and Sub-Zones protects, enhances or restores landscape values.

[458] The changes it proposes to Mr Serjeant's proposed SO are self-evident. The material change from the 2 April Planners JWS is the deletion of the former qualifying word "existing". In effect, this expands the application of the SO to all "other zones" (as identified in the listed Ch 6 policies) whether or not now existing. A further change is only minor (i.e. "to the extent enabled" gives way to the words "to the extent anticipated").

**SO 3.2.5.2A**

*2 April Planners JWS' version*

[459] Under the new heading 'Other zones within the rural environment', the 2 April Planners JWS recommended a new SO 3.2.5.2A as follows:



In existing zones and sub-zones [footnoted to mean as "identified in Policies 6.2.33.2, 6.3.3, and 6.3.3A and 6.3.3B"] other than within the Rural Zone Outstanding Natural Landscapes and Outstanding Natural Features, or Rural Character Landscapes, subdivision, use and development is provided for to the extent enabled by those zones and sub zones, and on the basis that any additional development not provided for by those zones maintains or enhances landscape values by directing new subdivision, use or development to occur in those areas that have the potential to absorb change.

[460] As can be observed, the effect of this SO is to apply a bespoke Strategic Objective for the specified Exception Zones where subdivision, use or development would occur "other than within" ONF/Ls or RCLs to the effect that:

- (a) subdivision, use or development is "provided for to the extent enabled by" the Exception Zone; and
- (b) any additional development not provided for by the Exception Zone maintains or enhances landscape values by means of:
  - (i) directing new subdivision, use or development to occur in those areas that have the potential to absorb change.

*QLDC closing version of SO 3.2.5.2A*

[461] QLDC's closing version proposes the following amended SO 3.2.5.2A:

Within Special Zones and other zones [footnoted to mean as "identified in Policies 6.3.1.2, 6.3.1.3, 6.3.1.4 and 6.3.1.5"] not within the Rural Zone Outstanding Natural Features and Outstanding Natural Landscapes, or Rural Character Landscapes, subdivision, use and development is provided for to the extent anticipated by those zones, and on the basis that any additional subdivision, use or development not provided for by those zones maintains or enhances landscape values by directing new subdivision, use and development to occur in those areas that have the potential to absorb change.

[462] Again the material change is to remove the qualifier "existing" from the reference to "other zones" (i.e. being as identified in the listed Ch 6 policies).

***Ch 6 Carve Out regime as renumbered in QLDC's closing version***

[463] As we have noted, the proposed SOs 3.2.5.1A and 3.2.5.2A include cross reference, via footnotes, to Ch 6 Carve Out policies (i.e. relevantly to the effect "In existing zones and sub-zones ... identified in Policies 6.3.1.2, 6.3.1.3, 6.3.1.4 and 6.3.1.5").





[464] QLDC's unopposed closing version of those policies is as follows (with material changes from the DV being the deletion of reference to Wanaka Airport Zone and the addition of reference to Resort Zones in Policy 6.3.1.3 as shown as underlined or ~~struck through~~):

- 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, 3.3.1A-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, ~~Wanaka Airport 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).

[465] The additional policies 6.3.1.4 and 6.3.1.5 are not being considered in Stage 1 of the appeals, but were inserted by QLDC's Stage 2 plan review decisions. For completeness, as recorded for reference in QLDC's closing version, they are as follows:

- 6.3.1.4 Provide a separate regulatory regime for the Wakatipu Basin Rural Amenity Zone, 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. (3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.2A, 3.3.20-24, 3.3.32).
- 6.3.1.5 Classify the Open Space and Recreation zoned land located outside the Urban Growth Boundary as outstanding Natural Landscape, Outstanding Natural Feature or Rural Character Landscape, and provide a separate regulatory framework for the Open Space and Recreation Zones within which the remaining policies of this chapter do not apply. (3.2.5.1A, 3.2.5.2A)

[466] Ch 6 also includes several policies grouped under heading 6.3.2 which is as follows (renumbered from the DV but substantially unchanged):

Managing Activities in the Rural Zone, the Gibbston Character Zone, the Rural Residential Zone and the Rural Lifestyle Zone.



[467] As that heading to the policies suggests, Mr Barr explained that the Carve Out regime would not apply to those policies.<sup>157</sup>

[468] Those policies include 6.3.2.7 now to read:

Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes in proximity to an Outstanding Natural Feature or Outstanding Natural Landscape does not compromise the landscape quality, character and visual amenity of the relevant Outstanding Natural Feature or Outstanding Natural Landscape. (3.2.5).

[469] Mr Barr contrasted this with those Ch 6 policies under heading 6.3.3 (headed "Managing Activities on Outstanding Natural Features and in Outstanding Natural Landscapes" in QLDC's uncontested closing version). He explained that those and other such policies are not intended to apply to the various classes of Exception Zone.<sup>158</sup> None of the planning witnesses who followed Mr Barr disputed his opinion on these matters.

### ***11 July Minute as to 'Carve Out'***

[470] Our 11 July Minute for closing submissions asked whether 'Carve Out' should be dealt with in Ch 3 or Ch 6 or both chapters. Responses on that are helpful, as we shortly discuss.

### ***Evidence***

[471] We have referred to the range of planning evidence on these and other Topic 2 provisions.

[472] On matters of 'Carve Out', we also heard from Ms Legnavsky of CAR. Cardrona Alpine Resort includes large and developing ski field operations, and associated facilities, at Cardrona which is in a Ski Area Sub-Zone. Ms Legnavsky explained how CAR's business is reliant, in part, on the ONF/L landscape within which the Resort is located.<sup>159</sup> In answer to questions, she also explained how CAR is both motivated to maintain the

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<sup>157</sup> First Supplementary Statement of Evidence of Mr Barr, for QLDC, dated 11 April 2019, at [11(f)].

<sup>158</sup> First Supplementary Statement of Evidence of Mr Barr, for QLDC, dated 11 April 2019, at [5(b)] and [11].

<sup>159</sup> Evidence-in-chief of Ms Legnavsky, for CAR, dated 29 October 2019, at [16] – [18].



landscape and active in doing so.<sup>160</sup>

### **Submissions**

#### *Darby Group*

[473] In her closing submissions, Ms Baker-Galloway responded to various aspects of Ms Mellsop's evidence concerning ONF/Ls. She submits that the relevant focus is on the question of how the "appropriateness" of types of activity is acknowledged. She notes that there are two main ways of doing so in terms of the design of the DV:<sup>161</sup>

- (a) providing effectively for so-termed Carve Out; and
- (b) ensuring that the default provisions properly anticipate the range of activities that might be appropriate.

[474] Counsel submits that the Carve Out regime that is provided for important existing zones and nodes of development (e.g. Ski Area Sub-zones, Gibbston, Special Zones and Rural Visitor Zones) needs to clearly articulate that development is appropriate in those zones, and that the specific zone provisions apply, not the general Ch 3 and 6 landscape provisions.

[475] As for the default provisions for the remainder of the Rural zones not subject to Carve Out, Ms Baker-Galloway submits that there is no justification for blanket "avoid" protections. The work has not been done to justify this, and simply saying that that is taking a precautionary approach is not good enough.

[476] On the matter of the approach to Carve Out, Ms Baker-Galloway makes a number of further submissions:<sup>162</sup>

- (a) Carve Out provisions need to be as clear and certain as possible and be explicit that Carve Out is solely in relation to landscape provisions;
- (b) Carve Out should be provided for, in regard to the ONF/L provisions of both Chs 3 and 6. Ch 3 is the Strategic chapter and applies district wide and Ch

<sup>160</sup> Transcript, p 612, l 24 and following, p 613, l 4 and following.

<sup>161</sup> Closing submissions for Darby Group, dated 31 July 2019 at [39].

<sup>162</sup> Closing submissions for Darby Group, dated 31 July 2019, at [41] and [42].



6 is the "Landscapes and Rural Character" and applies primarily to the zones outside of the Urban Growth Boundary ('UGB') (i.e zones that are not Urban zones). Carve Out is clearly needed for the various Sub-zones of the Rural zone (Rural Residential, Rural Lifestyle, Gibbston Character Zone, Ski Area Sub-Zones etc). Hence it is required in Ch 6. However, it is also required in Ch 3 to reflect the fact that District-wide there are also Urban zones and zones within the UGB that include parts of land classified as ONF/L and the explicit ONF/L landscape provisions do not apply to those urban zones;

- (c) Carve Out is further appropriate in all those Zones in the fact that they have their own objectives, policies, rules and other methods such as Structure Plans that will determine appropriate effects for those specific areas, set aside and zoned for specific purposes.

### *Cardrona Alpine Resort*

[477] It is helpful to start with Mr Leckie's concluding paragraphs to his closing for CAR, as these capture why the drafting of the Carve Out regime is important CAR.<sup>163</sup>

Given the role of the visitor industry and tourism in both the economic and social wellbeing of the District, it is important that it is sufficiently recognised and enabled in both the strategic objective of Chapter 3 and the landscape policies of Chapter 6. This requires that the carve out be contained in both Chapters 3 and 6.

The Ski Area Sub Zone is essential for the visitor industry, tourism activities and (consequently) the future growth of the District. Enabling provisions are therefore required to ensure that opportunities for growth, and activities that create growth, can continue and develop in the Ski Area Sub Zone. That is not to suggest that growth should be entirely unrestricted, but it should be restricted to an appropriate level. As Ms Legnavsky's evidence indicated, growth and development in the Ski Area Sub Zone is dependent on ONL/F landscapes so it is acknowledged that protection of the wider landscape is required.

[478] Mr Leckie also describes enabling the visitor industry and tourism activities in the Rural zone as necessary for growth in the District and submits this should be recognised as one of the ODP's goals.<sup>164</sup>

<sup>163</sup> Closing submissions for Cardrona Alpine Resorts Limited, dated 14 August 2019, at [36], [37].

<sup>164</sup> Closing submissions for Cardrona Alpine Resorts Limited, dated 14 August 2019, at [17].



