

Before the Hearing Panel

Under the Resource Management Act 1991 (**Act**)

In the matter of Priority Area Landscape Schedules Variation to the
Queenstown Lakes Proposed District Plan

**Synopsis of legal submissions on behalf of various submitters and further
submitters represented by Anderson Lloyd**

7th November 2023

Submitters' solicitors:

Maree Baker-Galloway | Rosie Hill
Anderson Lloyd
Level 2, 13 Camp Street, Queenstown 9300
PO Box 201, Queenstown 9348

p + 64 3 450 0700
maree.baker-galloway@al.nz | rosie.hill@al.nz

**anderson
lloyd.**

May it please the Panel

- 1 This synopsis of legal submissions is provided on behalf of the following submitters and further submitters represented by Anderson Lloyd in relation to the variation to introduce landscape schedules 21.22 and 21.23 (**Schedules**) into Chapter 21 Rural Zone of the Queenstown Lakes Proposed District Plan (**PDP**) (**Variation**):
 - (a) Glencoe Station Limited and Glencoe Land Development Company Limited
 - (b) Coneburn Preserve Holdings Limited and Henley Downs Farm Holdings Limited
 - (c) Soho Ski Area Limited and Blackmans Creek Holdings 1 LP
 - (d) Glendhu Bay Trustees Limited
 - (e) Mount Cardrona Station Limited
 - (f) Jeremy Burdon, Jo Batchelor, Andrea Donaldson
 - (g) Allenby Farms Limited
 - (h) Silverlight Studios Limited
 - (i) Gertrude's Saddlery Limited (response to Panel questions)
- 2 As with previous submissions we presented, this synopsis has been split into a 'general' section addressing broad and generic issues across all Landscape Schedules, and then Submitter-specific appendices addressing Site-specific issues in particular Schedules.

Summary of submissions to date

- 3 We rely on, earlier submissions presented to this Hearings Panel dated 24 October 2023 (**First AL Submissions**). Those submissions addressed the Panel on key themes, a summary of which is 'recapped' below.

Removal of the 'no capacity' rating;

- 4 The Submitters support the removal of a **no capacity** rating on the basis that there is insufficient evidence to justify or support such a conclusive rating at a priority area scale in the Schedules, including because:

- (a) This would be at odds with the accepted high-level¹ nature of the evidence and intent of the Schedules;
- (b) The agreed wording between experts involved in conferencing is preferred in order to enable appropriate consideration of proposals in a discretionary planning framework for ONFs and ONLs against the applicable policy and objective tests of the PDP. It is necessary to acknowledge with the landscape capacity rating that there may be exceptions where the right sort of development will be consistent with protection of landscape values.²
- (c) Removal of the last sentence in particular: acknowledging there may be *'exceptions where occasional, unique, or discrete development protects identified landscape values'* is contrary to the intended nature of the schedules as a 'starting point' which does not preclude future site-specific assessment of case-by case proposals.
- (d) The change proffered by Council witnesses after the JWS agreement has the effect of undermining or unravelling other agreements reached through schedule-specific JWSs, in particular where those were agreed to on the basis of this revised capacity rating. This is further noted in the submitter-specific appendices to these submissions.
- (e) In our submission the JWS wording is clear – it is not subject to undue vagueness, and this issue has not been raised by any of the experienced practitioners who were representing submitters in the conferencing process. No case authority has been provided by Counsel for the Council to support such a submission.

Schedules are descriptive, not directive policy;

- 5 This is not a process to introduce new policy or evaluative tests, which potentially duplicate or run contrary to, the settled landscape policy framework from the Court now in Chapters 3, 6, and 21 (in particular).

¹ Ms Gilbert, Evidence in chief at 4.1: "...The s42A Version of the Preambles is clear that the schedules are 'high level', the landscape capacity rating is at a PA scale (rather than a site-specific scale) and that a detailed site-specific landscape assessment will typically be required as part of a resource consent or plan change application."

² Summary statement Chris Ferguson at 7-8. Mr Skelton and Mr Kemp also tabled their support for the JWS wording in the PDL appearance in this hearing.

