

BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH

I MUA I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI

**Decision No. [2020] NZEnvC 158**

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: In Chambers at Christchurch  
Date of Decision: 21 September 2020  
Date of Issue: 21 September 2020

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**INTERIM DECISION OF THE ENVIRONMENT COURT**  
**Topic 2: Rural Landscapes – Priority Areas**  
**Decision 2.5**

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A: QLDC's proposed 'Priority Areas' for inclusion in Strategic Policy or Policies for the 'Values Identification Framework' described in Decision 2.2 for Outstanding Natural Features and Landscapes are confirmed as appropriate (subject to the noted mapping adjustments, and reservation of determination of the



appropriateness of the proposed Clutha River ONF Priority Area).

- B: Determination of the appropriate PA(s) for the Upper Clutha RCL is reserved.
- C: Directions in Decision 2.2 on expert conferencing and related matters are confirmed, subject to noting that further directions will issue, following a judicial teleconference as to the matters noted at [82] (parties are to ensure counsel or representatives are available, at short notice).
- D: Costs are reserved, subject to timetable directions to be made in due course.

## REASONS

### Introduction

[1] This is a further decision on appeal points assigned to Topic 2: Rural Landscapes of Stage 1 of the review of the Queenstown Lakes District Plan ('PDP'). An issue Decision 2.2<sup>1</sup> addressed regarding the appealed 'decision version' provisions in Topic 2 ('PDP-DV') was a lack of effective response to ss6(b) and 7(c) of the Resource Management Act 1991 ('RMA'). Decision 2.2 made findings as to a need to address this through new Strategic Policies ('SPs') in Ch 3, including:<sup>2</sup>

[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

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

<sup>2</sup> Decision 2.2 at [139]-[141], [151], [152], [161]-[180].



- 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).

...

[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).

...

#### ***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 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.<sup>3</sup>

[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 Priority 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

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There is a small matter of clarification to note regarding the finding at [166(c)]. As Mr Barr noted in evidence, the identification of an area as a Priority Area does not connote any greater landscape value. Rather it is driven by known development pressure matters. This point of detail should be consolidated in finalising the drafting of provisions. This position is similar for RCLs.





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 Ferguson 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.

[2] Related directions in Decision 2.2 required Queenstown Lakes District Council ('QLDC') to report its position on:<sup>4</sup>

- (a) 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);
- (b) the mapped geographic extent of each Priority Area; and
- (c) date(s) for Sch 1 plan change(s) for specification in each set of SPs for the Values' Identification Frameworks.

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<sup>4</sup> Decision 2.2 at [525(d)].



[3] Decision 2.2 also reserved leave for any party, after consultation with QLDC, to apply to the court for s293 directions for stated purposes, including to “provide for changes to the ODP for the purposes of including schedules of landscape values in relation to an ONF or ONL”.

[4] QLDC responded to those directions by memorandum dated 10 July 2020.

[5] Reply memoranda were received from Mt Cardrona Station Limited ('MCS'),<sup>5</sup> Speargrass Properties Limited ('SPL'),<sup>6</sup> Queenstown Park Limited ('QPL'),<sup>7</sup> Dr John Cossens,<sup>8</sup> and various parties represented by Anderson Lloyd ('Anderson Lloyd parties').<sup>9</sup> QLDC responded to those memoranda on 28 July 2020.<sup>10</sup>

[6] We start with a summary of QLDC's proposed approach before addressing other parties' positions.

#### **QLDC's proposed PAs**

[7] QLDC's proposes some twenty-seven PAs.<sup>11</sup>

[8] Fourteen of these are in ONLs: West Wakatipu Basin, Queenstown Bay and environs, Lake Hayes and Slope Hill, Northern Remarkables, Central Wakatipu Basin Coronet Area, East Wakatipu Basin and Crown Terrace Area, Victoria Flats, Cardrona Valley, Mount Alpha, Roys Bay, West Wanaka, Dublin Bay, Hawea South North Grandview, and Lake McKay Station and environs. Twelve are in ONFs: Peninsula Hill, Ferry Hill, Shotover River, Morven Hill, Lake Hayes, Slope Hill, Feehly Hill, Arrow River, Kawarau River, Mt Barker, Clutha River and Mt Iron.

[9] For this set, QLDC generally started by considering where there are development

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<sup>5</sup> Memorandum of counsel for Mt Cardrona Station Limited dated 17 July 2020.

<sup>6</sup> Memorandum of counsel for Speargrass Properties Limited dated 17 July 2020.

<sup>7</sup> Memorandum of counsel for Queenstown Park Limited dated 17 July 2020.

<sup>8</sup> Memorandum on behalf of Dr John Cossens dated 17 July 2020, supplementary memorandum on behalf of Dr John Cossens dated 29 July 2020.

<sup>9</sup> Memorandum of counsel on behalf of various parties dated 21 July 2020. This appears to be on behalf of all the appellants and s274 parties Ms Baker-Galloway acts for who have an interest in Topic 2.

<sup>10</sup> Supplementary memorandum of counsel for QLDC dated 28 July 2020.

<sup>11</sup> Memorandum of counsel for QLDC dated 10 July 2020, Appendix A.



pressures within the Rural Zone and Open Space Recreation Zone ONF/Ls ('Development Pressure Areas', 'DPAs').<sup>12</sup> QLDC explains this analysis as focussing on:<sup>13</sup>

- (a) Areas where consent applications are frequently lodged, whether they are granted or refused;
- (b) Areas where certain existing activities (including commercial recreation) could be expected to grow over the life of the ODP;
- (c) Areas that are, or have been, subject to recent rezoning appeals, and the land on the periphery of those areas;
- (d) Areas that were subject to rezoning submissions refused by Council during the Stage 1 or 2 hearings, with the rezoning submissions indicating the potential to move away from the underlying Rural Zone or seek consents under the Rural Zone;
- (e) Areas that were subject to submissions (or appeals) seeking to remove the ONL landscape categorisation (from either part, or all, of the land); and
- (f) Parts of the ONL on the fringes, or in close proximity to urban areas, or immediately outside the Urban Growth Boundary.