[479] Counsel proposes the following change to SO 3.2.5.1A, submitting the struck through words are superfluous:

In existing zones and the Ski Area Sub-Zones located within Outstanding Natural Landscapes and Outstanding Natural Features, subdivision, use and development is provided for to the extent anticipated by those zones and sub-zones, ~~and on the basis that any additional development not provided for by those zones and Sub-Zones protects, enhances or restores landscape values.~~

[480] Mr Leckie submits that the struck through words specify an inappropriate ONF/L qualifying test in circumstances where “the landscape has been modified, like in the Ski Area Sub Zone”. For that submission, he refers to acknowledgements by Ms Gilbert and Ms Mellsop that the Ski Area landscape has been modified. In particular, Mr Leckie refers to Ms Mellsop’s evidence under cross-examination, submitting this was to the effect that “the very purpose of the specific subzones is to allow for specified activities and the landscape outcomes, which differ to those of the ONL/F and RCL, anticipated from those activities”.<sup>165</sup>

[481] Counsel notes that, with such an approach to Carve Out, development would “not go unfettered”. In particular, activities not anticipated by the Ski Area Sub Zone would fall back to SO 3.2.5.1 to be tested for appropriateness.<sup>166</sup> As to this matter, counsel adds:<sup>167</sup>

The requirements of 3.2.5.1 are more appropriate than the qualifier in 3.2.5.1A to assess activities to be undertaken in the Ski Area Sub Zone. We have previously submitted, and several expert witnesses now support the proposition, that activities in the Ski Area Sub Zone should be assessed against the provisions of that subzone. Where a wider assessment is required to pursuant 3.2.5.1, consideration of the activities ability to protect, enhance and restore landscapes may be justified in some circumstances (for instance where 3.2.5.1B applies), but certainly not in all cases.

[482] Referring to Ms Legnavsky’s evidence, Mr Leckie submits that the success of CAR’s business “is in part due to the ONL/F landscape within which it is situated” and that this incentives CAR to maintain those landscapes, which it is actively doing.

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<sup>165</sup> Closing submissions for Cardrona Alpine Resorts Limited, dated 14 August 2019, at [21] – [23], referring to the Transcript at p 225, l 13 – 14 (Ms Gilbert), p 148, l 24 and following (Ms Mellsop).

<sup>166</sup> Closing submissions for Cardrona Alpine Resorts Limited, dated 14 August 2019, at [24], referring to the evidence of Mr MacLennan, planner for ORC, Transcript, pp 523 – 524.

<sup>167</sup> Closing submissions for Cardrona Alpine Resorts Limited, dated 14 August 2019, at [24], [25].



However, he emphasises that CAR needs flexibility within the Ski Area Sub Zone "to ensure that its business, culture and creativity (which is different to other activities in ONL/Fs) can continue and develop".<sup>168</sup>

[483] As to the meaning of "anticipated" in SO 3.2.5.1A, Mr Leckie submits that this would be sufficiently clear when policies are read in conjunction with assessment matters and other rules.<sup>169</sup>

#### ORC

[484] In closing for ORC, Mr Logan submits that the rationale for Carve Out is that the zones to which they are applied "have already been (or are to be) considered against" pt 2 RMA. As such "their regulatory regimes recognise and provide for" s 6 RMA matters. He noted the importance of including Carve Out provisions in both Chs 3 and 6.<sup>170</sup> He describes SOs 3.2.5.1B and 3.2.5.2A as cross-referencing the Ch 6 provisions that serve to give "greater particularisation of the areas to which the general ONF/L regime does not apply".

[485] He characterises the problem with the present provisions in Ch 3 as being "less one of structure, but more of drafting". An aspect of the drafting problem is the use, in both SOs, of the words "is provided for to the extent anticipated by those zones" and "and on the basis that any additional development not provided for by those zones". He illustrates this by comparing discretionary activities that offend zone objectives and policies with non-complying activities found not to be contrary to those provisions. There is inherent uncertainty as to how each such example would be treated for the purposes of SO 3.2.5.1B or 3.2.5.2A.

[486] Whilst acknowledging the challenge, Mr Logan submits that an explanation in the ODP of what is intended is "necessary or confusion will result".

[487] Mr Logan responds to some aspects of CAR's submissions on the wording of the Carve Out provisions. In particular, he refers to the submission that the words "and on the basis that any additional development not provided for by those zones and subzones

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<sup>168</sup> Closing submissions for Cardrona Alpine Resorts Limited, dated 14 August 2019, at [26].

<sup>169</sup> Closing submissions for Cardrona Alpine Resorts Limited, dated 14 August 2019, at [27].

<sup>170</sup> Closing submissions for ORC, dated 4 September 2019 at [67] – [81].



protects, enhances or restores landscape values" be deleted from SO 3.2.5.1A. He points out that this deletion would mean the applicable Ch 3 provision would be SO 3.2.5.1 (i.e. relevantly that "the landscape values of outstanding natural landscapes and outstanding natural features are protected from inappropriate subdivision, use and development"). Under that approach, Mr Logan submits that a decision-maker would be simply taken back to s6(b) RMA, so defeating the purpose the ODP is intended to serve in articulating at a district level how pt 2 applies. Mr Logan also points out that the relevant words reflect pRPS objective 3.2 (i.e. "Otago's significant and highly-valued natural resources are identified and protected, or enhanced where degraded").<sup>171</sup>

[488] For those reasons, Mr Logan submits that the words need to be retained, but that the meaning of "provided for" needs to be clearly explained in the ODP. He concludes that it is important that the Carve Out regime is "carefully and precisely worded" and that includes precision as to exactly which provisions of Chapters 3 and 6 are "carved-out".<sup>172</sup>

#### QLDC

[489] In her closing submissions for QLDC, Ms Scott recommends in favour of QLDC's closing version provisions including on the basis that they are well-supported by Mr Barr's demonstrably sound understanding of the wider design of the DV and ODP.<sup>173</sup>

[490] Like Mr Logan, Ms Scott emphasises the importance of care in how Carve Out provisions are framed, to avoid unintended consequences (noting that these had been demonstrated in some drafting recommendations by other planners, including Mr Sergeant). By way of background, Ms Scott notes that Carve Out policies have always featured in Ch 6 "due to the need to recognise 'special zones' that manage ONF/L without recourse to the more specific ONF/L policies in Chapter 6". She further explains:<sup>174</sup>

These Special Zones and other zones (with reference to the relevant Chapter 6 policies) were generally carefully crafted through the Schedule 1 process (generally as plan changes to the ODP) to deliver outcomes that ensure the appropriate protection of ONF/L, relative to

<sup>171</sup> Closing submissions for ORC, dated 4 September 2019 at [77] – [80], referring to Cardrona Alpine Resort Limited's submissions, at [21] – [27].

<sup>172</sup> Closing submissions for ORC, dated 4 September 2019 at [80], [81]; on the theme of careful drafting referring, by way of example, to the planning evidence of Mr Serjeant (16 May 2019 statement, at [4.2]) that Mr Logan submits perhaps unwittingly "carved-out" all Special Purpose Zones from Chapter 3.

<sup>173</sup> Closing submissions for QLDC, dated 4 September 2019, at [4.3] and following.

<sup>174</sup> Closing submissions for QLDC, dated 4 September 2019, at [4.8], [4.9].



the land within the special zones. As a result, these zones do not need to rely on all of the provisions within Chapter 6 to achieve the requirements of section 6(b) of the RMA – the existing / special zone provisions already do so. The reason for the carve out provisions is to clarify this situation in Chapter 3 as it also contains landscape objectives and policies, avoiding the uncertainty created by having two potentially conflicting sets of provisions apply.

[491] Ms Scott discusses how the Ch 3 Carve Out provisions originated during planning witness conferencing. She notes that this was for the purpose of providing "higher level (strategic) foundation" for the Carve Out regime and "greater certainty regarding the landscape protection policies within SO 3.2.5 and those SOs that contemplate the enablement of specific development" (noting that this is in regard to zones that exist within ONF/L that are not zoned Rural and the Ski Area Sub-Zone of the Rural zone). She adds:<sup>175</sup>

Achieving greater certainty by way of the amended 3.2.5 suite is submitted to be appropriate, particularly given that new Interpretation and Application section (determined in Topic 1) clarifies that there is no fixed hierarchy between Chapters 3 to 6. Without the "3.2.5 suite", potential for uncertainty would be created in relation to whether the Chapter 3 landscape protection policies act to constrain development within those other zones, such as the ski area sub zone (which may undermine the purpose of those zones).

[492] In response to CAR's submissions, Ms Scott says QLDC does not accept that "enabling the visitor industry and tourism activities in the Rural zone is 'necessary for growth in the District' and should be recognised as one of the 'goals'. Counsel notes that the relevant objective determined through Topic 1 (and not appealed by CAR) is:<sup>176</sup>

The development of a prosperous, resilient and equitable economy.

[493] Ms Scott points out that the concept of "growth" is not mentioned in that objective, or elsewhere as any Ch 3 objective or goal. Therefore, counsel submits that growth is not a 'goal' necessarily sought by the DV, as that would create a clear tension with the landscape protection objectives and policies included in Ch 3 and 6 (and to a lesser degree Ch 4).

[494] QLDC opposes CAR's proposed revision of SO 3.2.5.1A. Ms Scott explains that this SO is designed to recognise that Ski Area Sub-Zones (and other specified zones)

<sup>175</sup> Closing submissions for QLDC, dated 4 September 2019, at [4.10], [4.11].

<sup>176</sup> Closing submissions for QLDC, dated 4 September 2019, at [4.12] – [4.13].





"were developed in recognition of their particular characteristics". She notes that SO 3.2.5.1A is "the starting point from a strategic landscape perspective, and should also be the end point, for activities taking place within" the Ski Area Sub-Zone (and Special Zones and other specified zones within ONF/L). That is so whether or not those activities were 'anticipated' in the drafting of the Ski Area Sub Zone or other specified zones. In addition, Ms Scott makes submissions similar to Mr Logan as to the consequences of CAR's amendment being that there would no longer be adequate policy direction on s6(b) RMA.<sup>177</sup>

[495] Counsel goes on to submit in response to CAR's submission that it would not be appropriate to apply the ONF/L test currently in SO 3.2.5.1A to Ski Area Sub-zones ('SASZ') due to their already-modified landscape:<sup>178</sup>

[CAR] ... presented no evidence that SASZ are no longer ONL (by their nature, the SASZ sits in the middle of an alpine ONL), and has not appealed the inclusion of the SASZ within the extent of the mapped ONL. Indeed the [CAR] case was presupposed on the fact that SASZs are within an ONL and therefore require special treatment in the PDP – that is the policy construct that the PDP has created through Policy 6.3.1.2.

The special treatment afforded to SASZ and the other specified zones by the PDP extends to the specific activities anticipated within those areas, in particular for SASZs through the definition of 'ski area activities'. Across the SASZs and the other specified zones, a certain level of development has been enabled – albeit with appropriate checks and balances where required. Indeed, Ms Mellsop accepted that SASZ allow for certain specified ski area activities, with her evidence being that those activities are anticipated by those sub-zones within ONL. The appropriateness of those activities is reflected in the provisions of those zones, but that does not mean that there is no potential to go beyond those levels. It is when that occurs that the "additional development" clause of SO 3.2.5.1A will be engaged so that development is not only "unfettered", but considered in light of the relevant landscape values (with appropriate qualifiers).

