

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2020] NZEnvC 159

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

**INTERIM DECISION OF THE ENVIRONMENT COURT
Topic 2: Rural Landscapes – Exception Zone framework
Decision 2.6**

A: Chapter 3 provisions 3.1B.5 and 3.1B.6, the preliminary drafting of which was set out in Decision 2.2, are confirmed as modified in the Annexure to this decision.



- B: Chapter 3 provision 3.1B.7 in Decision 2.2 is confirmed as appropriate, without addition of a definition of 'Rural Character Landscape'.
- C: The drafting of SO 3.2.5.xxx and SO 3.2.1.5A as provided by Decision 2.2 is confirmed as appropriate.
- D: QLDC's application for directions under s293 as to referencing of the Rural Industrial Sub-Zone is declined.
- E: The related relief in relevant appeals is accordingly granted, granted in part or declined as the case may be. Directions will be made in due course for QLDC to update the ODP accordingly.
- F: Costs are reserved and timetable directions will be made in due course.

REASONS

Introduction

[1] This is one of a number of decisions for the determination of appeals regarding Topic 2 ('Rural Landscapes') of Stage 1 of the review of the Queenstown Lakes District Plan ('PDP'). It determines a matter left reserved by Decision 2.2 and now termed the 'Exception Zone framework' ('EZF') (previously, the 'Carve Out provisions'). As those terms suggest, exceptions are intended in regard to how some district-wide landscape policies are to apply to certain zones. Further background to this and how it has evolved during the PDP process is set out in Decision 2.2 (at [441] – [445]). That decision prefaced those findings with the following:

No party seeks that Carve Out of Ch 3 and Ch 6 landscape provisions be discarded. Rather, issues centre on ensuring the regime is clear and effective.

[2] Decision 2.2 goes on to summarise how, in their submissions and evidence for the hearing, interested parties and their planning experts continued to give attention to how best to ensure clarity and effectiveness in this EZF.¹ That included the offering of

¹ Decision 2.2: [2019] NZEnvC 205 at [450] – [496].



some drafting for Ch 3 in a joint witness statement of the planning witnesses, dated 2 April 2019 ('2 April JWS'). It also explains how some supplementary evidence was provided, offering further recommended refinements to the approach in light of the 2 April JWS. Positions were further refined in closing submissions, and in response to a Minute issued by the court on 11 July 2019.

[3] In view of these matters, Decision 2.2 accepted the consensus planning opinion that it was appropriate that there be Carve Out provisions added to Ch 3. In particular, the decision records as follows:

[30] ... 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. ...

...

[505] ... we can infer that the various classes of Exception Zone were generally carefully crafted through the Sch 1 RMA processes for the ODP ... 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. ...

...

[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.



Relevant provisions

[4] According to that approach, Decision 2.2 went on to set out revisions to what QLDC had proposed in its closing submissions for Ch 3 strategic objectives as to an EZF. Specifically, the revisions comprised new 'interpretation and application' provisions (3.1B.5 and 3.1B.6) and a new SO 3.2.5.1A. The provisional drafting was as follows:

- 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;
 - 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 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.

[5] Decision 2.2 invited supplementary submissions on that drafting and made associated directions as follows:²

² Decision 2.2, at [545](g).



...

- (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 ...

Supplementary submissions

[6] Queenstown Lakes District Council ('QLDC') consulted with parties interested in the EZF and filed a memorandum of counsel responding to the court's directions ('28 April memorandum').³ This attached a copy of Decision 2.2's Ch 3 provisions marked up with amendments that QLDC proposes.

[7] Reply memoranda were received from:

- (a) Otago Regional Council ('ORC');⁴
- (b) Cardrona Alpine Resort Limited ('CARL');⁵
- (c) Trojan Helmet Limited ('THL') and Boxer Hill Trust ('BHT');⁶
- (d) Mt Cardrona Station Limited ('MCS');⁷
- (e) Waterfall Park Developments Limited ('WPL');⁸ and
- (f) Real Journeys Group and the Darby Group.⁹

[8] QLDC responded to those memoranda on 14 May 2020.¹⁰

³ Memorandum of counsel for QLDC, dated 28 April 2020.

⁴ Memorandum of counsel for Otago Regional Council, dated 1 May 2020.

⁵ Memorandum of counsel for Cardrona Alpine Resort Limited, dated 4 May 2020.