- 6 To do so unintentionally, will create uncertainty in future plan implementation between the Schedules, as compared to, assessment matters, policies, and objectives.
- 7 This was described in Judge Hassan's determinations on the priority area scheduling process in his Topic 2.2 interim decision, as set out below, where it is noted in particular that the process of landscape scheduling is effectively a process of identification (only). That then later informs evaluative judgements in the policy context of chapters 3 and 6, and sections 6 and 7 of the Act³:

[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.³

[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.

- 8 Mr Ferguson's summary statement also provides further comment on the role of the schedules being appropriately limited to identification and description, rather than policy testing or evaluation.⁴

³ [2019] NZEnvC 205 (Decision 2.2) at 166-167.

⁴ Summary statement of Mr Chris Ferguson, at 20-21.

The high level and future-looking nature of the Schedules;

- 9 The Schedules are effectively, a 'high level' starting point⁵ of analysis. They should only be a description of values and related capacity at a very broad geographic scale, and are reflective of an unknown future character (and therefore capacity) of landscape, which will likely change over the lifetime of the District plan.

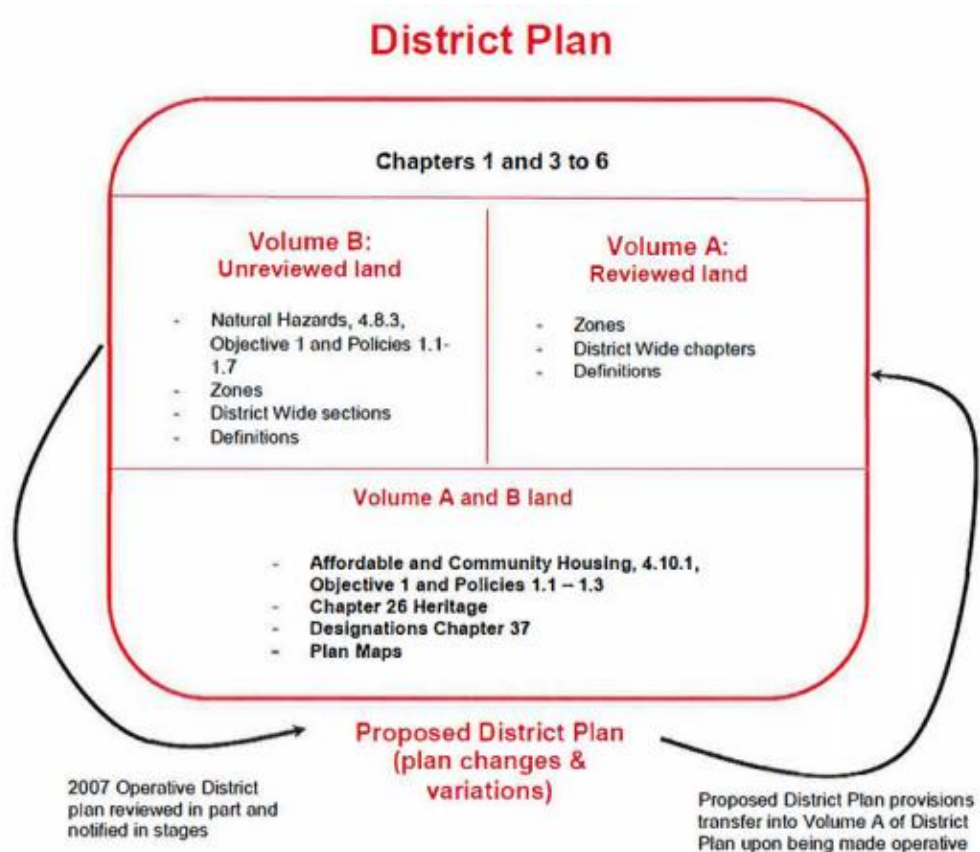
Exception Zone / non-Rural Zone framework and Schedule preamble;