... On this point, the [CAR] case focused on enabling Ski Area Activities, rather than activities that are not 'provided for' or 'anticipated' by the SASZ provisions. The [CAR] landscape evidence did not address the appropriateness of enabling non-Ski Area Activities, nor did its planning or landscape evidence address whether the entirety of the SASZs have been modified, such that the entire sub zone should be approached as though it had insufficient landscape values to manage (which would call into question the basis for its inclusion within ONL).

<sup>177</sup> Closing submissions for QLDC, dated 4 September 2019, at [4.16] – [4.18].

<sup>178</sup> Closing submissions for QLDC, dated 4 September 2019, at [4.19] – [4.22].



Finally, the [CAR] submissions justify this change in the context of SASZs only, without considering the broader implications on other "existing zones" within ONF/L – which came into the PDP with the intention that the Chapter 3 landscape protection objectives and policies would apply. For this reason, it is submitted that a cautious approach should be taken by the Court in relation to the arguments advanced by [CAR].

[496] In response to the changes sought by LET and CAR to SO 3.2.5.1B, Ms Scott submits that aspects of these could result in uncertainty. QLDC's preference is that this SO provide a firm requirement for new subdivision, use and development, which is supported by specific qualifiers. Ms Scott also disagrees with LET's submission that the inclusion of "enhanced or restored" acts to create a trade-off with "protection". Counsel refers to Mr Barr's answer in cross-examination to the effect that those qualifying words are not intended to allow an opportunity for inappropriate or mischievous concepts or compensation or mitigation. Ms Scott submits that SO 3.2.5.1B would be read in light of 3.2.5.1, such that inappropriateness would be assessed accordingly.<sup>179</sup>

### ***Evaluation***

[497] We accept the uncontested position that both Chs 3 and 6 need to give proper expression to a Carve Out regime. On the relatively limited evidence we have heard thus far on the Ski Area Sub-Zone, we do not accept as appropriate CAR's plea for any substantial change from what the DV provides for Carve Out. In particular, we draw from both the evidence and the observations made by the independent commissioners concerning the proper justification for such provisions, and the importance of carefully prescribing their influence.

[498] As we have explained, while the DV included a Carve Out regime for Ch 6, the recognition of the need to reflect Carve Out in Ch 3 has come somewhat late in the piece, significantly as a result of planning witness conferencing. However, we acknowledge that the drafting of the DV's policies 6.3.2 and 6.3.3 is somewhat ambiguous about this. While the policies specify that the policies of Ch 6 "do not apply" to the various categories of what we term "Exception Zones", they go on to list several Ch 3 landscape SOs and SPs in brackets and so signal those are also in contemplation as excluded.

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<sup>179</sup> Closing submissions for QLDC, dated 4 September 2019, at [4.24] – [4.30], referring to Transcript, p 285.



[499] In addition, we are mindful that the regime proposed for Ch 3 (even accounting for some differences between parties) is a substantial change from what the NV would appear to have intended. As we have set out, its then provision 6.4.1.2 expressed an intention that the "Strategic Direction Chapter's objectives and policies are relevant and applicable in all zones where landscape values are at issue".

[500] A further dimension to our consideration of this matter is the way Ch 3 is intended to apply within the design of the updated ODP.

[501] As updated by the Topic 1 decision (*Darby Planning*), Ch 3 now includes '3.1B Interpretation and Application of this Chapter' including the following provision 3.1B.2 as to how Ch 3's SOs and SPs relate to other objectives and policies of the ODP:

- 3.1B.2 For the purpose of plan implementation (including in the determination of resource consent 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;
  - b. The relevant objectives and policies of the plan (including Strategic Objectives and Strategic Policies in this Chapter) are to be considered together and no fixed hierarchy exists between them.

[502] We read those provisions together with the following statement in 6.1 Purpose of Ch 6 (as per QLDC's uncontested closing version):

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 objectives 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.

[503] Those provisions helpfully reinforce the importance of reflecting Carve Out in both Chs 3 and 6. That is in the sense that, without Ch 3 Carve Out consistency, the implication to be taken is that Ch 6 would serve to implement what SOs and SPs otherwise specify on landscapes. Furthermore, as provision 6.1 explains, Ch 6 is to provide "greater detail as to how the landscape ... will be managed" in order to implement Ch 3 SOs and SPs. Consistent with that approach, we find we can use relatively general



and broad expression in the Ch 3 Carve Out provisions so long as this does not undermine the more detailed provision made for landscapes in Ch 6's objectives and policies.

[504] We are assisted by Mr Logan's closing submissions to the effect that the rationale for Carve Out is that the zones to which they are applied "have already been (or are to be) considered against" pt 2 RMA. As such, as Mr Logan observes "their regulatory regimes recognise and provide for" s 6 RMA matters.

[505] We do not entirely agree with Mr Leckie's closing submissions about these matters. As Ms Scott points out, we can infer that the various classes of Exception Zone were generally carefully crafted through the Sch 1 RMA processes for the ODP (typically via plan changes) to deliver outcomes that ensure the appropriate protection of ONF/L, relative to the land within those Exception Zones. However, the same cannot extend to what is not contemplated by the particular Exception Zone.

[506] Added to that theme, we do not accept there is any sound basis for extending the scope of Carve Out to areas that may, in future, be re-zoned so as to come within one or other of the Exception Zones. The short point is that we cannot safely infer that, for such future re-zonings, there would be proper scrutiny against pt 2, including s6(b) RMA. In those terms, we find fault in QLDC's closing version of SOs 3.2.5.1A and 3.2.5.2A in that both would drop the qualifier 'existing' in the reference to "other zones".

[507] We acknowledge Mr Logan's observations as to the vagueness of words such as "provided for to the extent anticipated by" and "not provided for". However, given the place of Ch 3 in the ODP, we find those vagaries can be safely left to be determined in the particular contexts within which they would be considered (including in light of related Ch 6 objectives and policies the various assessment matters and other rules that would come into play).

[508] We accept QLDC's and ORC's submissions in not accepting other wording changes proposed.

[509] Subject to the reservations we have noted concerning pt 2 RMA, we find that Ch 3 Carve Out serves two legitimate purposes:



- (a) to qualify how certain SOs and SPs of Ch 3 apply; and
- (b) to state how landscape is treated in the consideration of applications for subdivision, use and development in the carved out zones.

[510] Our preliminary view on which our directions invite further comment from parties, is that it would be clearer to deal with those purposes in separate Ch 3 provisions:

- (a) additional 3.1B.2 provisions as to the interpretation and application of Ch 3 would more appropriately serve the first purpose; and
- (b) a related SO would then deal with the remainder.

[511] We bear in mind that the role of objectives, as indicated by ss32 and 75 RMA, is to achieve the RMA's purpose for the District. Further, policies and rules serve to implement objectives. Conceptually, it would be cleaner if the SOs were confined to fulfilling the RMA purpose of district plan objectives.

[512] In reaching that preliminary view, we observe that the original concept of Carve Out in Ch 6, as drafted in the NV, was as an interpretative provision in the Introduction to that Chapter.

[513] Our preliminary view is that there are some similar interpretative issues with Ch 6's 6.3.2 and 6.3.3. However, as those provisions are not contentious, we are inclined to not seek to improve on that. We have reserved ability for parties who seek that we reconsider that position to make supplementary submissions to that effect (including on whether s293 RMA directions would be needed).

[514] Our revision of these SOs replaces QLDC's closing version of SO 3.2.1.1B, SO 3.2.5.1A and SO 3.2.5.2A with a set of interpretation provisions and a single revised SO 3.2.5.1A. The directions in Part F require QLDC to propose an appropriate date for inclusion in SP 3.1B.5.

[515] Our revision does not carry over from QLDC's closing version of SO 3.2.5.2A those elements that referred to RCLs. Primarily, that is on our understanding from the evidence that none of the Exception Zones would be within an RCL. However, the directions in Part F reserve leave to QLDC (or any other interested party) to inform us otherwise. In the event that we have not understood that matter correctly, we note that



any replacement SO for this would need to be significantly revised to properly reflect how other SOs and SPs address the RCL, in terms of s7(c). That is in the sense that QLDC's closing version of SO 3.2.5.2A also includes elements more suited to ONF/Ls than RCLs. For instance, an SO concerning RCLs would more properly read:

In each Exception Zone located within a Rural Character Landscape, 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 maintains landscape character and maintains or enhances visual amenity values.

[516] Furthermore, we see no need to include the heading "Other zones not located within Outstanding Natural Features or Landscapes or Rural Character Landscapes" (as appears in QLDC's closing version). Nor are we satisfied there is scope to add this heading.

[517] Our revised SO 3.2.5.1A also differs from QLDC's closing version in the fact that it does not use the words "protects, enhances or restores landscape values". Rather, to ensure better consistency with other revised SOs and SPs, it simply uses the word "protects landscape values". If we have missed anything as to the need to restore reference to the words "enhances or restores" (eg in terms of any relevant purpose of the Exception Zones in terms of pt 2 RMA), QLDC or any other party can inform of that in supplementary submissions made under the directions in Part F.

[518] There are some matters of detail that need clarification before we finalise these provisions:

- (a) we need confirmation, by memorandum of counsel, as to what Special Zones are to be listed. Our new 3.1B.5 lists those Special Zones provided in the index and chapters of the DV provided to us by counsel during the hearing. We have noted, however, that QLDC's online Decisions Version also lists Ch 44 Coneburn Industrial Zone as a Special Zone.<sup>180</sup> The directions in Part F provide for QLDC to confirm this;

<sup>180</sup> <https://www.qldc.govt.nz/planning/district-plan/district-plan-review-proposed-district-plan/proposed-district-plan-decisions-version/>.



- (b) our new 3.1B.6 is intended to comprehensively specify all SOs and SPs to which Carve Out applies. As we found some lack of clarity at this precise detail in the various iterations of Carve Out proposed to us, the directions in Part F provide for this to be clarified. In the meantime, our drafting leaves these details blank;

[519] For those reasons:

- (a) on the substance of the various Ch 3 and Ch 6 Carve Out provisions, we reach the determinations we have explained; but
- (b) we propose for comment in supplementary submissions according to our directions the following redrafting:

- 3.1B.5 In 3.1B.6 – 3.1B.8, and SO 3.2.5.1A and 3.2.5.2A, Exception Zone means any of the following:
- a. The Ski Area Sub-zone;
  - b. The following Special Zones:
    - i Ch 41 Jacks Point,
    - ii Ch 42 Waterfall Park,; and
    - iii Ch 43 Millbrook;
    - iv Gibbston Character Zone;
  - c. The Rural Residential Zone;
  - d. The Rural Lifestyle Zone -

in each case to the extent that the Zone (or Sub-zone) is depicted on the planning maps as at [xxx date to come related to determination of related appeals.]