⁶ Memorandum of counsel for Trojan Helmet Limited and Boxer Hill Trust, dated 5 May 2020.

⁷ Memoranda of counsel for Mt Cardrona Station Limited, dated 6 May 2020 and 11 May 2020.

⁸ Email on behalf of Waterfall Park Developments Limited, received 6 May 2020.

⁹ Memorandum of counsel for the Real Journeys Group and the Darby Group, dated 7 May 2020.

¹⁰ Further memorandum of counsel for QLDC, dated 14 May 2020.



[9] We deal with various points and issues raised by QLDC and other parties in the order of matters signalled in the directions in Decision 2.2.

QLDC

QLDC's proposed drafting

[10] QLDC proposes changes and additions to the provisional drafting in Annexure 1 to Decision 2.2 as follows (additions underlined, deletions ~~struck through~~):

- 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 in each case, to the extent that the Zone (or Sub-Zone) is depicted on the planning maps:~~
- a. The Ski Area Sub-zone and the Rural Industrial Sub-Zone (Chapter 21);
 - b. The Rural Residential Zone and the Rural Lifestyle Zone (Chapter 22);
 - c. The Gibbston Character Zone (Chapter 23);
 - [d]. The Open Space and Recreation Zones (Chapter 38);
 - [e]. The following Volume A Special Zones:
 - i. ~~Ch 44~~ Jacks Point (Chapter 41);
 - ii. ~~Ch 42 Waterfall Park;~~
 - iii. ~~Ch 43 Millbrook~~
 - ii. Gibbston Valley Resort Zone (Chapter 45) Character Zone;
 - iii. Rural Visitor Zone (Chapter 46);
 - [f]. The following Volume B Special Zones:
 - i. Hydro Generation Special Zone;
 - ii. Kingston Village Special Zone; and
 - iii. Mt Cardrona Station Special 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 plan implementation (ie. any applications for any subdivision, use or development) within any of the Exception Zones:
- a. SO 3.2.1.7, SO 3.2.1.8, SO 3.2.5.x, SO 3.2.5.xx, SO 3.2.5.2, SO 3.2.5.iv, 3.2.5.v and
 - b. SP 3.3.1A, SP 3.3.20, 3.3.24, SP 3.3.29.x, SP 3.3.30, SP 3.3.30x, SP 3.3.31, SP 3.3.31.X, SP 3.3.32X, SP 3.3.32Y.



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

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 an 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.x¹¹ 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.x¹² and shown on the maps in Schedule 21.
- e. 'Rural Character Landscape' means all areas of the Rural Zone located outside the Outstanding Natural Features and Outstanding Natural Landscapes.

¹¹ In her memorandum of counsel of 28 April 2020, Ms Scott comments that there is no placeholder for these SPs in the chapter at present. She suggests an alternative may be to list the priority areas within this definition and save having two more SPs. However, as that is not a matter relevant to the Exception Zone framework, she records that it is a matter that may be better addressed in future drafting / planners' expert conferencing.

¹² Refer footnote 11.



Listed Special Zones in 3.1B.5

[11] QLDC's drafting of 3.1B.5 materially differs from the preliminary drafting in Decision 2.2 in the following respects:

- (a) in regard to the list of Zones and Sub-Zones:
 - (i) Open Space and Recreation Zones (Ch 38) are added;
 - (ii) Rural Industrial Sub-Zone (Ch 21) is added.
- (b) in regard to the list of Special Zones:
 - (i) Volume A: Waterfall Park (Ch 42) and Millbrook (Ch 43) are deleted and Gibbston Valley Resort Zone (Ch 45) and Rural Visitor Zone (Ch 46) are added;
 - (ii) Volume B: Hydro Generation Special Zone, Kingston Village Special Zone and Mt Cardrona Station Special Zone are added.

[12] QLDC explains that its drafting deliberately does not list the Wakatipu Basin Rural Amenity Zone and Lifestyle Precinct and various Volume B Special Zones (namely Bendemeer, Quail Rise, Meadow Park, and Northlake). That is because it understands this listing would not fit with the purpose of the EZF. Similarly, QLDC does not consider it appropriate for 3.1B.5 to maintain reference to Waterfall Park (Ch 42) and Millbrook (Ch 43). Relevantly, Ms Scott explains:¹³

The Court has included SO 3.2.5.1A in its decision which applies to all ONF/Ls in the District, so Council has listed all Special Zones that are located either entirely, or part, in the ONF/L

...