[10] The two exceptions where DPAs were not identified for listed PAs are East Wakatipu Basin and Crown Terrace PA, and West Wakatipu Basin PA. QLDC considers these areas should be PAs, nevertheless, given that the Wakatipu Basin surrounds are scheduled. QLDC's mapping of these proposed PAs extends up to the crests of the enclosing mountains. QLDC explains that this is to capture the entire visual catchment of the Wakatipu Basin and Queenstown. QLDC submits that listing these areas as PAs is warranted given their high visibility, and the importance of the landscape values and visual amenity provided by this backdrop. In essence, QLDC submits that those factors warrant having these areas subject to the VIF process, notwithstanding a present lack of development pressure.

[11] QLDC explains that its proposed PAs include several of the mapped terrestrial ONFs within the District, and the mapped ONF rivers.

[12] Decision 2.2 did not direct that QLDC identify any PAs within ONFs. Nevertheless, we find QLDC's choice to do so appropriate. It is helpful to set out QLDC's reasoning:<sup>14</sup>

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<sup>12</sup> Memorandum of counsel for QLDC dated 10 July 2020 at [7].  
<sup>13</sup> Memorandum of counsel for QLDC dated 10 July 2020 at [13].  
<sup>14</sup> Memorandum of counsel for QLDC dated 10 July 2020 at [10].





- (a) where any ONF is subject to development pressure, as shown on associated maps, the ONF should be listed as a PA;
- (b) where there is a lack of identified development pressure within certain ONFs, listing these ONFs as PAs is still considered appropriate on the basis that these ONFs are located adjacent to, or in some cases, surrounded by, areas that provide for some form of developments; and
- (c) the listed ONFs are for the most part relatively confined features, that already have discrete boundaries mapped in the PDP.

[13] QLDC's remaining PA is the entire Upper Clutha RCL, as shown on the PDP plan maps.

[14] By way of background to this choice of a very large PA, QLDC explains how it has undertaken to complete a landscape study of the entire RCL. In essence, it has given this undertaking to the Upper Clutha Environmental Society Inc ("UCESI"). That is in the context of UCESI's withdrawal of a High Court appeal. We observe that QLDC's election to take this approach represents an effective reversal of the position it took in the hearing for Decision 2.2. Nevertheless, QLDC is now of the view that the entire Upper Clutha RCL should be listed as a PA so as to be subject to the Values Identification Framework process.<sup>15</sup> QLDC has not provided a mapped boundary for this PA. It explains that this is not necessary in that the area can be identified as comprising "the Rural Zone land not within the ONF/L".

### ***Specification of dates for Sch 1 plan changes in the SPs***

[15] Decision 2.2 includes the following finding:<sup>16</sup>

[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.

[16] As noted, Decision 2.2 made a related direction that QLDC provide "date(s) for Sch 1 plan change(s) for specification in each set of SPs for the Values Identification Frameworks", either by supplementary evidence or memorandum of counsel.

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<sup>15</sup> Memorandum of counsel for QLDC dated 10 July 2020 at [18].

<sup>16</sup> Decision 2.2 at [179].



[17] QLDC has not yet complied with that direction.

[18] With reference to some authority,<sup>17</sup> Ms Scott submits that specifying dates in the SPs would not create an enforceable obligation on QLDC to institute plan change or variation processes.<sup>18</sup> In particular, counsel points out that the court “cannot impose a legally enforceable duty of this nature on Council [through] the provision of the ODP, due to the interference that it would create with Council’s separate decision-making function”. Ms Scott submits that the inclusion of dates in the SPs by which QLDC is required to notify a Sch 1 plan change would be incompatible with its statutory decision-making functions under the RMA and the Local Government Act 2002.<sup>19</sup>

[19] Ms Scott submits that, in any case for various reasons it would be premature and not practicable to specify dates for inclusion in the SPs for the Values Identification Frameworks at this time. She explains:<sup>20</sup>

- (a) A decision is required on the list and mapping of the PAs that are to be subject to the VIF. The landscape boundaries of those PAs will then be subject to expert conferencing, and then we anticipate there will be another decision from the Court confirming those are the appropriate boundaries. Until those steps are completed, Council will not fully understand the resourcing requirements (including the capacity of its landscape experts and its own budgetary implications), or the length of time required to complete the assessment and subsequent proposed values schedules (including consultation, as required);
- (b) Expert conferencing, and then an opportunity for parties to comment on the Joint Witness Statement followed by a decision of the Court are all needed for the SPs for the VIF that will crystallise the requirements of the scheduling methodology. Without a final set of SPs, Council is not able to enter into procurement for the relevant experts or finalise its plan for the implementation of the VIF, and any complexities associated with the scheduling methodology (which may have resourcing financial implications). The final methodology will have a direct bearing on Council’s resourcing, and the length of time required before any plan change(s) can be notified, making it essentially impossible to specify dates at this stage.
- (c) In relation to the Upper Clutha, (as discussed below) Council considers that a section 293 process is required before SPs for a VIF relative to the Upper Clutha RCL can

<sup>17</sup> *Awatea Residents’ Association Incorporated v Christchurch City Council* C78/2006; *Connet Properties Ltd v New Plymouth City Council* W26/88; *The Power Co Ltd v Gore District Council* 1997 1 NZLR 537, CA 267/95.