- 3.1B.6 The following Strategic Objectives and Strategic Policies do not apply to applications for any subdivision, use or development within any of the Exception Zones:
- a. SO [xxx to come], SO [xxx to come], [xxx list here all applicable SOs];
  - b. SP [xxx to come], SP [xxx to come], [xxx list here all applicable SPs]

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

### **Other matters concerning Chs 3 and 6**

#### ***Submissions and/or evidence not referred to***

[520] We have not referenced every submission and nor have we commented on all the evidence we have received and considered. To have endeavoured to do so would have made for an even lengthier decision. However, we have been careful to report fully our reasons in order that parties understand them, and our foundation for them in the significant evidence and submissions we have received and considered.

#### ***Cross-references***

[521] In our revisions and other changes to various Ch 3 and Ch 6 provisions, we have deliberately not followed the style of the DV and QLDC closing version in making bracketed cross-references to other provisions. That is so as to not endorse as necessarily accurate or complete such cross-referencing. We have reservations about the wisdom of this cross-referencing approach in that it is prone to error or omission. We reserve leave to QLDC to seek to have all cross-referencing removed at some stage of the appeal process. We see no scope or other difficulty in making directions to that effect, as cross-referencing is simply as a reading aide as opposed to having substantive consequences. The alternative course, if QLDC favours retaining cross-referencing, is that we direct a full audit at a later stage of the appeals' determinations so as to ensure the ultimate ODP outcome is accurate.

#### ***Provisions not specifically commented on are found appropriate***

[522] For completeness, where we have not commented on a provision we include in Annexure 1, that is because it is not controversial. We reserve capacity to revisit this in light of the output from the further expert witness conferencing directed by Part F.

#### ***Reservation concerning related and consequential changes***

[523] Finally, we record that our findings in this decision are on the basis that we have yet to consider appeals on related DV provisions, and in particular those in Ch 21. We





are mindful that there will be a need to consider, at some stage, whether related objectives, policies and rules in Ch 21 (and potentially elsewhere) would properly achieve and implement the various Ch 3 SOs and SPs and Ch 6 policies addressed in this decision. As for rules, we include those on assessment matters, standards and activity classifications. We reserve our capacity to consider and determine those matters in relevant topics and stages.



## PART F: DIRECTIONS AND CONCLUSION

[524] For those reasons, this interim decision is the first substantive decision towards finalising the most appropriate Topic 2, sub-topic 2 – 10 provisions for Chs 3 and 6 of the ODP.

[525] To further progress matters, we now give directions, or reserve leave, on various matters signalled in this decision:

- (a) the directions in (b) - (i) must be complied with according to the timetable to be set by Minute following QLDC's filing of a proposed timetable according to the direction in (j);
- (b) Messrs Barr and Ferguson (together with Messrs Gilbert, Mellsop and Pflüger) are directed to undertake further facilitated expert witness conferencing so as to produce, by joint witness statement ('Supplementary JWS'):
  - (i) recommended drafting of SPs to provide for our findings on how Ch 3 should give direction concerning our so-termed Values' Identification Frameworks (i.e. for ONF/L Priority Areas and Upper Clutha RCL Priority Areas);
  - (ii) associated maps, suitable for inclusion in the DV, depicting the geographic extent, at proper landscape scale of Priority Areas to which those SPs for ONF/Ls and for the Upper Clutha RCL will apply to;
  - (iii) recommended drafting of SPs to provide for our findings as to how Ch 3 should give direction concerning landscape assessment methodologies;
  - (iv) recommended drafting of SPs to give effect to our findings on how Ch 3 should give direction on monitoring;
- (c) the Supplementary JWS will provide that drafting in format suitable for inclusion in the ODP (and, insofar as necessary, record reasons for any differences in drafting approach);
- (d) for the purposes of that further joint witness conferencing and our further decision(s) on Topic 2, QLDC must file, whether by supplementary planning evidence or memorandum of counsel, its final position on:
  - (i) the list of Priority Areas that each set of SPs for Values' Identification



- Frameworks should specify and be applied to (one list for each of the ONF/L Framework, another for the Upper Clutha RCL Framework);
- (ii) the mapped geographic extent of each Priority Area; and
  - (iii) date(s) for Sch 1 plan change(s) for specification in each set of SPs for the Values' Identification Frameworks;
- (e) the following parties may, by way of memoranda of counsel, inform the court (with reasons) of any difference(s) as to those priorities, mapped boundaries and/or date(s):
- (i) all parties to this decision;
  - (ii) all parties to Decision 2.1 and Decision 2.3;
- (f) once the Supplementary JWS is filed:
- (i) QLDC will confer with other parties and file a final set of Topic 2 sub-topic 2 - 10 provisions for Chs 3 and 6 to give effect to the findings in this decision (showing changes to the drafting in Annexure 1 as underlined or struck through), including for related definitions and the SPs for Values' Identification Frameworks;
  - (ii) all parties to this decision will be given opportunity to make final supplementary closing submissions (including to propose technical drafting refinements) by further direction;
- (g) for the purposes of finalising the drafting of the Carve Out provisions:
- (i) QLDC must file a memorandum of counsel to provide a full list of relevant Special Zones (and confirm no scope issues arise for any additions to what is presently specified in our draft 3.1B.5), provide a full list of SOs and SPs to be referenced in our draft 3.1B.6 and inform the court whether any Exception Zone is in a Rural Character Landscape;
  - (ii) QLDC must propose a date for insertion in SP 3.1B.5 to give effect to the findings in this decision;
  - (iii) those parties with relevant interests in the Carve Out provisions may file memoranda of counsel in reply on any point of disagreement with what QLDC so provides or proposes;
- (h) leave is reserved for any party, after consultation with QLDC, to make application for the court to make directions under s293 for each or any of the following purposes:
- (i) to provide for changes to the ODP in relation to our findings as to the Upper Clutha Basin RCL;
  - (ii) to provide for changes to the ODP for the purposes of including



- schedules of landscape values and landscape capacity in relation to an ONF or ONL;
- (iii) to provide for changes to policies 6.3.2 and/or 6.3.3 consequential on our findings on related Ch 3 provisions;
  - (i) QLDC must, and any other party may, by memorandum of counsel inform the court of its position on whether the changes this decision determines as appropriate for SO 3.2.1.7 and SP 3.3.20 should be the subject of directions under s293 RMA (and, if so, according to what recommended consultative process);
  - (j) QLDC will confer with all parties to this decision (and, on matters concerning expert conferencing, the Registrar as to matters of availability of a facilitating commissioner) and file, by memorandum of counsel, a proposed timetable for the directions in (b) to (i), by **Monday 3 February 2020**;
  - (k) determination of whether or not Ch 3 will incorporate a SP on resorts, and as to the substance of any such SP is reserved, pending further directions on when and how this will be addressed in light of related topics and stages pertaining to this matter;
  - (l) leave is reserved to any party to this decision (and for direction (e), parties to Decisions 2.1 and 2.3) to request further or amended directions on these matters by filing a memorandum of counsel for those purposes by **Monday 27 January 2020** (after conferring with counsel for QLDC on any such request);
  - (m) leave is reserved to QLDC to seek, by memorandum of counsel, that the Court finalise its determination such that any of the following Topic 2 provisions can be included as operative into the ODP:
    - (i) Topic 1 provisions determined by this decision to be appropriate and that are not related to our directions herein and able to be incorporated into the ODP; and/or
    - (ii) ONF/L or RCL mapping determined by Decision 2.1 and/or Decision 2.3 that is able to be treated on that basis.



[526] Costs are reserved and a timetable will be set in due course.

For the court:



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



**Annexure 1**

Underlining and ~~strike-through~~ show changes from the QLDC closing version.



# STRATEGIC DIRECTION 3

[Blue text not Topic 2]

[Further internal consistency and consequential changes may be needed].

## 3 Strategic Direction

### 3.1 Purpose

This chapter sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities:

- a. ~~dramatic~~ distinctive lakes, rivers, alpine and high country landscapes free of inappropriate development;
- b. clean air and pristine water;
- c. vibrant and compact town centres;
- d. compact and connected settlements that encourage public transport, biking and walking;
- e. diverse, resilient, inclusive and connected communities;
- f. a district providing a variety of lifestyle choices;
- g. an innovative and diversifying economy based around a strong visitor industry;
- h. a unique and distinctive heritage;
- i. distinctive Ngāi Tahu values, rights and interests;
- j. indigenous biodiversity and ecosystems.

### 3.1A Strategic Issues

The following strategic issues are overarching. While not intended to be an exhaustive list or description of issues to be addressed in the District's pursuit of sustainable management, these Strategic issues are identified as warranting to be addressed at the present time and during the lifetime of the Plan (and beyond) to enable the retention of the special qualities listed at a – i of 3.1 Purpose:

- a. Strategic Issue 1: Economic prosperity and equity, including strong and robust town centres, and the social and economic wellbeing and resilience of the District's communities may be challenged if the District's economic base lacks diversification.
- b. Strategic Issue 2: Growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscapes, particularly its outstanding natural features and outstanding natural landscapes.
- c. Strategic Issue 3: High growth rates can challenge the qualities that people value in their communities.
- d. ~~Strategic Issue 4: Inappropriate activities (subdivision, use and development) have the potential to affect the intrinsic qualities and values of the District's natural environment, particularly its outstanding landscapes, which are valued by the community and from which the District derives significant economic value. Some resources of the District's natural environment, particularly its outstanding natural features and outstanding natural landscapes and their landscape values, require effective identification and protection in their own right as well as for their significant contribution to the District's economy.~~
- e. Strategic Issue 5: The design of developments and environments can either promote or weaken safety, health and social, economic and cultural wellbeing.
- f. Strategic Issue 6: Tangata Whenua status and values require recognition in the District Plan.



# STRATEGIC DIRECTION 3

## 3.1B Interpretation and Application of this Chapter

3.1B.1 For the purpose of plan development, including plan changes, the Strategic Objectives and Strategic Policies in this Chapter provide direction for the development of the more detailed provisions contained elsewhere in the District Plan in relation to the Strategic Issues.

3.1B.2 For the purpose of plan implementation (including in the determination of resource consent 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;
- b. The relevant objectives and policies of the plan (including Strategic Objectives and Strategic Policies in this Chapter) are to be considered together and no fixed hierarchy exists between them.

3.1B.3 In this plan, the notation 'SO' means Strategic Objective'. The notation 'SP' means 'Strategic Policy'.