The Court's drafting of certain provisions in the decision version of Chapter 3 includes landscape qualifiers for the ONF/L and the Rural Zone RCL, but not for all rural landscapes, refer SP 3.3.1A, SP 3.3.20, SP 3.3.24 ...

...

As a result, there does not appear to be any utility in listing the Special Zones that are not located in ONF/L or the Rural Zone RCL, because no landscape qualifier in Chapter 3 is ever triggered through the Court's drafting in Decision 2.2. The most obvious issue this creates is in relation to the WBRAZ¹⁴, which we address in this memorandum but do not propose to list as an Exception Zone at this stage.



¹³ QLDC memorandum dated 28 April 2020 at [18].
¹⁴ Wakatipu Basin Rural Amenity Zone.

Whether any listed Exception Zones would be in the Rural Character Landscape

[13] Decision 2.2 recorded the court's understanding that there are no Exception Zones in the Rural Character Landscape ('RCL'). However, it went on to note that, if that understanding was not correct, the drafting would need to be reviewed to ensure proper consistency with SOs and SPs that address the RCL.¹⁵

[14] In response to the court's direction, Ms Scott explains that the only candidate within the RCL is the Rural Industrial Sub-Zone ('RISZ'), a Special Zone that QLDC has proposed be added to the list in 3.1B.5. The RISZ is confined to a partially developed area of land near Luggate.

Scope for 3.1B.5

[15] No party raises any scope issues concerning the amended EZF as proposed by QLDC. However, Ms Scott helpfully presents a discussion of relevant principles and an analysis of the potential scope issues.

[16] Regarding reference to the Ski Area Sub-Zone ('SASZ') in the EZF, Ms Scott advises that no appeal point specifically asked for it to be carved out from Ch 3 SOs and SPs on ONLs. However, she provides a point-by-point analysis of the Soho and CARL notices of appeal (and original submissions) to explain why she is satisfied there is no scope impediment to referencing the SASZ. Counsel for CARL, Mr Leckie, concurs.

[17] Ms Scott concludes that only one of the Special Zones listed in QLDC's proposed 3.1B.5 presents a scope issue, namely the RISZ.¹⁶ While its inclusion in the PDP was not contentious, the RISZ is not referred to in Ch 6's policy 6.3.1.2. Hence, Ms Scott submits that a s293 direction would be appropriate were the court minded to include it in the EZF. Ms Scott offers that QLDC would assist in proposing timetabling directions should the court determine to proceed via s293.

No date proposed for 3.1B.5

[18] In response to the court's direction, Ms Scott explains that QLDC does not

¹⁵ Decision 2.2 at [515].

¹⁶ QLDC memorandum dated 28 April 2020 at [6].



consider that any date is required for inclusion in 3.1B.5. That is on the basis that additions to 3.1B.5 would have to be tested through future plan changes. Ms Scott explains that QLDC consulted with relevant parties and they concur.¹⁷

3.1B.6: The list of SOs and SPs

[19] QLDC's proposed revision to 3.1B.6 lists the SOs and SPs it considers should be referenced (so as to be effectively excluded, or excluded in part, from applying to each of the Special Zones listed in 3.1B.5). In her 28 April memorandum, Ms Scott reports that QLDC understands that other parties largely concur, subject to two potential exceptions:

- (a) THL queried whether SP 3.3.29 should be added (however, as we later explain, THL confirms this is not a matter of concern);
- (b) THL and "Darby Group et al" queried whether 3.1B.6 should also list SO 3.2.5.xxx (as we later explain, this is no longer an issue for THL but remains an issue for Darby Group and Real Journeys Group).

[20] On the matter of SO 3.2.5.xxx, Ms Scott confirms that QLDC remains of the view that it should not be listed in 3.1B.6. Her reasons are:¹⁸

Council cannot understand the purpose of SO 3.2.5.xxx if it is to not apply to the Exception Zones, given that it specifically applies to ONF/L "in locations other than in the Rural Zone". The SO is correctly qualified through the use of the word "inappropriate subdivision, use and development".

[21] In addition, QLDC proposes two drafting refinements (as set out at [10]).¹⁹ Later, we explain that we agree further refinement is appropriate but differ somewhat from QLDC on the best approach to this.

Provision 3.1B.7: Proposed additional definition of 'Rural Character Landscape'

[22] Ms Scott explains that this definition is proposed in light of questions parties asked QLDC as to whether the WBRAZ is RCL as referred to in Decision 2.2's version of Ch 3.