<sup>18</sup> Memorandum of counsel for QLDC dated 10 July 2020 at [25].

<sup>19</sup> Memorandum of counsel for QLDC dated 10 July 2020 at [30].

<sup>20</sup> Memorandum of counsel for QLDC dated 10 July 2020 at [32].



be introduced into the ODP. While the use of section 293 remains subject to the Court's consideration, this will affect the timing of any decision relative to the Upper Clutha RCL PA, such that specifying dates at this stage is not possible;

- (d) It is further submitted that it would be inappropriate to pre-empt the outcome of what any section 293 process might be, and whether there should be any change to the SPs that set out a methodology for the Upper Clutha RCL landscape study;
- (e) Specifying dates at this stage for the notification of the resulting plan change(s) assumes that New Zealand will not revert back to a more stringent Covid-19 level, which would limit, or potentially prevent, domestic travel and site visits.

***Whether s293 directions are needed for scheduling of the ONF/Ls and the Upper Clutha RCL***

[20] Ms Scott submits that the Darby appeal provides the necessary scope to introduce SPs that set out a methodology by which landscape values and capacity for the ONF/L resource are assessed.<sup>21</sup>

[21] By contrast, QLDC submits that s293 directions would be appropriate to give effect to the relevant changes to the ODP for the Upper Clutha RCL. In particular, Ms Scott points out that scheduling of values was not pursued by any party for the RCL. She analyses the UCESI and Darby Group appeals as being of most relevance. However, the relief UCESI pursued was an Upper Clutha Land Use Planning Study to inform a PDP variation, and that relief was declined. As for the Darby Group appeal, Ms Scott points out that explicitly sought to distinguish ONF/Ls (for which it pursued scheduling) from the RCL (for which it explicitly did not).<sup>22</sup>

**Positions of other parties**

***Mt Cardrona Station Limited ('MCS')***

[22] For MCS, Mr Goldsmith opposes QLDC's proposed Cardrona Valley PA. MCS owns all of the land within the Mount Cardrona Station Special Zone ('MCSSZ').<sup>23</sup> It seeks that the Cardrona Valley PA be amended by deleting all of the MCSSZ from the proposed PA.

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<sup>21</sup> QLDC memorandum of counsel dated 10 July 2020 at [34]-[43].

<sup>22</sup> QLDC memorandum of counsel dated 10 July 2020 at [34]-[43].

<sup>23</sup> Memorandum of counsel for Mt Cardrona Station Limited dated 17 July 2020 at [2].





[23] Mr Goldsmith questions whether there is jurisdiction for the MCSSZ to be included within a PA under this process given that, as he submits, the MCSSZ “is not subject to” the review of the ODP.

[24] Mr Goldsmith submits that there is no value in having the MCSSZ part of this PA. Firstly, it is one of the (yet to be confirmed) Exception Zones. As such, most of the landscape related PDP objectives and policies will not apply to it. Furthermore, it is a Special Zone with its own set of objectives, policies, rules and development structure plan. As such, counsel submits that there is no need to apply the PA and related consequential plan change processes to protect the values of the MCSSZ because those values are already protected by the provisions of the MCSSZ. Mr Goldsmith submits that the more sensible approach is to leave matters aside to any future plan change processes that would bring all Special Zones into the ODP review. He submits that, in any such future process, the values associated with the MCSSZ could then be evaluated and, if need be, made subject to further or different protection.

***Queenstown Park Limited ('QPL')***

[25] QPL owns Queenstown Station which is a 2,000ha site on the true right bank of the Kawarau River which extends to an altitude of approximately 1000 masl. It has related interests in the Remarkables ONL.

[26] Part of QPL's land has been identified as a DPA in the Council's mapping. Mr Young explains that QPL does not fundamentally disagree with that nor with the fact that the QPL land that is subject to development pressure is recognised as a PA. However, counsel points out that QLDC's mapping of the DPA on its land goes well beyond the location and scale of its development aspirations. More substantively, QPL considers that QLDC's proposed “Northern Remarkables” PA is not identified at a proper landscape scale. He explains that QLDC's mapping would show the PA boundary running through the west face of the landscape of the Remarkables without any apparent justification. Mr Young submits that the more appropriate landscape scale would map the full geographic extent of the Remarkables.

***Dr Cossens***

[27] Dr Cossens criticises QLDC for failing to undertake meaningful consultation before settling on its list of proposed PAs. He characterises QLDC's PAs as poorly





constructed and explained and meaningless.<sup>24</sup> He argues that QLDC's recommendation that the entire Upper Clutha RCL be a PA is an outcome of QLDC's expediency. In particular, he refers to QLDC's commitment to UCESI to undertake a landscape study of the Upper Clutha Basin. He observes that this amounts to a "180 degrees" turn from the case QLDC presented in the Decision 2.2 hearing. He records that QLDC's earlier lack of willingness to undertake a study to underpin the ODP review has resulted in parties incurring very significant costs and time wastage.

[28] Furthermore, Dr Cossens submits that QLDC ought to have consulted parties about its election to treat the entire Upper Clutha RCL as a PA. He submits that QLDC's choice of the entire Upper Clutha RCL as a PA fails to respond to the findings and directions in Decision 2.2. Those include findings as to the importance of remedial Sch 1 plan change or variation processes being properly targeted to whether there are development pressures, including for the Upper Clutha RCL. In particular, he refers to findings as to the fundamental weakness in the RCL of failing to identify landscape character areas in the Upper Clutha or to "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". He also notes the court's related findings concerning the targeting of any s293 directions for the Upper Clutha RCL to "those areas where development pressure is higher". In particular, these include the court's finding that the new SPs for Values Identification Frameworks would serve to give policy direction to future plan change(s) that are targeted to including:<sup>25</sup>

... 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).