3.1B.4 The following relationships apply as between Strategic Objectives and Strategic Policies of this Chapter:

- a. Where it is intended that a Strategic Objective elaborates on another Strategic Objective, that is specified in italicised text in brackets immediately following the Strategic Objective that is elaborated on. Unless otherwise specified, where a Strategic Objective enumerated to three digits (e.g. 3.2.1) (Three Digit Strategic Objective') is followed by one or more Strategic Objectives enumerated to four digits (e.g. 3.2.1.1, 3.2.1.2) ('Four Digit Strategic Objective'), those Four Digit Strategic Objectives elaborate on that Three Digit Strategic Objective;
- b. Many Strategic Policies in Chapter 3 implement more than one Strategic Objective. This is reflected in how Strategic Policies are grouped. The relationship(s) intended between individual Strategic Policies and the relevant Strategic Objective(s) is specified in the italicised text in brackets following each Strategic Policy.

3.1B.5 In 3.1B.6 and SO 3.2.5.1A and 3.2.5.2A, 'Exception Zone' means any of the following:

- a. The Ski Area Sub-zone;
- b. The following Special Zones:
  - i Ch 41 Jacks Point;
  - ii Ch 42 Waterfall Park;
  - iii Ch 43 Millbrook; and
  - iv Gibbston Character Zone;
- c. The Rural Residential Zone; and
- d. The Rural Lifestyle Zone –

in each case to the extent that the Zone (or Sub-zone) is depicted on the planning maps as at [xxx date to come related to determination of related appeals.]





## STRATEGIC DIRECTION 3

3.1B.6 The following Strategic Objectives and Strategic Policies do not apply to applications for any subdivision, use or development within any of the Exception Zones:

- a. SO [xxx to come], SO [xxx to come], [xxx list here all applicable SOs]; and
- b. SP [xxx to come], SP [xxx to come], [xxx list here all applicable SPs].

3.1B.7 In this Chapter:

- a. 'Landscape capacity':
  - i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means the capacity of a landscape or feature to accommodate subdivision and development without compromising its identified landscape values;
  - ii. in relation to a landscape character area in a Rural Character Landscape, means the capacity of the landscape character area to accommodate subdivision and development without compromising its identified landscape character and whilst maintaining its identified visual amenity values;
- b. 'Landscape values' in relation to any Outstanding Natural Feature, Outstanding Natural Landscape or Rural Character Landscape includes biophysical, sensory and associative attributes (and 'values' has a corresponding meaning);
- c. 'Rural Living' means residential-type development in a Rural Character Landscape or on an Outstanding Natural Feature or in an Outstanding Natural Landscape, including of the nature anticipated in a Rural Residential or Rural Lifestyle zone but excluding residential development for farming or other rural production activities;
- d. 'Priority Area':
  - i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means an area listed in SP x.x.x.x and shown on the maps in Schedule 21;
  - ii. in relation to the Upper Clutha Rural Character Landscape, means an area listed in SP x.x.x.x and shown on the maps in Schedule 21.

# STRATEGIC DIRECTION 3

## 3.2 Strategic Objectives

3.2.1 The development of a prosperous, resilient and equitable economy in the District (addresses Issue 1)

3.2.1.1 The significant socioeconomic benefits of well designed and appropriately located visitor industry places, facilities and services are realised across the District.

3.2.1.2 The Queenstown and Wanaka town centres<sup>1</sup> are the hubs of New Zealand's premier alpine visitor resorts and the District's economy.

3.2.1.3 The Frankton urban area (including the Remarkables Park mixed use centre) functions primarily as a major commercial and industrial service centre, and provides community facilities, for the people of the Wakatipu Basin.

3.2.1.4 The key function of the commercial core of Three Parks is focused on large format retail development.

3.2.1.5 Local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka town centres<sup>2</sup>, Frankton and Three Parks, are sustained.

3.2.1.6 Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.

3.2.1.7 ~~Agricultural land uses consistent with the maintenance of the character of rural landscapes and significant nature conservation values are enabled.~~ Agricultural land uses are enabled provided those uses are consistent with:

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 the maintenance or enhancement of their visual amenity values; and

c. the maintenance of significant nature conservation values.

3.2.1.8 ~~Diversification of land use in rural areas beyond traditional activities, including farming, provided that the character of rural landscapes, significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintained.~~ Diversification of land use in rural areas beyond traditional activities, including farming is enabled provided that:

a. the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected;

b. the landscape character of Rural Character Landscapes is maintained and their visual amenity values are maintained or enhanced; and

c. significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintained.

3.2.1.1B ~~The Special Purpose Zones and other zones in the rural environment<sup>3</sup> achieve sustainable management through a separate regulatory regime which provides for~~

1 Defined by the extent of the Town Centre Zone in each case

2 Defined by the extent of the Town Centre Zone in each case

3 As identified in, and including all the zones in, policies 6.3.1.2, 6.3.1.3, and 6.3.1.4 and 6.3.1.5.



## STRATEGIC DIRECTION 3

subdivision, use and development in accordance with their zone purpose, objectives and policies. The strategic objectives and strategic policies of this chapter only apply to resource consent applications for activities not anticipated by these Special Purpose Zones, or plan changes seeking to expand the extent of the zone or the range of anticipated activities.

3.2.1.9 Infrastructure in the District that is operated, maintained, developed and upgraded efficiently and effectively to meet community needs, while managing adverse effects on the environment.

3.2.2 **Urban growth is managed in a strategic and integrated manner. (addresses Issue 2)**

*(Strategic Objective 3.2.2.1 elaborates on Strategic Objective 3.2.2. SO 3.2.1.9 also elaborates on SO 3.2.2).*

3.2.2.1 Urban development occurs in a logical manner so as to:

- a. promote a compact, well designed and integrated urban form;
- b. build on historical urban settlement patterns;
- c. achieve a built environment that provides desirable, healthy and safe places to live, work and play;
- d. minimise the natural hazard risk, taking into account the predicted effects of climate change;
- e. protect the District's rural landscapes from sporadic and sprawling development;
- f. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in;
- g. contain a high quality network of open spaces and community facilities; and
- h. be integrated with existing, and planned future, infrastructure.

3.2.3 **A quality built environment taking into account the character of individual communities. (addresses Issues 3 and 5)**

*(Strategic Objective 3.2.3.1 elaborates on Strategic Objective 3.2.3. In addition, SO 3.2.2.1 also elaborates on SO 3.2.3).*

3.2.3.1 The District's important historic heritage values are protected by ensuring development is sympathetic to those values.

3.2.4 **The distinctive natural environments and ecosystems of the District are protected. (addresses Issue 4)**

*(Strategic Objectives 3.2.4.1 – 3.2.4B inclusive elaborate on Strategic Objective 3.2.4. In addition, SO 3.2.1.7 also elaborates on SO 3.2.4).*

3.2.4.1 Development and land uses that sustain or enhance the life-supporting capacity of air, water, soil and ecosystems, and maintain indigenous biodiversity.

3.2.4.2 The spread of wilding exotic vegetation is avoided.

3.2.4.3 The natural character of the beds and margins of the District's lakes, rivers and wetlands is preserved, or enhanced where possible, and protected from inappropriate subdivision, use and development.

3.2.4.4 The water quality and functions of the District's lakes, rivers and wetlands are maintained or enhanced.

3.2.4.5 Public access to the natural environment is maintained or enhanced.



# STRATEGIC DIRECTION 3

- 3.2.4.A The values of significant indigenous vegetation and significant habitats of indigenous fauna are protected.
- 3.2.4.B The survival chances of rare, endangered, or vulnerable species or indigenous plant or animal communities are maintained or enhanced.

## 3.2.5 The retention of the District's distinctive landscapes. (addresses Issues 2 and 4)

*(Strategic Objectives 3.2.5.1 – 3.2.5.2A inclusive elaborate on Strategic Objective 3.2.5. In addition, SO 3.2.1.7, SO 3.2.1.8 and 3.2.2.1 also elaborate on SO 3.2.5).*

### 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 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 Outstanding Natural Features and Outstanding Natural Landscapes are specified in Schedule 21.22, those values are protected;
  - 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 [x.x.x.y] the intended new SP on assessment methodology] are protected.
- 3.2.5.xxx 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.

3.2.5.1 ~~The landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected from inappropriate<sup>4</sup> subdivision, use and development.~~

3.2.5.1A ~~Within Special Zones, other zones<sup>5</sup> and the Ski Area Sub-Zones located within Outstanding Natural Features and Outstanding Natural Landscapes, subdivision, use and development is provided for to the extent anticipated by those zones and sub-zones, and on the basis that any additional subdivision, use and development not provided for by those zones and Sub-Zones protects, enhances or restores landscape values. 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.~~

3.2.5.1B ~~Within the Rural Zone Outstanding Natural Features and Outstanding Natural Landscapes (other than for the Sub-Zones subject to SO 3.2.5.1A), new subdivision, use and development is only appropriate, in exceptional cases where the landscape values are protected, enhanced or restored where:~~

~~(a) activities and their effects are temporary; or~~

<sup>4</sup> Rural Zone Assessment Matter 21.21.1.3 provides elaboration on the attributes of relevance to landscape values.

<sup>5</sup> As identified in Policies 6.3.1.2, 6.3.1.3 and 6.3.1.5.

# STRATEGIC DIRECTION 3

(b) activities are otherwise well located, designed, and undertaken.

## Rural Character Landscapes

3.2.5.2 The landscape character and visual amenity values in Rural Zoned Rural Character Landscapes are maintained or enhanced by directing new subdivision, use and development to occur in those areas that have the potential to absorb change. 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 Zoned Rural Character Landscapes are identified, including by mapping; and
- b. associated landscape character and visual amenity values are identified.

## ~~Other zones not located within Outstanding Natural Features and Landscapes or Rural Character Landscapes~~

~~3.2.5.2A Within Special Zones and other zones<sup>6</sup> not within the Rural Zone Outstanding Natural Features and Outstanding Natural Features Landscapes, or Rural Character Landscapes, subdivision, use and development is provided for to the extent anticipated by those zones, and on the basis that any additional subdivision, use or development not provided for by those zones maintains or enhances landscape values by directing new subdivision, use and development to occur in those areas that have the potential to absorb change.~~

3.2.6 The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety. (addresses Issues 1 and 6)

3.2.7 **The partnership between Council and Ngāi Tahu is nurtured. (addresses Issue 6).**

*(Strategic Objectives 3.2.7.1 and 3.2.7.2 elaborate on Strategic Objective 3.2.7).*

3.2.7.1 Ngāi Tahu values, interests and customary resources, including taonga species and habitats, and wahi tupuna, are protected.

3.2.7.2 The expression of kaitiakitanga is enabled by providing for meaningful collaboration with Ngāi Tahu in resource management decision making and implementation.

<sup>6</sup> As identified in Policies 6.3.1.2, 6.3.1.3, 6.3.1.4 and 6.3.1.5.