- 10 The way in which the Schedules apply to / have an interface with, exception zones and non-Rural Zones, (including the Ski Area subzones (**SASZ**)) is currently confusing and potentially uncertain.
- 11 We use the term 'non-Rural Zones' as well as Exception Zones in this context because:
- (a) The Mt Cardrona Station Special Zone (**MCSSZ**) is an Operative District Plan (**ODP**) Zone which is currently a 'special zone'. The MCSSZ has not yet been incorporated into the PDP framework, however this will need to be done at some point in the future.
 - (b) The MCSSZ is part of 'Volume B' of the District Plan, and chapters 3, 4, and 6 apply to it:

1.1B Structure of District Plan:

... Chapters 3, 4, 5 and 6 apply district wide over Volume A and Volume B land except to the extent that either Chapter 3 or Chapter 6 specifies exclusions or qualifications to that application.

⁵ As referred to in Mr Bentley's evidence at [17]: ... I agree with Bridget Gilbert and the peer review of Brad Coombs, that the Landscape Schedules are a starting point for a more detailed assessment of a specific proposal. This is typical of how other schedules in other districts work,



- (c) Council has indicated, on the record, that the MCSSZ is an anticipated candidate to become an 'Exception Zone' once it is reviewed into the PDP⁶. It is not however listed as such within policy 3.1B.5 at the moment. But Chapter 3 does apply.
- (d) The mapping of the MCSSZ within the Cardrona PA could therefore cause confusion if the Schedules and in particular their preambles refer to the 'carve out' approach just for "Exception Zones" but not other non-Rural Zones;
- (e) Counsel has not audited all PAs to identify whether there are any other similar anomalies (of non-Rural Zoned land, not listed as an Exception Zone and included in a PA) but there may well be.
- (f) If the intention of the Variation is to only introduce schedules into Chapter 21 (Rural Zone) and amend the policy framework for that

⁶ Interim Decision 2.5 noted: ...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 3.18.5 and 3.18.6 would apply [41].

Zone, further caution may be required in the carve out terminology beyond just "Exception Zones".

- 12 If the position (as currently suggested in the revised preamble wording from the JWS) is that the Schedules 'may' be considered in future planning decisions for exception zones (though not mandated to be), the current capacity ratings may in some cases be inconsistent with respect to identified capacity for activities within all exception zones⁷. There is therefore a mis-match and a potentially plan administration issue, if the Schedules are in the future considered as a relevant other matter, or weighted in a discretionary assessment, but the capacity ratings are misleading as to the exception zones/non Rural Zones (or were never written / assessed with that purpose in mind).
- 13 It is unclear what scope or instruction was provided to Council witnesses in terms of assessing capacity for exception zones, and it appears these either under-rate capacity, do not reflect the ambit of anticipated activities, and / or are inconsistent across exception zones with the same planning framework (for example SASZ and earthworks).
- 14 Counsel discussed possible solutions with the Panel, including (in no stated order of preference, and potentially required cumulatively):
 - (a) Exclude exception zones and other non-Rural Zones from the mapped extent of priority areas⁸;
 - (b) More specifically precluding consideration of the Schedules entirely in future planning assessments⁹;
 - (c) More specifically excluding the capacity rating section of Schedules insofar as it applies to the non-Rural and exception zones;
 - (d) Amending higher order chapters of the PDP, including Chapter 21, to make the policy link and exclusion of non-Rural Zones against the schedules, more explicit and clear¹⁰;

⁷ Summary statement of Mr Farrell, dated 24 October 2023

⁸ As proposed by Mr Espie, though not supported by Mr Ferguson.

⁹ As proposed in Mr Ferguson's revised preamble statement.

¹⁰ Discussed in the First AL Submissions.

- (e) Revisiting and reviewing capacity for the exception zones which reflects the rule framework more accurately;

Response to questions / themes raised by Panel – 24 October 2023

Q1 - What is the implication on development rights as a result of the Schedules / are there any examples of where a future planning application might fail, or face a higher bar, as a result of being within a Priority Area, as opposed to outside?