[29] Dr Cossens submits that, by failing to respect the court's findings, QLDC will impede capacity to achieve what the court considered appropriate for the Upper Clutha RCL. In essence, QLDC would have its landscape study effectively subsume what the court found. Its objective should be, instead, that its study be aided by prior identification of PAs that truly respond to Decision 2.2. He also sets out some thoughts and observations on how drivers of development pressure might be identified and as to criteria for determining PAs for the Upper Clutha RCL.

<sup>24</sup> Memorandum on behalf of Dr Cossens dated 17 July 2020 at [3].

<sup>25</sup> Dr Cossens helpfully refers to Decision 2.2 at [149], [152], [162]-[164].



***Anderson Lloyd parties***

[30] On behalf of the Anderson Lloyd parties (including Darby Group and several others), Ms Baker-Galloway opposes the basis upon which QLDC has identified PAs. Counsel submits that part of QLDC's basic criteria appears to be simply whether there is or was a submission or appeal seeking rezoning, or a recent consent application and this "falls far short of the 'significant anticipated development pressure' reference from the Court's decision at [167], and the Court's forward-looking reference to what might be anticipated during the life of the PDP."<sup>26</sup>

[31] Ms Baker-Galloway agrees with Dr Cossens that QLDC has not derived its PAs on a properly-principled basis. She submits that the fact that resource consents have been granted and implemented in an area does not provide logical justification for concluding there will be development pressure there in the future, for the life of the reviewed ODP.

[32] Counsel also submits that none of the reasons QLDC advances for not complying with the court's clear direction to specify dates for Sch 1 plan changes withstand scrutiny.<sup>27</sup> Ms Baker-Galloway submits that indicative dates for Sch 1 processes would provide a degree of confidence and certainty that Sch 1 processes will be forthcoming. As such, they are important for affected landowners and parties and the community. Counsel submits that indicative dates could be expressed as being sequential, following on from what other intervening processes are to be completed first, such as whatever s293 processes are ultimately notified.

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

- (a) Hansen Family Partnership own much of the land that QLDC has identified

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<sup>26</sup> Memorandum of counsel on behalf of various parties dated 21 July 2020 at [2].

<sup>27</sup> Memorandum of counsel on behalf of various parties dated 21 July 2020 at [8].



- as the Ferry Hill ONF DPA;
- (b) Robert Stewart owns land east of Arthurs Point North between the Coronet Peak access road and Malaghans Road;
  - (c) Lesley and Jerry Burdon own land at the western edge of Lake Hawea;
  - (d) Debbie Maccoll owns land within QLDC's Morven Hill DPA and Morven Hill ONF PA; and
  - (e) Chard Farm Limited has a vineyard within the Northern Remarkables PA.

[34] Ms Baker-Galloway submits that the court can make directions under s293 for those purposes.

[35] Ms Baker-Galloway notes Friends of Wakatipu Gardens and Reserves Incorporated supports the inclusion of the Queenstown Bay environs as a PA.

[36] Ms Baker-Galloway explains that Allenby Farms Limited ('Allenby'), which owns part of the Mt Iron ONF and some adjacent land, does not object to the rural zoned part of the ONF owned by Allenby Farms being listed as a PA. However, counsel submits that the justification for identifying any DPA is outdated given that there is no longer any rezoning appeal and no live consent application within the rural zoned ONF. Allenby also seeks to ensure Area A (as to be removed from the Mt Iron ONF in Decision 2.1) continues to be excluded from any PA, along with any other land located within the Urban Growth Boundary.

***Parties seeking mapping adjustments to reflect consent order outcomes***

[37] QLDC's reply acknowledges the need to make the adjustments requested by these parties, but they are noted for completeness.

*Speargrass Properties Limited ('SPL')*

[38] For SPL, Mr Goldsmith raises a concern that part of the PA identified as 'West Wakatipu Basin' encompasses a small area of land that was excluded from the relevant ONL by consent order, such that it is now classified as RCL.<sup>28</sup> The consent order was issued on 18 March 2020 and allowed an appeal by SPL by amending the location of the

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<sup>28</sup> Memorandum of counsel for Speargrass Properties Limited dated 17 July 2020 at [2].





relevant ONL boundary.<sup>29</sup> Counsel seeks that this be rectified by exclusion of the relevant RCL land from the PA.

*Steve Xin for Sunshine Bay Limited*

[39] For Sunshine Bay Limited, Ms Baker-Galloway notes a similar need for a mapping adjustment in light of a consent order. The order, dated 23 September 2019, excluded some Sunshine Bay Limited land to the immediate west of Sunshine Bay. QLDC's proposed West Wakatipu Basin PA includes this land but its memorandum (in Appendix B) notes that this mapping requires updating to reflect the consent order's modification to the ONL boundary.

#### **QLDC's reply**

[40] As noted, QLDC agrees with SPL and Sunshine Bay Limited that the mapping of the proposed SAs needs to be adjusted to exclude land that, as a consequence of consent orders, is no longer ONL.<sup>30</sup>

[41] In response to MCS, Ms Scott submits that there is no jurisdictional bar to including the MCSSZ in its proposed Cardrona Valley PA such that it is subject to the SPs for the Values Identification Frameworks.<sup>31</sup> In particular, Ms Scott points out that the court has already determined that the Strategic chapters of the PDP (including Chapters 3 and 6) apply across the District, including to all ODP zones. In essence, therefore, the fact that the MCSSZ was not itself notified to be part of the ODP review does not mean there is a jurisdictional bar to now having a SP, for the approach to future Sch 1 processes for the identification of ONF/L values, that refers to it.<sup>32</sup> As a separate matter, QLDC submits that it would be appropriate for the MCSSZ to be one of the 'Exception Zones' to which new SPs 3.1B.5 and 3.1B.6 would apply.<sup>33</sup>

[42] In reply to the Anderson Lloyd parties, Ms Scott points out that the stance taken by Ms Baker-Galloway, to the effect that the court should use s293 even for scheduling

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<sup>29</sup> In relation to SPL's appeal ENV-2019-CHC-92.