## 3.3 Strategic Policies

### Visitor Industry

- 3.3.1 Make provision for the visitor industry to maintain and enhance attractions, facilities and services, including supporting infrastructure, within the Queenstown and Wanaka town centre areas and elsewhere within the District's urban areas and settlements at locations where this is consistent with objectives and policies for the relevant zone. (relevant to S.O. 3.2.1.1 and 3.2.1.2).
- 3.3.1A ~~In rural areas, provide for commercial recreation and tourism related activities in appropriate locations where they enable people to access and appreciate the district's landscapes provided that landscape quality, character, visual amenity values, and nature conservation values are maintained or enhanced. In Rural areas, provide for commercial recreation and tourism related activities that enable people to access and appreciate the district's landscapes provided that those activities are located and designed and are of a nature that:~~
- ~~a. protects the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes; and~~
  - ~~b. maintains the landscape character and maintains or enhances the visual amenity values of Rural Character Landscapes.~~
- 3.3.1B ~~Provide for resorts in appropriate locations with particular consideration of adverse cumulative effects. [consideration adjourned]~~

### Town Centres and other Commercial and Industrial Areas

- 3.3.2 Provide a planning framework for the Queenstown and Wanaka town centres that enables quality development and enhancement of the centres as the key commercial, civic and cultural hubs of the District, building on their existing functions and strengths. (relevant to S.O. 3.2.1A and 3.2.1.2)
- 3.3.3 Avoid new commercial zoning of land that is likely to undermine the role of the Queenstown and Wanaka town centres as the primary focus for the District's economic activity. (relevant to S.O. 3.2.1.2)
- 3.3.4 Provide a planning framework for the Frankton urban area that facilitates the integration of the various development nodes. (relevant to S.O. 3.2.1.3)
- 3.3.5 Recognise that Queenstown Airport makes an important contribution to the prosperity and resilience of the District. (relevant to S.O. 3.2.1A and 3.2.1.3)
- 3.3.6 Avoid additional commercial zoning that is likely to undermine the function and viability of the Frankton commercial areas as the key service centre for the Wakatipu Basin, or which will undermine increasing integration between those areas and the industrial and residential areas of Frankton. (relevant to S.O. 3.2.1.3)
- 3.3.7 Provide a planning framework for the commercial core of Three Parks that enables large format retail development. (relevant to S.O. 3.2.1.4)



# STRATEGIC DIRECTION 3

- 3.3.8 Avoid non-industrial activities not ancillary to industrial activities occurring within areas zoned for industrial activities. (relevant to S.O. 3.2.1.3 and 3.2.1.5)
- 3.3.9 Support the role township commercial precincts and local shopping centres fulfil in serving local needs by enabling commercial development that is appropriately sized for that purpose. (relevant to S.O. 3.2.1A and 3.2.1.5)
- 3.3.10 Avoid commercial rezoning that is likely to undermine the key local service and employment function role that the centres outside of the Queenstown and Wanaka town centres, Frankton and Three Parks fulfil. (relevant to S.O. 3.2.1.5)
- 3.3.11 Provide for a wide variety of activities and sufficient capacity within commercially zoned land to accommodate business growth and diversification. (relevant to S.O. 3.2.1A, 3.2.1.1, 3.2.1.2, 3.2.1.5, 3.2.1.6, and 3.2.1.9)

## Climate Change

- 3.3.12 Encourage economic activity to adapt to and recognise opportunities and risks associated with climate change.

## Urban Development

- 3.3.13 Apply Urban Growth Boundaries (UGBs) around the urban areas in the Wakatipu Basin (including Jack's Point), Wanaka and Lake Hawea Township. (relevant to S.O. 3.2.2.1)
- 3.3.14 Apply provisions that enable urban development within the UGBs and avoid urban development outside of the UGBs. (relevant to S.O. 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2)
- 3.3.15 Locate urban development of the settlements where no UGB is provided within the land zoned for that purpose. (relevant to S.O. 3.2.1.8, 3.2.2.1, 3.2.3.1, 3.2.5.1 and 3.2.5.2)

## Heritage

- 3.3.16 Identify heritage items and ensure they are protected from inappropriate development. (relevant to S.O. 3.2.2.1, and 3.2.3.1)

## Natural Environment

- 3.3.17 Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna, referred to as Significant Natural Areas (SNAs). (relevant to S.O. 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.4.3 and 3.2.4.4)
- 3.3.18 Protect SNAs from significant adverse effects and ensure enhanced indigenous biodiversity outcomes to the extent that other adverse effects on SNAs cannot be avoided or remedied. (relevant to S.O. 3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.1.2, 3.2.4.3 and 3.2.4.4)
- 3.3.19 Manage subdivision and / or development that may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins so that their life-supporting capacity and natural



## STRATEGIC DIRECTION 3

character is maintained or enhanced. (relevant to S.O. 3.2.1.8, 3.2.4.1, 3.2.4.3, 3.2.4.4, 3.2.5.1 and 3.2.5.2)

### Rural Environment Activities

- 3.3.20 Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with: ~~significant nature conservation values or degrade the existing character of rural landscapes.~~ (relevant to S.O. 3.2.1A, 3.2.1.7, 3.2.5.1 and 3.2.5.2)
- protection of the landscape values of Outstanding Natural Features or Outstanding Natural Landscapes;
  - maintenance of the landscape character and maintenance or enhancement of the visual amenity values of Rural Character Landscape; or
  - maintenance of significant conservation values or Ngāi Tahu values, interests or customary resources.
- 3.3.22 Provide for rural living opportunities in areas identified on the District Plan maps as appropriate for rural living developments. (relevant to S.O. 3.2.1A, 3.2.1.7, 3.2.5.1 and 3.2.5.2)
- 3.3.24 ~~Ensure that cumulative effects of new subdivision and development for the purposes of rural living does not result in the alteration of the character of the rural environment to the point where the area is no longer rural in character.~~ (relevant to S.O. 3.2.1.8, 3.2.5.1, 3.2.5.2 and 3.2.5.3) Ensure that the effects of cumulative subdivision and development for the purposes of Rural Living does not compromise:
- the protection of the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes;
  - the maintenance of the landscape character of Rural Character Landscapes; and
  - the maintenance or enhancement of the visual amenity values of Rural Character Landscapes.
- 3.3.25 Provide for non-residential development with a functional need to locate in the rural environment, through a planning framework that recognises its locational constraints, while ensuring maintenance and enhancement of the rural environment. (relevant to S.O. 3.2.1A, 3.2.1.8, 3.2.1.9, 3.2.5.1 and 3.2.5.2).
- 3.3.26 That subdivision and / or development be designed in accordance with best practice land use management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District. (relevant to S.O. 3.2.1.8, 3.2.4.1 and 3.2.4.3)
- 3.3.27 Avoid the planting of identified exotic vegetation with the potential to spread and naturalise unless spread can be acceptably managed for the life of the planting. (relevant to S.O.3.2.4.2)
- 3.3.28 Seek opportunities to provide public access to the natural environment at the time of plan change, subdivision or development. (relevant to S.O.3.2.4.6)



# STRATEGIC DIRECTION 3

## Landscapes

- 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 landscape capacity:
- a. in Schedule 21.22 where applicable and otherwise through assessment processes; and
  - b. in accordance with the landscape assessment matters in SP[x.x.x.y] and sound landscape assessment methodology.
- ~~3.3.30 Avoid adverse effects on the landscape, and visual amenity values and natural character 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. (relevant to S.O.3.2.5) 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. in Schedule 21.22 where applicable and otherwise through assessment processes;
  - b. in accordance with the landscape assessment matters in SP x.x.x.x and sound 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 are identified in Schedule 21.22, ensure that new subdivision and development for the purposes of Rural Living:
- a. maintains that landscape character;
  - b. enhances any visual amenity value that Schedule 21.22 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 x.x.x.y;

## STRATEGIC DIRECTION 3

- i a landscape character area for assessment purposes is identified at an appropriate scale including by mapping;
  - ii the landscape character and visual amenity values of that landscape character area are identified; and
  - iii the 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 so identified in relation to that landscape character area.

3.3.32A — ~~Encourage plan changes to identify areas on the District Plan maps that are not within Outstanding Natural Features or Outstanding Natural Landscapes and that cannot absorb further change, and avoid residential development in those areas. (relevant to S.O. 3.2.1.8 and 3.2.5.2A)~~

*[Drafting note: relocated from SP 3.3.23 and amended]*

x.x.x.x **[to come new SPs for Values' Identification Frameworks]**

x.x.x.y **[to come new SP(s) for Landscape Assessment Methodology]**

x.x.x.z **[to come revision of the monitoring SPs 3.3.32B and following]** ~~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 from *[insert date interim decision on Topic 2 issued]*. Procedures for monitoring shall include:~~

- a. ~~keeping records, gathering information and undertaking or commissioning research addressing resource consent decisions granted for discretionary and non-complying activities, in particular residential subdivision use and development including evaluation of the commentary in those decisions to assess the implementation of the relevant provisions of Chapter 21, and objectives and policies of Chapters 3 and 6;~~
- b. ~~identification of areas that are subject to particular development pressure including field reports to evaluate the implementation of the relevant provisions of Chapter 21, and objectives and policies of Chapters 3 and 6;~~
- c. ~~recommendations as to the efficiency and effectiveness of the Rural Zone methods, and whether a plan change is necessary to achieve SO 3.2.5.~~

~~(Relevant to S.O. 3.2.5, 3.2.5.1, 3.2.5.2B and 3.2.5.2)~~

3.3.32C — ~~For the Rural Character Landscape areas in the Upper Clutha, within three years from *[insert date interim decision on Topic 2 issued]* the Council shall initiate monitoring, in addition and consequential to SP 3.3.32B that will include an evaluation of whether:~~

- a. ~~the cumulative effects of rural living activities are being effectively managed so as to implement SP 3.3.2332A and Policy 6.3.21.4.3 and achieve SO 3.2.5;~~



## STRATEGIC DIRECTION 3

- b. opportunities for extensions to existing urban settlements so as to implement Chapter 4 and achieve SO 3.2.2;
- c. opportunities to consolidate rural living development within existing nodes of rural living areas, including the existing Rural Residential and Rural Lifestyle Zones;
- d. opportunities to protect areas of significant indigenous biodiversity, or enhance or restore areas of indigenous biodiversity that could meet the criteria for being significant in Policy 33.2.1.8 (Chapter 33 Indigenous Vegetation and Biodiversity);
- e. opportunities to identify and manage rural production systems including to protect productive soils;
- f. opportunities to integrate land use planning and water quality management; and
- g. the outcomes of any consultation undertaken.