- 15 It is possible that future planning proposals could be faced with a higher bar, or at least a more directive / certain outcome, in response to being categorised within a priority area landscape, as opposed to not being within one - in particular, where the PA Schedule signals an extremely limited to no capacity rating. Obviously, this is difficult to predict. It could be that part of the objective for preparing the Schedules does eventuate – i.e. they provide more certainty, and therefore a more cost effective and efficient planning framework. In a perfect world, the Schedules would provide some clarity on the appropriate general direction of travel, subject of course to the finer grained assessment – making the consent application process more efficient and focused. That direction could set a high threshold, but similarly, a proposal in non-scheduled ONL would also be subject, in a broader sense, to the high thresholds in the chapters 3, 6 and 21, albeit without any point of reference. In summary the answer is twofold – yes, it is possible the Schedules will result in a perception of a higher bar being set, but they might also have the effect of a more efficient consenting process.

Example 1 – the proposed regional policy statement avoidance test and PDP Policy 3.3.31

- 16 Extracts from Otago Regional Council's (**ORC**) planning officer reply report, dated 23 May 2023, and tabled in respect of the Natural Landscapes and Features Hearing in the recent proposed regional policy statement process (**pRPS**) are relevant to this point. The reply report is attached as **Attachment 1**.
- 17 As can be seen in this attachment, the originally notified wording of NFL-P2 sought, inter alia, to: *'avoid adverse effects on the values of natural features and landscapes where there is limited or no capacity to absorb use or development'*.
- 18 While the reply report from ORC now seeks to move away from that test, it is possible that the Hearing Panel's final recommendations do not follow that, and instead apply the avoidance test – or something equivalent. When translated to the PDP schedules framework, this shows how due care must

be taken for the capacity descriptions. For example, the Cardrona, Central Wakatipu Basin, and Northern Remarkables Schedules are currently identified as having **'limited capacity'** for Passenger Lift Systems. If applying the regional policy statement (as notified) policy NFL-P2, this triggers an avoidance (or do not allow regime) for (any scale of) adverse effects on landscape values.

19 If the landscape in question did not however include a prima facie 'limited' or 'no' capacity rating as a starting point in the schedules, it might not trigger that avoidance assessment at the RPS level.

20 Similarly, policy 3.3.31 in the PDP provides:

*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.*

21 It is entirely plausible that a future planner will try to apply the avoidance requirement (i.e. to not allow) any level of adverse effects on values, where there is identified *'little'* capacity within a PA – whereas a landscape without this capacity presumption, might not trigger this.

Example 2 – policies and assessment matters referencing landscape capacity

22 Assessment matters 21.21.1.4 (c) and (d) relates to consideration of cumulative effects of a proposal on landscape capacity. Where capacity is described as **'extremely limited to no capacity'** (for example) in a landscape schedule, that is a likely starting presumption for a future planner to assess the tipping point of cumulative effects assessments against. It is entirely plausible, that even with the assistance of a further detailed landscape assessment for the proposal, there would still be a bias, or a higher bar, associated with the presumption of extremely limited capacity in the schedule across a whole priority area.

23 The Panel are already aware of the tensions between capacity ratings for SASZ set out in the draft schedules, as contrasted with the enabling policy and rule framework for those exception zones. When looking at the objective and policy suite under 21.2.3, this distinction becomes clearer. In

particular, growth and consolidation of Ski Area Activities¹¹ within the subzones are 'provided for' and 'encouraged'.

- 24 Despite that enabling framework, if the capacity ratings are taken into account for these SASZ activities in future, it is highly plausible that an indicative 'no', 'extremely limited' or even 'limited' capacity rating could be read as conflicting with this enabling policy approach.

Example 3 – policy directive language introduced in schedules

- 25 As set out above, one general theme of issues is where the schedules transgress into policy tests and beyond just values identification. Mr Ferguson's summary evidence provides examples of this, and the consequence, in terms of the wording of 'barely discernible' in relation to rural living within the west Wanaka PA schedule.
- 26 If such policy directive type wording remains in the schedules, and it is slightly different, or more onerous than, existing chapter 3 and 6 policies, it is quite possible that a higher policy bar could be applied to a priority area as opposed to a non-priority area ONL.