<sup>30</sup> Supplementary memorandum of counsel for QLDC dated 28 July 2020 at [7].

<sup>31</sup> Supplementary memorandum of counsel for QLDC dated 28 July 2020 at [3].

<sup>32</sup> Memorandum for QLDC addressing the Exception Zone Framework dated 28 April 2020 at [30].

<sup>33</sup> The Exception Zone Framework provisions, including MCS's case on them, is the subject of our companion separate Decision 2.6.





ONF/L values for PAs, is not compatible with Darby Group case for Decision 2.2. Specifically, Ms Scott notes the fact that Darby Group's own appeal sought scheduling, and its planning witness, Mr Ferguson, recommended for a values identification framework approach. Ms Scott also notes Darby Group's closing submissions for that hearing acknowledged that there was no need to use s293.<sup>34</sup>

[43] In response to Dr Cossens, Ms Scott makes the overall submission that QLDC's approach to the PAs is in the court's hands. Counsel also responds in some detail to Dr Cossens, including:<sup>35</sup>

... Council is entitled to, and indeed required to, update its position based on the Court's decision and the work required of it as directed in Decision 2.2. In addition, there is a distinction between a full *land use planning study* as was pursued by UCESI during the hearing and the *landscape study* that the Topic 2 decision directed for RCL PA areas. ...

... Given that one of the outputs of the Upper Clutha RCL landscape study will be to identify where there is capacity to absorb further development, identifying where development pressure exists will be a central indicator.

... Parties were entitled to advise the Court of their views of the extent of PAs in the Upper Clutha RCL as timetabled. Dr Cossens is the only party that has taken up that opportunity in relation to the Upper Clutha RCL.

... Dr Cossens has focussed on demand for semi-urban or rural living opportunities. While demand for that type of development is clearly relevant in terms of identifying where there is development pressure in the ONF/L and Upper Clutha RCL, Council has considered other forms of subdivision, use and development when identifying its Development Pressure Areas and proposed PAs (ie. rural living, agriculture, viticulture, ski area activities and other commercial recreational activities, commercial and industrial activities). In doing so, Council has borne in mind the Court's finding, at [166] of Decision 2.2, that the landscape assessments of the PAs will help to "test the settings in the district plan for enablement of subdivision, use and development" generally, not only for subdivision for rural living opportunities.

... Council considers its proposed PAs to be reasonable based on both supply and demand, and that there is no material difference between the criteria set out by Dr Cossens (in paragraph 38) and those set out in paragraph 13 of Council's PA memo.

... Council does not agree with Dr Cossens' suggestion that the identification of the entire

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<sup>34</sup> QLDC supplementary memorandum of counsel, dated 28 July 2020, at [11]-[17].

<sup>35</sup> QLDC supplementary memorandum of counsel, dated 28 July 2020, at [10].



Upper Clutha RCL would result in 'needless additions to the schedules of values'. In his paragraph 34(b), he infers that the RCL landscape classification would be where "most subdivision applications would happen", which is a sound reason why the Upper Clutha RCL may benefit from scheduling. In addition, Mr Ferguson, for Darby, filed evidence that "it would seem logical for all of the Upper Clutha RCL to be one priority area", due to the relationship between that study area and the definition of the landscape to which it relates.

## Discussion

### *QLDC's proposed Upper Clutha RCL Priority Area*

[44] In a procedural decision declining Dr Cossens' application for rehearing directions under s294 ('Procedural Decision'), the court observed:<sup>36</sup>

It was open to QLDC to respond to the directions in Decision 2.2 in the manner it has in its 10 July 2020 memorandum (including that the entire Upper Clutha RCL be identified as a Priority Area). Whether or not it will be so identified is a matter for the court to determine on the evidence before it.

[45] That finding was in the context of a determination that there was no proper justification to rehear Decision 2.2 on the various grounds advanced by Dr Cossens.

[46] It was open to QLDC to have responded in the manner it did. However, we must now determine whether or not this response is appropriate for the court's identified purposes. It was also QDLC's prerogative to have decided to undertake an Upper Clutha Landscape Study. However, that choice is not material to what we must determine. In particular, the Study is not a matter directed by the court. Indeed, QLDC's election to pursue it is in light of Decision 2.2's rejection of UCESI's related relief. While UCESI appealed that to the High Court, it elected to withdraw that appeal. Therefore, we can give no weight to Ms Scott's submissions as to any assistance as may arise from QLDC's anticipated outputs from that study. Quite simply, these are matters for QLDC not the court.

[47] Rather, the merits or otherwise of treating the entire Upper Clutha RCL as a PA are to be determined in light of what Decision 2.2 identifies as the substantive purpose of its intended Strategic Policies for a Values Identification Framework for the Upper

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<sup>36</sup> *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2020] NZEnvC 123 at [27].



Clutha. Having considered QLDC's approach in those terms, we find it does not assist to address that substantive purpose.

[48] QLDC's proposal to treat the entire Upper Clutha RCL as a PA sits in distinct contrast to the method it applied to identifying PAs within ONF/Ls. As set out at [9] above, for ONF/Ls, QLDC undertook analysis to identify so-termed 'Development Pressure Areas'. While some parties criticise the robustness of QLDC's methodologies for those purposes, they at least demonstrate a genuine response to the court's findings.