¹⁷ QLDC memorandum dated 28 April 2020 at [71].

¹⁸ QLDC memorandum dated 28 April 2020 at [79].

¹⁹ QLDC memorandum dated 28 April 2020 at [76].



She explains that the Wakatipu Basin was originally RCL but ceased to be so when the Basin variation provided for the WBRAZ. Hence, the RCL notation is no longer shown over the Basin area. Ms Scott submits that the proposed definition of RCL would provide clarity in relation to the EZF and would not result in any change of regulatory effect.

Positions of other parties

MCS

[23] Mr Goldsmith filed two memoranda for MCS. He explains that MCS did not submit on Ch 3 because it understood that the Mt Cardrona Station Special Zone ('MCSSZ') was not part of the PDP review. He submits that including reference to the MCSSZ in the EZF would potentially disenfranchise MCS. In his second memorandum, he comments:

Counsel remains puzzled about how we have got from a notified DPR which specifically did not apply to the Excluded Zones and had no effect on the Excluded Zones to a DPR containing strategic objectives and policies which govern the Excluded Zones. The consequence appears to be that, when the Excluded Zones are reviewed, they will be reviewed in light of higher order objectives and policies which landowners within the Excluded Zones have had no input into. However, Counsel assumes that that issue has been addressed in the legal submissions for the Council referenced in Ms Scott's Memorandum of 8 May 2020 (which Counsel has not read, due to not being involved in that hearing). Assuming that is the case, Counsel apologises to the Court for raising this general point of concern.

THL and BHT

[24] Ms Wolt explains that THL and BHT have no interest in, and take no position on, the EZF insofar as it pertains to the ONF/Ls and RCLs within the district. Rather, their interests are in how the EZF might impact on the Wakatipu Basin, particularly the WBRAZ. THL is an appellant in Stage 2 in relation to the WBRAZ and has several landholdings there. Hence, THL and BHT agree with QLDC that there should not be any reference to the WBRAZ in the EZF at this time. Insofar as QLDC has indicated that it intends to pursue identification of the WBRAZ as an Exception Zone when Stage 2 appeals are mediated or heard, Ms Wolt reserves her clients' positions.

[25] On the matter of whether SP 3.3.29 should be referenced in 3.1B.6, Ms Wolt clarifies that THL does not have a view. Comments made during consultation were only made to help QLDC check it was being consistent in its proposed drafting (bearing in



mind that QLDC lists SP 3.3.31). She confirmed that, likewise, THL has no view on whether or not 3.1B.6 should list SO 3.2.5.xxx.

Real Journeys Group and Darby Group

[26] Ms Baker-Galloway explains that Real Journeys Group and Darby Group support the position put by Ms Wolt for THL and BHT concerning the WBRAZ. Her clients do not have a position on the Volume B Special Zones and otherwise support what QLDC proposes for the EZF, with the exception of 3.1B.6.

[27] In regard to 3.1B.6, Ms Baker-Galloway explains that her clients seek some redress in regard to SO 3.2.5.xxx. She identifies the issue as follows:²⁰

Counsel's interpretation is that the intention is that this SO is in part implemented in the various Exception Zones, with the development that is provided in those zones being deemed to be appropriate and therefore not in conflict with SO 3.2.5.xxx. It is understood that QLDC are also of the view that the Exception Zones provide for appropriate development in the ONLs and ONFs. However, there is the risk of an alternative interpretation, whereby it might be argued that despite an activity being provided for in an Exception Zone, it is somehow found to be contrary to SO 3.2.5xxx – thereby undermining the Zones that provide for appropriate activities in the ONLs and ONFs.

[28] To address that issue, her clients seek either that SO 3.2.5.xxx be listed in 3.1B.6 or that SO 3.2.5.xxx be amended as follows:²¹

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 not otherwise provided for in the applicable zone provisions.

[29] Ms Baker-Galloway explains that Real Journeys Group and Darby Group do not object to QLDC's proposed definition of 'Rural Character Landscape', whilst reserving their capacity to pursue the following point at the appropriate time:²²

For the avoidance of doubt this does not constitute acceptance that all RCL land is an important or, in Regional Policy Statement policy 3.2.5 terms, a "highly valued" landscape necessarily. Some areas within the RCL will reach this threshold, once assessed against

²⁰ Memorandum of counsel for Real Journeys Group and Darby Group, at [8].