Example 4 – unknown predictions of future planners' responses

- 27 All of the above are predictions as to a future processing planner's interpretation of the Schedules, in future hypothetical application scenarios. Counsel cannot predict the gravity of difference the schedules might cause to a planning assessment, compared to an assessment in a non-scheduled landscape. However, on balance, the use of the schedules at the least as a guide, or a high-level starting point, runs at least a possible risk of creating a higher, or additional bar for what might be quite appropriate proposals. In particular, where capacity ratings are stringently drafted.
- 28 The experiences from *King Salmon* and subsequent judgements is that wording in planning instruments is likely to be interpreted literally or strictly. Hence the equation of 'avoid' to 'do not allow', or 'no' means just that.
- 29 In summary of these points:

¹¹ The ambit of activities defined as Ski Area Activities is very broad: it means: the use of natural and physical resources for the purpose of establishing, operating and maintaining the following activities and structures: recreational activities either commercial or non-commercial; passenger lift systems; use of snow groomers, snowmobiles and 4WD vehicles for support or operational activities; activities ancillary to commercial recreational activities including avalanche safety, ski patrol, formation of snow trails and terrain; installation and operation of snow making infrastructure including reservoirs, pumps and snow makers....

- (a) Care should be taken with such absolute language, which is actually intended to apply at a 'high level';
- (b) Certainty and clarity are required in terms of the non-Rural Zone / exception zone interface issues;
- (c) The mapping of a PA is important, and should be informed by landscape best-practice and evidence where that is available.

Q2 - Does the mapping of priority areas need to be exact, given the intent of the schedules to be high level, and the potential for those to be assessed in 'adjacent' scenarios?

30 Applying the examples above of how provisions in the PDP might or might not be triggered or assessed depending on whether land is within or outside a PA, Counsel concludes that indeed mapping of PAs is important, and from it flows a planning distinction which submitters have the right to be heard on.

31 Council's previous use of clause 16 amendments to the PA mapping suggests that Council does consider the mapping should be accurate. This process as set out in the memo realigned a number of boundaries of PAs according to GIS data, rather than following the Court-approved JWS mapping. Had the Council considered mapping need not be precise, it need not have undertaken this extra process.

32 Judge Hassan's Decision 2.2 also noted:

[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.

33 And in Decision 2.7:

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

34 So, yes, the mapping is important

35 The scenarios set out above in terms of the relative policy 'bar' to scheduled vs non-scheduled landscapes, is relevant to, and supports this conclusion.

Q3 Are there any examples where lines of landscape boundaries are actually now 'out of date' or changed – since 2014 M Read report?

- 36 With respect to Ms Gilbert's presentation to the Panel and her statement that the Dr Read report was now 'somewhat out of date'. From this, we infer that also some of the mapping recommendations from that report (which were adopted in the PDP landscape boundaries) are also therefore 'out of date'.
- 37 It is unclear what Ms Gilbert meant by her reference to the Read report as being out of date.
- 38 However, the main points from our submissions were:
- (a) Values assessment underpins boundary mapping of landscapes¹². This process is the first notified and detailed values assessment for many landscapes. It follows, that there will logically be amendments to mapping as a result of this process;
 - (b) Mapping, description and justification of a landscape being identified as an ONL is an iterative process which occurs simultaneously, rather than step by step.¹³
 - (c) In a number of locations, the 2014 Dr Read report 'rolled over' the operative landscape boundary lines by following the Rural General Zone boundary. Many of these were submitted on, or appealed through stage of the PDP review.
 - (d) The deficiencies in having no values assessment underpin mapping in the stage 1 PDP process was noted by Judge Hassan, including in Decision 2.2 where he stated:

[11] ... the mapping of ONF/Ls and RCLs in the DV is not associated with scheduling of values and not backed by associated assessment processes through which QLDC has formally identified such values for those purposes. Necessarily, so as to determine the appeals disputing ONF/L and RCL boundaries, we must make related findings on those values. However, as the map boundary matters in dispute in appeals are in confined locations (rather than on any wider first principles evaluation of ONF/Ls and RCLs as a whole), our related findings are similarly confined. They are not intended as being necessarily

¹² Te Tangi a te Manu, paragraph 5.19; Evidence of Mr Bentley, Mr Skelton, Mr Smith, Mr Espie.