(Relevant to S.O. 3.2.5.2)

- 3.3.32D — If the monitoring required by SP 3.3.32C shows that SO 3.2.5 is not being achieved due to inadequacies in the relevant Rural Zone Rural Character Landscape provisions, the Council will notify a plan change within five years from [insert date interim decision on Topic 2 issued] to provide an alternative planning framework for the Upper Clutha Rural Character Landscapes. (Relevant to S.O. 3.2.5.2 and 3.2.5.2A)

### Cultural Environment

- 3.3.32 Avoid significant adverse effects on wāhi tūpuna within the District. (relevant to S.O.3.2.7.1)
- 3.3.33 Avoid remedy or mitigate other adverse effects on wāhi tūpuna within the District. (relevant to S.O.3.2.7.1)
- 3.3.34 Manage wāhi tūpuna within the District, including taonga species and habitats, in a culturally appropriate manner through early consultation and involvement of relevant iwi or hapū. (relevant to S.O.3.2.7.1 and 3.2.7.2)

### Regionally Significant Infrastructure

- 3.3.35 Provide for the functional needs of regionally significant infrastructure while managing its adverse effects on the environment. (relevant to S.O. 3.2.1.9)
- 3.3.36 Protect regionally significant infrastructure by managing the adverse effects of incompatible activities. (relevant to S.O. 3.2.1.9)



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[Blue text not Topic 2]

[Further internal consistency and consequential changes may be needed].

## 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 objectives 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 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 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

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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 Categorise the Rural Zoned landscapes in the District as:

- a. Outstanding Natural Feature (ONF);
- b. Outstanding Natural Landscape (ONL);
- c. Rural Character Landscape (RCL) (3.2.5.2, 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, 3.3.1A-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, Wanaka Airport 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).

6.3.1.4 Provide a separate regulatory regime for the Wakatipu Basin Rural Amenity Zone, 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. (3.2.1.1, 3.2.1.7, 3.2.1.8, 3.2.5.2A, 3.3.20-24, 3.3.32).

6.3.1.5 Classify the Open Space and Recreation zoned land located outside the Urban Growth Boundary as outstanding Natural Landscape, Outstanding Natural Feature or Rural Character Landscape, and provide a separate regulatory framework for the Open Space and Recreation Zones within which the remaining policies of this chapter do not apply. (3.2.5.1A, 3.2.5.2A)

6.3.1.6 In relation to Regionally Significant Infrastructure, the policies in 6.3.6.1 to 6.3.6.4 take precedence in the event of any conflict with other policies in this Chapter. (3.2.1.9, 3.2.5.1, 3.2.5.2, 3.3.30, 3.3.32, 3.3.36).



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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

- 6.3.2.1 Avoid urban development and subdivision to urban densities in the rural zones. (3.2.2.1, 3.2.5, 3.3.13-15, 3.3.30, 3.3.32A).
- 6.3.2.2 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, 3.3.19, 3.3.20, 3.3.30).
- 6.3.2.3 Ensure the District's distinctive landscapes are not degraded by production forestry planting and harvesting activities. (3.2.1.8, 3.2.5, 3.3.19, 3.3.29, 3.3.31).
- 6.3.2.4 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, 3.3.20).
- 6.3.2.5 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, 3.3.19, 3.3.30, 3.3.32A).
- 6.3.2.6 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. (3.2.1.7, 3.2.4.1, 3.2.5, 3.3.1A, 3.3.19, 3.3.20, 3.3.30, 3.3.32 A).
- 6.3.2.7 Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes in proximity to an Outstanding Natural Feature or Outstanding Natural Landscape does not compromise the landscape values of that the relevant Outstanding Natural Feature or Outstanding Natural Landscape. (3.2.5).
- 6.3.2.8 Encourage any landscaping to be ecologically viable and consistent with the established character of the area. (3.2.1.8, 3.2.5, 3.3.30, 3.3.32 A).

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

- 6.3.3.1 ~~Recognise that subdivision and development is inappropriate in almost all locations on Outstanding Natural Features and in Outstanding Natural Landscapes, meaning successful applications will be exceptional cases where the landscape or feature can absorb the change. (3.2.1.1, 3.2.5.1 A, B, 3.3.1A-C, 3.3.30). Recognise that subdivision and development is inappropriate on Outstanding Natural Features and in Outstanding Natural Landscape unless:~~
- a. landscape values are protected; and
  - b. in the case of any subdivision or development, all buildings and other structures and all changes to landform or other physical changes to the appearance of the land will be reasonably difficult to see from beyond the boundary of the site in question.

- 6.3.3.2 Ensure that the protection of Outstanding Natural Features and Outstanding Natural Landscapes includes recognition of any values relating to cultural and historic

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elements, geological features and matters of cultural and spiritual value to tangata whenua, including tōpuni and wahi tūpuna. (3.2.3.1, 3.2.5.1 A, B, 3.2.7.1, 3.3.16, 3.3.30, 3.3.33 - 35, Chapter 5).

- 6.3.3.3 ~~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. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1 A, B, 3.3.20, 3.3.30). 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.
- 6.3.3.4 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. (3.2.5.1 A, B, 3.3.25).
- 6.3.3.5 ~~Maintain the open landscape character of Outstanding Natural Features and Outstanding Natural Landscapes where it is open at present, taking into account circumstances where the loss of open character is outweighed by substantial indigenous biodiversity regeneration or enhancement that maintains landscape values. (3.2.1.7, 3.2.1.8, 3.2.4.1, 3.2.5.1 A, B, 3.3.1A, 3.3.20, 3.3.30).~~

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## 6.3.4 Managing Activities in Rural Character Landscapes

- 6.3.4.1 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, 3.2.5.2, A, B, 3.3.20- 24, 3.3.32A).
- 6.3.4.2 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, 3.2.5.2, A, B, 3.3.22, 3.3.24, 3.3.32 A).
- 6.3.4.3 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, 3.2.5.2, A, B, 3.3.23, 3.3.32 A).
- 6.3.4.4 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, 3.2.5.2, A, B, 3.3.1 A-C, 3.3.24-25, 3.3.32 A).
- 6.3.4.5 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, 3.2.5.2, A, B, 3.3.1 A-C, 3.3.24, 3.3.32 A).

- 6.3.4.6 Avoid adverse effects on visual amenity from subdivision, use and development that:

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- a. 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
  - b. 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, 3.2.5.1, A, B, 3.2.5.2, A, B, 3.3.20-21, 3.3.24-25, 3.3.30, 3.3.32).
- 6.3.4.7 In the Wakatipu Basin, avoid 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, A, B, 3.3.1A-C, 3.3.20, 3.3.24-25, 3.3.32~~).
- 6.3.4.8 In the upper Clutha Basin, subdivision and development maintains open landscape character where it is an important part an areas landscape values that is the existing character of the Rural Character Landscape. (3.2.1.1, 3.2.1.8, 3.2.5.2, A, B, 3.3.1A-C, 3.3.20, 3.3.24-26, 3.3.32 A).
- 6.3.4.9 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, 3.3.24, 3.3.32).

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## 6.3.5 Managing Activities on Lakes and Rivers

- 6.3.5.1 Manage the location, intensity and scale of structures on the surface and margins of water bodies including jetties, wharves, moorings and infrastructure 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, 3.3.1A-C, 3.3.26, 3.3.30, 3.3.32A).
- 6.3.5.2 Recognise the character of the Frankton Arm including the established jetties and wharves, and provide for their maintenance, upgrade or expansion. (3.2.4.3, 3.2.5, 3.3.30).
- 6.3.5.3 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 the District's distinctive landscapes. (3.2.1.1, 3.2.4.1, 3.2.4.4, 3.2.5, 3.3.19, 3.3.1A-C).
- 6.3.5.4 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, 3.3.1A-C, 3.3.30).

## 6.3.6 Managing Regionally Significant Infrastructure

- 6.3.6.1 Locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid adverse effects on Outstanding Natural Landscapes Features and Outstanding Natural Features Landscapes, while acknowledging that functional needs and/or the nature of the infrastructure may mean that this is not practicable in all cases. (3.2.1.9, 3.2.5.1 A, B, 3.2.6, 3.3.25, 3.3.30, 3.3.36).
- 6.3.6.2 In cases where it is demonstrated that regionally significant infrastructure cannot avoid adverse effects on Outstanding Natural Landscapes Features and Outstanding Natural Features Landscapes, avoid significant adverse effects so as to maintain the values



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that contribute to the outstanding nature, and remedy or mitigate other adverse effects on those landscapes and features. (3.2.1.9, 3.2.5.1, A, B, 3.2.6, 3.3.36).

6.3.6.3 In relation to Rural Character Landscapes and other amenity landscapes, locate, design, operate and maintain regionally significant infrastructure so as to seek to avoid significant adverse effects on the character of the landscape, while acknowledging that functional needs and/or the nature of the infrastructure may mean that this is not practicable in all cases. (3.2.1.9, 3.2.5.2, 3.2.6, 3.3.32, 3.3.36).

6.3.6.4 In cases where it is demonstrated that regionally significant infrastructure cannot avoid significant adverse effects on the character of the landscape, such adverse effects shall be remedied or mitigated. (3.2.1.9, 3.2.5.2, A, B, 3.2.6, 3.3.36).

## Chapter 2: Definitions

<b>Electricity Sub-transmission Infrastructure</b>	Means electricity infrastructure which conveys electricity between: <ul style="list-style-type: none"> <li>a. the National Grid and zone substations;</li> <li>b. renewable energy generation sources and zone substations; or</li> <li>c. zone substations.</li> </ul>
<b>Open Space</b>	Means any land or space which is not substantially occupied by buildings. For the Open Space Zone – Landscape Protection, and the Open Space and Recreation Zone, means any land or space which provides benefits to the general public as an area of visual, cultural, educational, or recreational amenity values  Excludes the presence of centre pivot and linear irrigators.
<b>Openness and Open Character</b>	Means any land or space which is not substantially occupied by buildings, structures or trees. The land is likely to include and be characterised by either one of or both of exotic pasture, indigenous grasslands and grey shrubland.  Excludes the presence of centre pivot and linear irrigators.
<b>Regionally Significant Infrastructure</b>	Means: <ul style="list-style-type: none"> <li>a. Renewable electricity generation activities undertaken by an electricity operator; and</li> <li>b. The national grid; and</li> <li>c. electricity sub-transmission infrastructure; and</li> <li>d. significant electricity distribution infrastructure as shown on the District Plan Maps; and</li> <li>e. Telecommunication and radio communication facilities; and</li> <li>f. State highways; and</li> <li>g. Queenstown and Wanaka airports and associated navigation infrastructure.</li> </ul>



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## Other Amendments (Topic 2 Subtopic 11 Infrastructure):