²¹ Memorandum of counsel for Real Journeys Group and Darby Group, at [10].

²² Memorandum of counsel for Real Journeys Group and Darby Group, at [13].



the RPS and any relevant PDP requirements, but others may not, and indeed are not even of sufficient scale to be classified as a "landscape".

WPL

[30] WPL supports the position put by Ms Wolt for THL and BHT.

ORC

[31] ORC supports QLDC's proposed drafting. However, Mr Logan records ORC's concern that there is now not adequate provision made for s7 RMA landscapes other than in the Rural Zone RCL. He attributes this to the withdrawal of the RCL notation over the Wakatipu Basin (as a consequence of inclusion in the PDP by variation of the WBRAZ).

CARL

[32] Mr Leckie advises that CARL supports QLDC's proposed drafting, particularly its inclusion of the Ski Area Sub-Zone and the provisions listed in 3.1B.6 (and also supports SO 3.2.5.1A in Decision 2.2).

QLDC's reply

[33] On the relatively confined points raised by other parties, QLDC confirms its initial position. As for the WBRAZ, it reiterates that the court does not need to make a decision to include it at this stage. However, it explains why it considers it can take this issue forward in the context of the Stage 2 appeals. We agree that we do not need to take that matter further at this time.

Discussion

[34] Our analysis is with reference to the key purposes of the 'Carve Out' or EZF regime as recorded in the extracts from Decision 2.2 quoted at [4]. In essence, the EZF is premised on a theory that, for the ODP provisions to which it applies, s6(b) landscape matters have already been accounted for. Therefore, it qualifies how certain SOs and SPs of Ch 3 apply in the consideration of applications for subdivision, use and development in the EZF zones.



[35] Decision 2.2 also finds that the premise that s6(b) landscape matters have been accounted for in the provisions “cannot extend to what is not contemplated by the particular Exception Zone”. Furthermore, it found that there is not a 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. On that matter, it noted that the court “cannot safely infer that, for such future re-zonings, there would be proper scrutiny against pt 2, including s6(b) RMA”.

3.1B.5: Zones subject to EZF and lack of specification of a date

[36] For the reasons given by QLDC, we find it appropriate that 3.1B.5 not include reference to Waterfall Park (Ch 42) and Millbrook (Ch 43). Subject to our findings, we are satisfied that the drafting refinements suggested by QLDC are appropriate.

[37] However, we have significant concerns about QLDC’s proposal to add a number of zones (including sub-zones and special zones) to what was specified in the preliminary draft of 3.1B.5 in Decision 2.2.

[38] One concern is that, at this stage of our consideration of the appeals, we have not been given sufficient understanding of how the provisions that would be added to the ODP through the review would interact with the unreviewed remainder of the ODP. We are mindful that several of QLDC’s proposed additions were not matters addressed in evidence before us in the Stage 1, nor the subject of any findings in Decision 2.2. Some of these are the subject of Stage 2 appeals or Stage 3 QLDC hearings. Hence, we cannot safely conclude that s6(b) landscape matters have already been accounted for in the provisions of the proposed additional zones. Related to that, without specification of a date in 3.1B.5, we find we should take a strict approach to our consideration of zones now proposed to be added that were not clearly part of the Stage 1 review.

[39] A related concern is that it would not accord with due process to add the zones QLDC seeks. We are not satisfied that participants in the review would have necessarily understood or assumed that these additions would be subject to the EZF.

[40] We are not satisfied there would be scope to add the zones QLDC seeks. The general test of the scope to change plan provisions on appeal, if not specifically sought by relief in an appeal, is well settled. As Ms Scott explains, it is whether the change is



fairly and reasonably raised in the original submission and notice of appeal: *General Distributors v Waipa District Council*.²³

[41] Insofar as there is such a scope restraint, we find it would not be appropriate to address this through any s293 directions, given the due process concerns we have noted. As we have emphasised in a number of decisions in this staged plan review (including Decision 2.2), the court's appellate role is somewhat confined whereas QLDC has overall responsibility for the design and coherence of the ODP as the responsible planning authority.

[42] Rather, the most appropriate process for consideration of any additions to the EZF would be a QLDC-initiated variation or plan change. That is because it would properly reflect QLDC's planning authority role and enable those interested associated submission and appeal rights.