¹³ Evidence of Mr Smith for CCCL, at 35.

definitive for the purposes of later scheduling of those values through Sch 1 plan changes. Nor should they be so treated¹⁴

- (e) These points are relevant in the context of broader scope arguments in respect of what was notified by Council, and what is within the ambit of the plan change by considering the amended planning framework for priority areas.

Q4 - Is there a fairness issue with scope, if the Panel does agree there is scope to amend mapping, then some submitters who read the s32 report more literally have been left out of this opportunity?

39 The *Clearwater*¹⁵ authority is the leading authority in determination of when a submission is 'on' or consequential to, a plan change, and therefore what is in scope. There are two limbs:

- (a) the extent to which the variation changes the pre-existing status quo; and
- (b) whether accepting a submission would cause the plan change to be appreciably amended without real opportunity for participation by those potentially affected.

40 Neither of the *Clearwater* tests are about fairness to parties who did not seek particular relief.

41 In the First AL Submissions, it was counted that approximately a quarter of submitters sought relief to amend mapping. That is a significant proportion. Counsel cannot hypothesise as to whether the three quarters of submitters did not seek mapping relief because they thought it was out of scope, or because they did not need such an outcome. However, we consider it is reflective of the Council's confusing and contradictory notification process that a large number of submitters did submit for this relief, and fairness would be to allow those due consideration within the ambit of this plan change.

42 Following the *Clearwater* two stage tests, the question of fairness (the second limb) is only about due public process to participate in submissions. The quantum of submitters seeking mapping amendments, the further submission process, the Council's own corporate submissions and

¹⁴ Decision 2.2 at [11].

¹⁵ *Clearwater Resort Ltd v Christchurch City Council HC Christchurch AP34/02*, 14 March 2003

explanation of the mapping as 'notified'¹⁶, all lead to a reasonable conclusion that no fairness issue would exist to submitters / the public if mapping amendments were found to be within scope.