[49] By contrast, the key flaw in QLDC's proposal for the Upper Clutha RCL is its lack of focus on the drivers for prioritisation as found in Decision 2.2. Those are development pressures and associated vulnerabilities of landscape character areas in terms of both character and visual amenity values. Decision 2.2 is clear that Priority Areas are to be determined by reference to where the most significant development pressures are anticipated during the life of the ODP.<sup>37</sup>

[50] Decision 2.2 identified a fundamental weakness of the DV-PDP's Upper Clutha RCL was its failure to identify relevant landscape character areas. It noted the importance of rectifying this in order to properly respond to s7(c), RMA. It explained that 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.<sup>38</sup> Accepting the evidence of QLDC's peer review landscape expert, Ms Gilbert, it found it appropriate that the Upper Clutha Plan Values' Identification Framework provide for the mapping of RCL character areas in the ODP. It found that, for the Upper Clutha RCL, there needed to be 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.<sup>39</sup>

[51] QLDC's proposed Upper Clutha RCL PA does not assist to remediate those failings of the DV-PDP. It would not assist to identify the geographic extent landscape character areas most at risk of degradation through the intrusion into Rural areas of 'rural living' and other types of residential development. Nor would it assist to identify the

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<sup>37</sup> Decision 2.2 at [162] and [167].

<sup>38</sup> Decision 2.2 at [173].

<sup>39</sup> Decision 2.2 at [176]. The reference to 'character' being to landscape amenity and to 'amenity values' being to visual amenity values.





landscape character and associated visual amenity values of those areas. Whether or not QLDC's intended landscape study would ever assist on these matters is not for the court, for the reasons noted.

[52] As Decision 2.2 found, those failings in the DV-PDP mean that it does not yet give effected policy direction, in its Chs 3 and 6, to provide effectively against the degradation of landscape character in the Upper Clutha RCL. As such, it fails to properly respond to s7(c) RMA.<sup>40</sup>

[53] Decision 2.2 emphasised the importance of remediating the DV-PDP's flawed approach to the Upper Clutha RCL by properly directed Sch 1 plan change processes. QLDC's approach does not assist in the formulation of the intended Strategic Policies to direct future plan change(s) for the purposes noted in Decision 2.2, including to add):

- (a) maps identifying priority landscape character areas; and
- (b) Ch 21 schedules identifying landscape character, visual amenity values, and landscape capacity for those areas.

[54] Part D of Decision 2.2 sets out preliminary drafting of additional SPs to those ends,. These were to be completed, and supplemented by additional SPs on the Values Identification Frameworks, once expert conferencing and related steps are concluded such as to inform the court's final determination of Topic 2.

[55] In particular, we refer to the addition of SP 3.3.31x, 3.3.32x and 3.3.32y to supplement the DV-PDP's SP 3.3.31 as follows:<sup>41</sup>

- |         |  |
|---------|--|
| 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: <ul style="list-style-type: none"> <li>a. in Schedule 21.22 where applicable and otherwise through assessment processes;</li> <li>b. in accordance with the landscape assessment matters in SP x.x.x.x and sound landscape assessment methodology; and</li> </ul> |

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<sup>40</sup> Decision 2.2 at [141].

<sup>41</sup> Decision 2.2 at [312].





- 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.

[56] As discussed, Decision 2.2 determines that the additional SPs for the Values Identification Frameworks (to be confirmed following expert conferencing) would serve to give policy direction to future plan change(s). In the case of ONF/Ls, that direction would be for plan change(s) 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). For the Upper Clutha RCL, that direction would be for plan change(s) 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.

[57] For completeness, as Decision 2.2 explains, Mr Barr (QLDC's planner) and Mr Ferguson (called by Darby Group) each proposed drafting for such new Strategic Policies (their drafting being in Annexure 2 to that decision). The decision directed those



witnesses to undertake further expert witness conferencing to inform the court's final determination and drafting for this matter.

[58] The expert witness conferencing directed by Decision 2.2 was scheduled to occur between 24 August and 18 September 2020.<sup>42</sup> Related to that, counsel for QLDC made enquiries as to the timing of release of this decision. By Minute of 25 August 2020,<sup>43</sup> guidance was given. That included an observation that QLDC's proposal to treat the entire Upper Clutha RCL as a single PA "fails to accord with the directions and findings in Decision 2.2 and is inappropriate". It can be observed that the court's further considered position is that QLDC's approach, by its lack of proper targeting, does not assist to address that substantive purpose of Decision 2.2.

[59] If the court were to accept the entire Upper Clutha RCL as a Priority Area, significant challenges would be presented for the Sch 1 plan change processes for remediation of the DV-PDP's Upper Clutha RCL regime. Those challenges would be presented by a fundamental failure to elect where priorities for this should be initially applied. Without that, the scale of work involved can be expected to be much more significant than would be the case if the focus was on geographically confined areas (such as in and around urban areas). For example, that is in terms of mapping and identifying all relevant landscape character areas within the Upper Clutha RCL and identifying the landscape character and visual amenity values for each character area for inclusion in the PDP's Sch 21.22.

[60] It can be realistically anticipated that such a task, if timetabled, could take several years. A related difficulty, as we have noted, is that QLDC has, so far, declined to provide any dates for the instigation of any Sch 1 processes such as could be included in any SPs. We return to that matter at [71]. However, at this stage, we observe that it presents a prospect that no Sch 1 processes are instigated in the foreseeable future to fulfil the intention of remediating the flaws in DV-PDP's Upper Clutha RCL regime, as set out in Decision 2.2.

[61] That brings into focus the potential consequences for further subdivision and

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<sup>42</sup> At the time of writing this decision, we are informed that QLDC is to file a memorandum of counsel seeking for conferencing to begin on 29 September 2020. That would be addressed by separate Minute.