[43] However, we do not agree with Mr Goldsmith's general points of concern in regard to the application of Ch 3 to the MCSSZ.

[44] Mr Goldsmith's fundamental premise is his understanding that the MCSSZ was not part of the PDP review. However, as our decisions to date make clear, the PDP review is, in law, a review to update the ODP. As such, fundamentally, Ch 3 and other chapters proposed in the review, once confirmed, will be part of that updated ODP. It follows that Ch 3, as a strategic chapter, has always been intended to apply to all related ODP chapters (including those not reviewed, such as the MCSSZ) except to the extent otherwise specified. That has always been the legal position throughout all Sch 1 processes for the review, including appeals. As such, in its notified form, all of its proposed SOs and SPs would have applied on that unqualified basis to the ODP (of which the MCSSZ is part).

[45] Therefore, we find that the preliminary drafting in Decision 2.2 is appropriately updated as follows:

3.1B.5 In 3.1B.6 and SO 3.2.5.1A, 'Exception Zone' means any of the following, to the extent that the Zone (or Sub-Zone) is depicted on the planning maps:



²³ *General Distributors v Waipa District Council* (2008) 15 ELRNZ 59 (HC).

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

3.1B.6: Which SOs and SPs should be listed and how should it be framed?

[46] Two important guiding principles that Decision 2.2 reflected for the drafting of 3.1B.6 are that the exclusion of the application of those SOs and SPs:²⁴

- (a) is to be confined to “the consideration of applications for subdivision, use and development in the [EZF] zones”; and
- (b) “cannot extend to what is not contemplated by the particular Exception Zone”.

[47] There is a related direction in SP 3.2.5.1A:

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

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

[48] For the reasons we now explain, we find QLDC’s revision of 3.1B.6 generally:

- (a) appropriate in listing SOs 3.2.5.x and 3.2.5.xx and SPs 3.3.29x, 3.3.30 and 3.3.30x;
- (b) not appropriate in listing SOs 3.2.5.2, 3.2.5.iv and 3.2.5.v and SP 3.3.31 and the additional SPs on the identification of values and priority areas in RCLs (3.3.31x, 3.3.32x and 3.3.32.y);
- (c) not appropriate in listing the entirety of SOs 3.2.1.7, 3.2.1.8 and SPs 3.3.1A, 3.3.20, 3.3.24 in that 3.1B.6 should list only paragraph (a) in each of those provisions;
- (d) as a rider to that we find 3.1B.6 requires further elaboration to clarify that the SOs and SPs still apply to areas of Outstanding Natural Features and Outstanding Natural Landscapes outside the Exception Zone itself.

²⁴ Decision 2.2 at [509(b)] and [505].



SOs 3.2.5.x and 3.2.5.xx and SPs 3.3.29x, 3.3.30

[49] For context, these provisions are:

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.y] the intended new SP on assessment methodology] are protected.

SP 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.

SP 3.3.30: Protect the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes;

SP 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.

[50] In terms of the findings in Decision 2.2, it is relatively straightforward that this set of SOs and SPs should be listed as the Exception Zones can be taken to have already addressed related s6(b) considerations.

SOs 3.2.5.2, 3.2.5.iv and 3.2.5.v and SPs 3.3.31 3.3.31x, 3.3.32x and 3.3.32.y

[51] This set of SOs and SPs pertain to the RCL. The areas that are in Exclusion Zones (i.e. as listed in 3.1B.5) are not RCL areas. The only potential exception on QLDC's proposed list would have been the Rural Industrial Sub-Zone. However, for the reasons given, we have determined that this sub-zone should not be added to 3.1B.5. QLDC does not explain why it considers that these SOs and SPs should be listed and



hence excluded from application to areas that are in Exception Zones. In light of the evidential findings in Decision 2.2, we do not find any sound justification for referencing SOs and SPs that relate to receiving environments outside the ONF/L land located in the particular Exception Zone. Therefore, we decline to include reference to this set of provisions.