Dated this 7th day of October 2023

Maree Baker-Galloway

Maree Baker-Galloway/Rosie Hill
Counsel for the Submitters

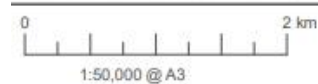
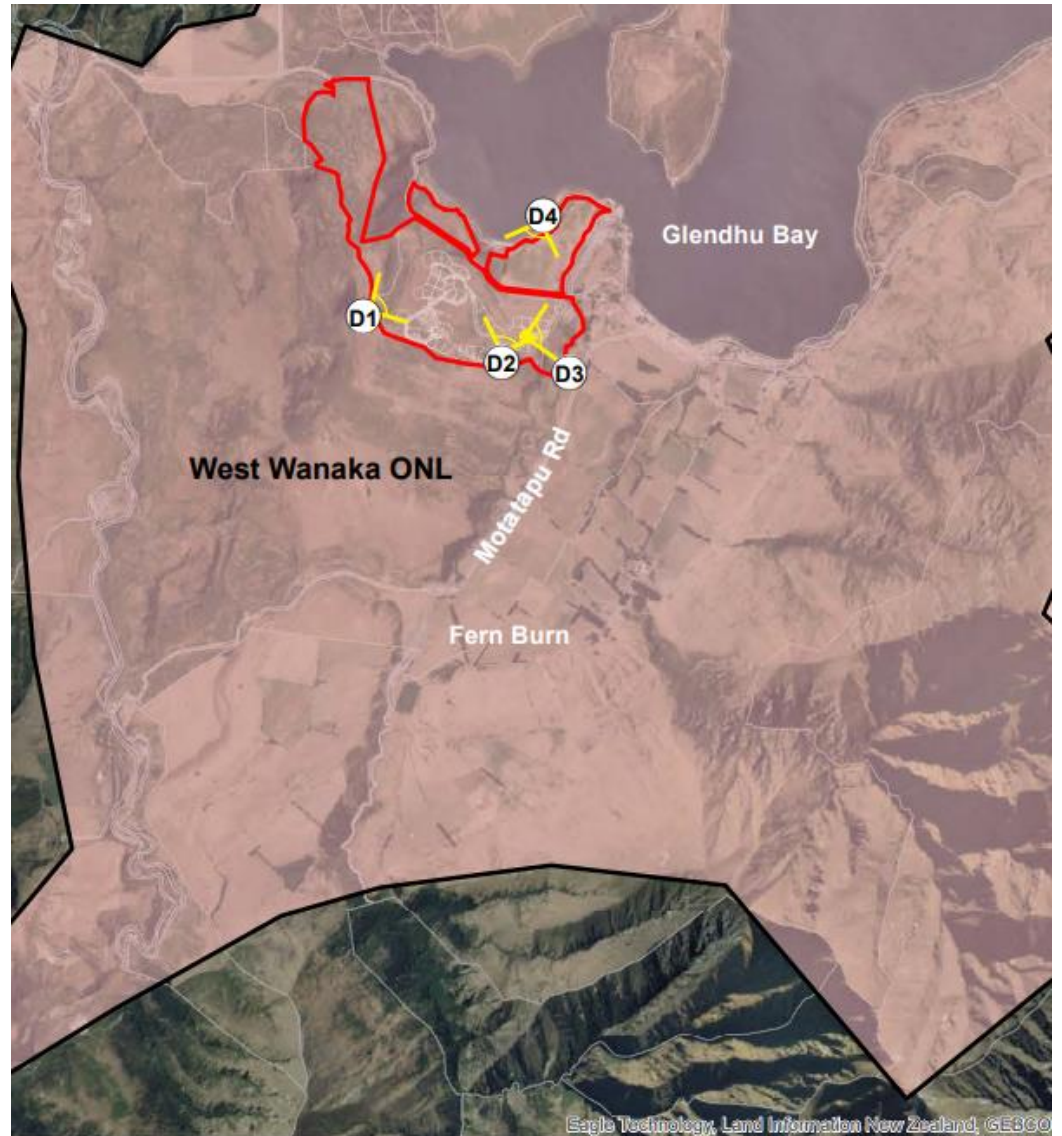
¹⁶ As explained in the First AL Submissions, Ms Gilbert's evidence refers to the mapping as notified, the public notice included web mapping links to the PDP mapping of Pas (which could only have been updated through Schedule 1 notification), and there has never been an explanation that the PA mapping was in fact incorporated by reference (and it is still not updated on Council's webpage to that effect).

Site specific appendices

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| Glendhu Bay Trustees Limited (GBTL) | 15 |
| Coneburn Preserve Holdings Limited and Henley Downs Farm Holdings Limited (Coneburn) | 20 |
| Glencoe Station Limited and Glencoe Land Development Company Limited (Glencoe) | 24 |
| Mount Cardrona Station Limited (MCSL) | 25 |
| Jeremy Burdon, Jo Batchelor, Andrea Donaldson | 28 |
| Allenby Farms Limited (Allenby) | 31 |
| Silverlight Studies Limited | 33 |

Glendhu Bay Trustees Limited (GBTL)

- 1 GBTL has an interest in land at 1215 Wanaka – Mount Aspiring Road, Wanaka, legally described as Lot 9 DP 562798, Lot 10 DP 568480, Lot 12 DP 543116, Lot 13 DP 564796 and Lots 2, 10 and 11 DP 568480 and identified below. The GBTL submission pertains to the priority area schedule 21.22.21 PA ONL West Wānaka.



es, LINZ Data Service, and Queenstown Lakes

- LEGEND**
- Glendhu Bay Trustees Limited Property Boundary
 - Landscape Priority Area
 - Site Photographs D1-D4

- 2 In May 2012, the Environment Court confirmed the grant of an application for resource consent (RM070044) to Parkins Bay Preserve Limited for the construction, provision and use of 18-hole championship golf course, a series of lakeside buildings including a club house with a restaurant and a

café, a jetty, twelve visitor accommodation units, spread over three buildings, 42 residences/visitor accommodation units, and other associated activities at the Site. Substantial completion of the resort development has occurred already to date, including through obtaining and implementing associated variations and additional consents needed to achieve the overall vision for the comprehensive golf course resort.