<sup>43</sup> Minute dated 25 August 2020 – Decision 2.2 – update on some matters to assist scheduled expert conferencing.



development for Rural Living in the Upper Clutha RCL pending proper remediation of these flaws. Pending completion of the intended Sch 1 processes, much would depend on the effective application of intended SP 3.3.32y. That could have significant consequences for the potential to pursue new subdivision or development for the purposes of Rural Living in the Upper Clutha RCL, and for the required processes for scrutinising applications, with attendant costs for applicants and QLDC. That is particularly given the intention in SP 3.3.32y not to allow new subdivision or development for the purposes of Rural Living except where the matters in SP 3.3.32y (a) and (b) are duly satisfied.

[62] The directions in Decision 2.2 entitled QLDC to respond on these matters either by memorandum of counsel or supplementary evidence. It elected to respond by memorandum. It has not assisted the court with any information as to benefits and costs of its preferred approach, for the court to evaluate it under s32, RMA.

[63] As for QLDC's submissions on the need to instigate a s293 process, we find that this is largely contingent on the position it has taken in proposing that the entire Upper Clutha RCL be a Priority Area for the purposes of implementing Decision 2.2. We reserve any further findings on this until greater clarity on the way forward from here is available.

[64] The court must now decide how best to proceed such as to continue progress towards final determination of Topic 2 matters. There are some related matters to consider, as we next address.

#### ***QLDC's proposed PAs for ONF/Ls***

[65] The 25 August 2020 Minute gave the following related guidance for the purposes of expert conferencing:

- (a) QLDC's fourteen proposed PAs for ONLs are appropriate (subject to some minor qualifications noted herein), i.e. the areas mapped and described as Queenstown Bay and environs, Lake Hayes and Slope Hill, Northern Remarkables Central Wakatipu Basin Coronet Area, East Wakatipu Basin and Crown Terrace Area, Victoria Flats, Cardrona Valley, Mount Alpha, Roys Bay, West Wanaka, Dublin Bay, Hawea South North Grandview and Lake McKay Station and environs;
- (b) QLDC's following proposed PAs for ONFs are similarly appropriate: Peninsula Hill, Ferry Hill, Shotover River, Morven Hill, Lake Hayes, Slope Hill, Freehly Hill, Arrow River, Kawarau River, Mt Barker, and Mt Iron (i.e. excluding Clutha River – see below)

...





[66] We have recorded the minor mapping discrepancies pointed out by two parties are accepted by QLDC. With regard to QLDC's PA for the Clutha River ONF, the Minute also records:

The PA for the Clutha River is closely related to determinations the court has yet to make on whether or not to make a s293 direction to extend the ONF boundaries, as QLDC has invited the court to consider, to the boundary with Central Otago District. Until that determination is made, it is problematic to proceed with expert conferencing for this. That is not to preclude experts from doing so, but to recognise that it may not be practicable until the court makes its decision on the boundaries issue. Perhaps a workable approach would be to assume two possible scenarios at this stage – one in which the court makes s293 directions such as to extend the ONF boundary and one that does not.

[67] We confirm those preliminary observations in finding QLDC's PAs for ONF/Ls (with the present exception of the Clutha River ONF) are sufficiently fit for purpose such that expert conferencing can proceed on that basis.

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

[69] Similarly, we do not accept Ms Baker-Galloway's submission that the court should instigate s293 processes for the benefit of the clients she has referred to who were not participants in the Topic 2 hearing for Decision 2.2. Rather, we accept Ms Scott's submissions on these matters (which we record as being closely aligned to those Ms Baker-Galloway presented for the Darby Group as is noted in Decision 2.2). In essence, we concur that there is scope, within the Darby Group appeal, to proceed such that it is



neither necessary nor appropriate to make a s293 direction on these matters.

[70] We are not persuaded by criticisms by some parties of the robustness of QLDC's methodology for determining appropriate PAs. In contrast to how QLDC has identified the entire Upper Clutha RCL as a Priority Area, we are satisfied that, in substance, QLDC has respected the findings in Decision 2.2 in deriving its list for ONF/Ls. Furthermore, those parties criticising QLDC's proposed list in these terms have not offered their own recommended PAs. An exception to that is Allenby. We agree that Area A should be excluded from the PA. No specific direction is needed on that. Rather, experts in conferencing are instructed to proceed on that understanding.

***Failure by QLDC to provide date(s) for Sch 1 plan change(s)***

[71] The finding in Decision 2.2 that the SPs for Values Identification Frameworks should "prescribe dates by which relevant steps are taken and Sch 1 plan changes are expected to be notified" was made on the basis of the court accepting the opinion of Mr Ferguson on these matters. As noted, Mr Ferguson and QLDC witness, Mr Barr, presented alternative opinions on the most appropriate SPs for those purposes.

[72] In essence, Decision 2.2 identified the specification of dates as important to the efficacy of these new SPs (along with the "targeting of Priority Areas").

[73] We do not accept that there is any jurisdictional bar to the proper prescription in a policy of dates by which relevant steps are taken and Sch 1 plan changes are expected to be notified. The proper expression of the Strategic Policy, including in regard to dates, can safely avoid the perils identified by Ms Scott. In particular, that expression can be properly qualified to be ultimately subject to the due exercise by QLDC of its planning authority functions and related Local Government Act 2002 functions and responsibilities (including as to funding and resources).

[74] What is of primary importance, however, is that the ultimate form of the ODP, following determination of appeals, gives appropriate expression to pt 2, RMA. It is in those terms that Decision 2.2 finds the presently deficient DV-PDP requires remediation, including in the proper expression of a new SP for the Values Identification Frameworks, including in regard to dates. Furthermore, we agree with Ms Baker-Galloway that some expression of dates in the SPs for the Values Identification Frameworks gives some degree of assurance to impacted landowners, parties and the community, that these



matters are intended to be assiduously addressed so as to properly fulfil the role the ODP must play in response to pt 2, RMA.