SOs (3.2.1.7, 3.2.1.8) and SPs (3.3.1A, 3.3.20, 3.3.24)

[52] These remaining SOs and SPs include elements that go beyond ONF/Ls and their landscape values. We highlight those aspects below:

- SO 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.**
- SO 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.**
- SP 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.**
- SP 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 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.**
- SP 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.**

[53] Decision 2.2 contemplates that 3.1B.6 could list SOs and SPs on a qualified, or partial, basis. We are satisfied that paragraph (a) in each of SOs 3.2.1.7 and 3.2.1.8 and SPs 3.3.1A, 3.3.20 and 3.3.24 is able to be singled out as excluded such that the intention remains clear and coherent. However, there is an element of uncertainty in the words “within any of the Exception Zones”. That is insofar as any subdivision, use or development could have receiving environment effects on an ONF/L that is beyond the Exception Zone. On the evidence, we find it important that this Carve Out is clearly confined in those terms. Therefore, we find that the most appropriate approach is to revise this aspect of QLDC’s drafting as follows:

- 3.1B.6 The following Strategic Objectives and Strategic Policies do not apply to applications for subdivision, use or development within any of the Exception Zones except insofar as the receiving environment includes an Outstanding Natural Feature or Outstanding Natural Landscape (or part thereof) that is outside the Exception Zone:
- a. SO 3.2.1.7.a, SO 3.2.1.8.a... and
 - b. SP 3.3.1A.a ... , SP 3.3.20.a, 3.3.24.a ...

[54] A consequential change is appropriate to 3.1B.6 as follows:

The following Strategic Objectives and Strategic Policies (or specified parts thereof) do not apply to

QLDC’s remaining drafting proposals

[55] We see merit in QLDC’s suggestion that the following be added:

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



[56] However, we do not find value in QLDC's suggestion to bracket the words "any applications for any subdivision, use or development" and preface those words with "plan implementation i.e.". With respect, that would simply add a layer of wording without changing the intention. However, on further reflection, we find it would be clearer to express this part of 3.1B.6 as:

... to the consideration or determination of any applications for any subdivision, use or development

[57] We leave reserved our determination as to the substance of various SPs that remain subject to expert conferencing. That is particularly in relation to landscape assessment methodology. Subject to that, we find the following drafting of 3.1B.6 the most appropriate:

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

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

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

How should SO 3.2.5.xxx be drafted?

[58] Regarding SO 3.2.5.xxx, we do not accept that development in Exception Zones is "deemed appropriate and therefore not in conflict with SO 3.2.5.xxx". Rather, insofar as an Exception Zone has been scrutinised as appropriate in terms of pt 2 RMA, that does not necessarily imply that all activities sought to be undertaken within it are so appropriate. As Ms Scott properly points out, SO 3.2.5.xxx is qualified in those terms, i.e. in its reference to "are protected from inappropriate subdivision, use and development". In our respectful view, the additional words proposed by Ms Baker-Galloway would confuse, rather than clarify, SO 3.2.5.xxx in those respects. That is because appropriateness, or otherwise, is best measured by reference to applicable zone objectives, policies and rules. As such, we decline to add the words that Ms Baker-



Galloway has proposed.

QLDC's proposed definition

[59] We find QLDC's proposed definition of 'Rural Character Landscape' is unwarranted. That is particularly given that our decisions herein effectively mean that the EZF does not apply to the RCL.

Conclusion

[60] The updated drafting of the EZF to give effect to these findings is in the Annexure to this decision. As other decisions are being issued pertaining to related matters in follow up to Decision 2.2, final directions for including all provisions in the ODP will be made by further decision.

[61] Costs are reserved and a timetable will issue 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



ANNEXURE

- 3.1B.5 In 3.1B.6 and SO 3.2.5.1A, 'Exception Zone' means any of the following, to the extent that the Zone (or Sub-Zone) is depicted on the planning maps:
- a. The Ski Area Sub-zone;
 - b. The Rural Residential Zone and Rural Lifestyle Zone (Chapter 22);
 - c. The Gibbston Character Zone (Chapter 23);
 - d. Jacks Point Special Zone (Chapter 41):
- 3.1B.6 The following Strategic Objectives and Strategic Policies (or specified parts thereof) do not apply to the consideration or determination of any applications for any subdivision, use or development within any of the Exception Zones except insofar as the receiving environment includes an Outstanding Natural Landscape or Outstanding Natural Feature (or part thereof) that is outside the Exception Zone:
- a. SO 3.2.1.7.a, SO 3.2.1.8.a, SO 3.2.5.x, SO 3.2.5.xx; and
 - b. SP 3.3.1A.a, SP 3.3.20.a, 3.3.24.a, SP 3.3.29.x, SP 3.3.30, SP 3.3.30x.
- For avoidance of doubt, the above identified Strategic Objectives and Strategic Policies apply to plan development, including plan changes.