<p>Consequential changes to District Plan Maps</p>	<ol style="list-style-type: none"> <li>1. Delete "Aurora Distribution Lines – For information only" from the District Plan Maps Legend</li> <li>2. Add the following to the District Plan Maps Legend:             <ol style="list-style-type: none"> <li>a. "Electricity Sub-transmission Infrastructure"</li> <li>b. "Significant Electricity Distribution Infrastructure"</li> </ol> <p>Each type to be differentiated by different colour. Aurora suggests bright green for Electricity Sub-transmission Infrastructure and red for Significant Electricity Distribution Infrastructure as this is consistent with the Aurora GIS information available online so may reduce opportunities for confusion.</p> <p>The three significant electricity distribution infrastructure lines to be shown on the plan maps are:</p> <ul style="list-style-type: none"> <li>• Wanaka to Treble Cone</li> <li>• Maungawera to Makarora</li> <li>• Cardrona substation to the Cardrona Transformer at skifield base (pole 17698)</li> </ul> </li> </ol>
<p>Consequential changes to District Plan Maps</p>	<p>Recommended modification within ambit of Clause 16(2) Schedule 1 of the RMA.</p> <p>Amend the annotation on the District Plan Maps Legend from 'Transmission Corridor' to 'The National Grid', in order to better distinguish between the National Grid infrastructure and the new annotations of 'Electricity Sub-transmission Infrastructure' and 'Significant Electricity Distribution Infrastructure'.</p>



**Annexure 2****Values Identification Frameworks proposed by Messrs Barr and Fergusson*****Mr Barr's drafting******ONF/Ls******SP 3.3.29A***

*Specify in Schedule 21.22 Outstanding Natural Landscapes and Outstanding Natural Features that are likely to be subject to particular demand for subdivision, use and development over the planning period of the District Plan, while acknowledging that a lack of identification in Schedule 21.22 has no bearing as to whether a landscape or feature is less important in terms of landscape values or vulnerability to subdivision, use and development. (relevant to S.O. 3.2.5.1)*

***SP 3.3.29B***

*Describe in Schedule 21.22 those Outstanding Natural Landscapes and Outstanding Natural Features that are likely to be subject to particular demand for subdivision, use and development, based on the following attributes and values: (relevant to S.O. 3.2.5.1)*

- a. Biophysical;*
- b. Sensory; and*
- c. Associative.*

***SP 3.3.29C***

*When determining whether subdivision, use and development implements the relevant policies in Chapter 21, Chapter 6 and Strategic Policies of Chapter 3, and in addition to applying the Landscape Assessment matters in Part 21.21, protect the attributes and values within those particular Outstanding Natural Landscapes and Outstanding Natural Features by describing the following matters in Schedule 21.22: (relevant to S.O. 3.2.5.1)*

- a. the extent of the Outstanding Natural Landscapes and Features;*
- b. the key biophysical, sensory and associative attributes and values that contribute to the outstanding-ness of the landscape or feature and that need to be protected from adverse effects.*

***SP 3.3.29D***

*The Council shall undertake monitoring of the Rural Zone Outstanding Natural Landscapes and Features that have not been identified in Schedule 21.22 in order to assess whether SO 3.2.5 is being achieved. (relevant to S.O. 3.2.5.1)*



*Upper Clutha RCLs***SP 3.3.31A**

*Specify in Schedule 21.23 areas of Rural Character Landscapes within the Upper Clutha that are likely to be subject to particular demand for subdivision, use and development over the planning period of the District Plan, while acknowledging that a lack of identification in Schedule 21.23 has no bearing as to whether that landscape is less important in terms of landscape values or vulnerability to subdivision, use and development. (relevant to S.O.3.2.5.1)*

**SP 3.3.31B**

*Describe in Schedule 21.23 the attributes and values of Rural Character Landscapes within the Upper Clutha that are likely to be subject to particular demand for subdivision, use and development based on the following: (relevant to S.O.3.2.5.1)*

- a. *Potential landscape issues and constraints associated with additional development;*
- b. *Potential landscape opportunities and benefits associated with additional development;*
- c. *Environmental characteristics and amenity values to be maintained and enhanced; and*
- d. *A rating of the unit's capability to absorb development.*

**SP 3.3.31C**

*When determining whether subdivision, use or development implements the relevant policies in Chapter 21, Chapter 6 and Strategic Policies of Chapter 3, and in addition to applying the Landscape Assessment matters in Part 21.21, maintain or enhance the attributes and values within those particular Rural Character Landscapes within the Upper Clutha by describing the following matters in Schedule 21.23: (relevant to S.O.3.2.5.1)*

- a. *the extent of the landscape unit; and*
- b. *the key biophysical, sensory and associative attributes and values that contribute to the landscape or feature and that need to be maintained or enhanced.*

**SP 3.3.31D**

*The Council shall undertake monitoring of the Rural Character Landscapes within the Upper Clutha that have not been identified in Schedule 21.23 in order to measure whether SO 3.2.5 is being achieved. (relevant to S.O.3.2.5.1)*



**Mr Ferguson's drafting***Both ONF/Ls and the Upper Clutha RCLs*

**SP 3.3.29** *The identification of the District's landscapes shall include:*

- (a) *Landscape characterisation, using a consistent set or descriptors to provide an objective description of the landform, landcover and land use to inform a landscape evaluation.*
- (b) *Landscape evaluation to identify the values and qualities of the District's landscapes embracing biophysical, sensory and associative attributes, having regard to the following matters:*

<i>1. Biophysical attributes</i>	<i>a. Natural science factors, including geological, topographical, ecological and dynamic components; b. The presence of water including in seas, lakes, rivers and streams; c. Vegetation (native and exotic).</i>
<i>2. Sensory attributes</i>	<i>a. Legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes; b. Amenity Aesthetic values including memorability and naturalness; c. Wild or scenic values.</i>
<i>3. Associative attributes</i>	<i>a. Whether the values are shared and recognised; b. Cultural and spiritual values for Kāi Tahu, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features; c. Historical and heritage associations.</i>

- (c) *Input from stakeholders and the wider community.*

**SP 3.3.29A** *Protect the values and attributes described within Schedule 21.22 from inappropriate subdivision, use or development, having regard to:*

- (a) *In the event of any differences from the extent of Outstanding Natural Feature or Outstanding Natural Landscape identified on the District*



*Plan Planning Maps, a landscape assessment shall be undertaken in accordance with SP 3.3.29 (a) and (b).*

- (b) *An assessment of the attributes and values of the landscape using the appropriate parts of landscape assessment matters contained within 21.21.*
- (c) *Those particular values that contribute to the landscape or feature being outstanding, including any additional values and qualities found as part of a project specific assessment made under (a) above.*

**SP 3.3.30** *Protect outstanding natural values and outstanding natural features against inappropriate development by maintaining the scheduled outstanding values of the feature or landscape.*

**SP 3.3.31A** *Maintain or enhance the values and attributes described within Schedule 21.23 from the adverse effects of subdivision, use or development, having regard to:*

- (a) *In the event of any differences from the extent of the Rural Character Landscape identified on the District Plan Planning Maps, a landscape assessment shall be undertaken in accordance with SP 3.3.29 A) AND B).*
- (b) *An assessment of the attributes and values of the landscape using the appropriate parts of landscape assessment matters contained within 21.21.*
- (c) *Those particular values that contribute to the landscape or feature being highly valued, including any additional values and qualities found as part of a project specific assessment made under a) above.*

**SP 3.3.32B** *The Council shall undertake the following work relating to the identification and scheduling of the values of the District's landscapes:*

- (a) *The preparation of landscape assessments to identify the Outstanding Natural Features and Landscapes, and the Rural Character landscapes of the District using the process contained with Policy 3.3.29, by the following dates:*
  - (i) *Within the High Priority areas of the District, 12 months from the date of this policy becoming operative; and*
  - (ii) *For the remainder of the District, 2 years from the date of this policy becoming operative.*
- (b) *For the purposes of (a) (i) the High Priority areas are:*
  - (i) *The Upper Clutha Rural Character Landscape;*
  - (ii) *The Rural Character Landscapes outside of the Wakatipu Basin;*
  - (iii) *The Cardrona Valley;*
  - (iv) *The rural areas around Glenorchy;*
  - (v) *[Insert other areas based on evidence];*
  - (vi) *...*



- (c) *The outputs from any landscape assessment, which shall be inserted into the plan through a variation or plan change, include:*
- (i) *An identification of the extent of the Outstanding Natural Features and Landscapes and Rural Character Landscapes for insertion into the District Plan Planning Maps;*
  - (ii) *A schedule of the values and attributes for each of the identified landscapes, which may be broken into separate character areas, shall be inserted into Chapter 21 Rural Areas of the District Plan;*
  - (iii) *For the High Priority areas, the schedule of values and attributes shall also include:*
    - *Identification and description of individual Landscape Units;*
    - *A description of landscape character sensitivity and visual sensitivity for each Landscape Character Unit;*
    - *A description of the primary threats to landscape values;*
    - *Rating of the capacity of each Landscape Character Unit to absorb further change;*
    - *Identify parameters to benchmark the monitoring of change within the landscape over time.*



## Annexure 3

Appeals, appearances and summary of Topic 2 outcomes<sup>181</sup>

Appeals	Appearances (s274 parties additional to below)	Outcomes (AP: allowed in part; DP: declined in part; Adj = determination of relief adjourned)
Federated Farmers of NZ (053)	No	AP/DP
Upper Clutha Environmental Society (Inc) (056)	Yes	AP/DP
Kawerau Jet Services Holdings Ltd (082)	Yes	DP
Mt Cardrona Station Ltd (083)	Yes	AP
L & J Burdon (091)	No	DP
Trojan Helmet Limited (092)	Yes (Topic 1 submissions)	Adj ('resorts SP')
GW Stalker Family Trust, Tylden, Strain, B & J Walker Family Trust (Ladies Mile Consortium) (099)	Yes	AP/DP
Soho Ski Area Ltd (104)	Yes	AP/DP
Treble Cone Investments Ltd (107)	Yes	AP/DP
Cardrona Alpine Resorts Ltd (117)	Yes	DP
Waterfall Park Developments Ltd (124)	Yes	AP/DP
Remarkables Park Ltd (126)	Yes	AP/DP
Queenstown Park Ltd (127)	Yes	AP/DP
Slopehill Properties Ltd (129)	No	AP/DP
Real Journeys Ltd (131)	Yes	AP/DP
M & C Burgess (136)	Yes	AP/DP
Real Journeys Ltd (t/a Go Orange Ltd) (138)	Yes	AP/DP
Allenby Farms Ltd (148)	Yes (Decision 2.1)	DP
Darby Planning Ltd (150)	Yes	AP/DP
NZ Tungsten Mining Ltd (151)	Yes	DP

<sup>181</sup> Appellants regarding regionally significant infrastructure provisions not listed as determination will be made separately in view of settlement reached.





## 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