[75] Nevertheless, we acknowledge that dates do not need to be specified in advance of expert conferencing. If need be, further directions can be made in regard to these matters following expert conferencing. As Ms Scott has properly noted, various procedural steps will be needed following that conferencing and before any final determination on these Topic 2 provisions is made.

***Matters to now be progressed in light of our findings***

[76] As will be evident from our discussion, in view of responses thus far to the directions in Decision 2.2, some matters can be progressed in expert conferencing now whereas other matters cannot at this time, pending further directions.

[77] As the court's 25 August Minute records, our approval of QLDC's fourteen proposed PAs for ONLs and, with the exception of the Clutha River, its PAs for ONFs mean that expert conferencing can and must proceed on those matters as directed.

[78] Decision 2.2 directed that conferencing is to be as between the two noted planners who have presented evidence as to their opinions on the substance of the relevant SPs, i.e. Messrs Barr and Ferguson. The decision also directed that three landscape experts participate in that conferencing (Messrs Gilbert, Mellsop and Pflüger). In response to requests from parties, those landscape experts are to be joined by Ms Lucas, Mr Milne and Mr Brown.

[79] Given QLDC's response, some further directions are required for how matters concerning the Upper Clutha RCL are approached in conferencing. We return to that matter shortly. However, the directions as to that conferencing remain appropriate insofar as the ONF/Ls are concerned, i.e.:

... . 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.

[80] We remind parties and landscape architects and planners involved in the conferencing of the findings and directions in Decision 2.2 on 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.

...

[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.

...

[272] In respect of ONF/Ls, ... 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. ...

[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.

[81] Decision 2.2 contains new SPs 3.3.29x (for ONF/Ls) and 3.3.32y (for RCLs) and to come are new SP(s) for Landscape Assessment Methodology for both ONF/Ls and RCLs.

[82] With regard to the Upper Clutha RCL, further directions may issue concerning expert conferencing (and/or other potential inputs). Counsel (and unrepresented parties) should, in the meantime, make arrangements to be available at short notice. Unfortunately, given the importance of making progress in these matters, such short notice arrangements are required. We make the following preliminary observations to assist parties to prepare to discuss an appropriate way forward in the teleconference:

- (a) important missing dimensions to QLDC's present response concern the proper identification of the geographic extent of character areas that should be prioritised in view of their vulnerabilities to development pressures;
- (b) we expect at least some of the landscape experts who are to participate in expert conferencing will be in a position to assist the court in determining the geographic extent of landscape character areas in the Upper Clutha RCL. For instance, Ms Gilbert, Ms Lucas and Ms Mellsop all demonstrated a high degree of knowledge as to the landscape character of the Upper Clutha and, in particular, areas in and around urban centres (e.g. Wanaka, Hawea, Luggate);
- (c) however, it is clearly important to give some direction as to where, in the Upper Clutha RCL, they should concentrate in terms of what requires prioritisation in view of development pressure vulnerabilities;
- (d) surprisingly, given QLDC's statutory planning and local government responsibilities, the best evidence before the court at this time on those matters came from lay people – Mr Haworth and Dr Cossens. Specifically, we refer to their evidence offering their observations from experience and mapping analysis (in Mr Haworth's case, drawing from QLDC data);



- (e) ideally, the court seeks more precise and authoritative information to identify where, in the Upper Clutha RCL, the greatest development pressures are anticipated such that these can be the areas that the experts in conferencing are directed to focus on;
- (f) that information does not need to await the outcomes of any wider landscape or land use study of the Upper Clutha RCL. Decision 2.2 made that clear in declining the related aspect of relief pursued by UCESI.

## Conclusion

[83] Therefore:

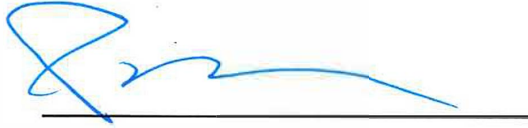
- (a) QLDC's fourteen proposed PAs for ONLs are confirmed as appropriate (subject to the noted mapping adjustments, i.e. the areas mapped and described as West Wakatipu Basin, Queenstown Bay and environs, Lake Hayes and Slope Hill, Northern Remarkables, Central Wakatipu Basin Coronet Area, East Wakatipu Basin and Crown Terrace Area, Victoria Flats, Cardrona Valley, Mount Alpha, Roys Bay, West Wanaka, Dublin Bay, Hawea South North Grandview, and Lake McKay Station and environs);
- (b) QLDC's following proposed Peninsula Hill, Ferry Hill, Shotover River, Morven Hill, Lake Hayes, Slope Hill, Feehly Hill, Arrow River, Kawarau River, Mt Barker, and Mt Iron PAs for ONFs are similarly confirmed as appropriate;
- (c) QLDC's proposed PA for the Clutha River ONF will be the subject of a separate decision (also pertaining to whether a s293 direction will be made to consider alteration to the mapped boundaries of that ONF);
- (d) determination of the appropriate PA(s) for the Upper Clutha RCL is reserved;
- (e) the directions in Decision 2.2 on expert conferencing and related matters are confirmed, subject to noting that further directions will issue, following a judicial teleconference, as to how expert conferencing is to proceed in regard to the Upper Clutha RCL and the Clutha River ONF; and





(f) costs are reserved, subject to timetable directions to be made in due course.

For the court:



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



## SCHEDULE

ENV-2018-CHC-053	Federated Farmers of NZ
ENV-2018-CHC-055	Hawthenden 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