UCESI Relief

- 3 As reflected in the current drafting of the Schedule (post expert conferencing), human modification through established and consented activities at Glendhu Bay and Parkins Bay are relevant considerations in the receiving environment and should be retained as such throughout the Schedule. GBTL supports recognition of these modifications in terms of the views to and from the area, and in naturalness attributes and values (noting that Ms Lucas on behalf of UCESI supports deletion of these elements in several places throughout the schedule).
- 4 GBTL supports the retention of this drafting on the basis that cultural and man-made aspects of the landscape are appropriately referenced in a Schedule of Landscape Values, and support Ms Gilbert's statements to the same effect.

Rural living and policy evaluation introduced in the schedules

- 5 The JWS between Mr Bentley and Ms Gilbert has largely resolved remaining issues raised by GBTL on the Schedule, with the outstanding point of disagreement being limited to Rural living capacity.
- 6 The minor area of disagreement concerns the wording 'barely discernible' under (xi) Rural Living within the capacity ratings.

11 Mr Bentley prefers the wording 'reasonably difficult to see' which is used within Chapter 6 PDP (Chapter 6 6.3.3.1 page 6-4).

12 Mr Bentley is supportive of having 'reasonably difficult to see' from public roads in parts of the landscape where the rural character/ naturalness attributes of the landscape dominates (including from Roys Peak) and is visually recessive from other areas and other public viewpoints within the landscape.

13 Ms Gilbert considers that the existing level of visible built development consented in the PA suggests that any future rural living development should be 'barely

discernible' (rather than 'reasonably difficult to see'), to appropriately manage cumulative adverse landscape effects.¹⁷

- 7 As set out in the First AL Submissions, and in the general sections above, introducing inconsistent and ambiguous hybrid policy or assessment matter tests into the schedules creates uncertainties in plan interpretation.
- 8 GBTL supports removal of these policy type sentences within the schedules, or at the very least, taking absolute care to ensure consistency (and definitely no 'higher bar') with what is already settled policy in chapters 3, 6, and 21¹⁸.
- 9 The policy test in chapter 6 provides:
 - 6.3.3.1 **Recognise that subdivision and development is inappropriate on Outstanding Natural Features or in Outstanding Natural Landscapes unless:**
 - a. landscape values are protected; and
 - b. in the case of any subdivision or development, all buildings and other structures and all changes to landform or other physical changes to the appearance of land will be reasonably difficult to see from beyond the boundary of the site in question.
(SO 3.2.1, 3.2.1.7, 3.2.1.8, 3.2.5, 3.2.5.2, 3.2.5.3, 3.2.5.4 and SP 3.3.2, 3.3.23, 3.3.30, 3.3.31)
- 10 As cited above in general submissions, the purpose of this process as set by Judge Hassan's series of interim decisions was to remedy the deficiency of the Council's stage 1 PDP, which identified the mapped extents of landscapes, but with no identification of their values and related capacity. The point being, that much turns on what is sought to be 'protected' by the identification of values.
- 11 Regarding the future possibility of rural living, the Parkins Bay resort development was initially lodged with Council on the basis of 50 rural living homes being included. That was later reduced by the Applicant down to 42. The Court never assessed those removed x8 lots, and it has specifically been acknowledged that the possibility of adding those back in may occur in the future.
- 12 Consent Notice 9486490.2 as currently registered on the GBTL titles, resulted from the bulk subdivision consent RM120588 and provides the following relevant restriction:¹⁹

¹⁷ 5th October JWS between Ms Gilbert and Mr Bentley at [11] – [13].

¹⁸ Summary statement of Mr Ferguson.

¹⁹ Consent Notice 9486490.2, clause 3.ii.

3(ii) Lots 2, 10 and 11 DP 457489 shall be covenanted in perpetuity from the date of the grant of consent against further development but not prohibiting subdivision of the golf course and the 42 house-sites, and the subdivision and development of eight visitor accommodation/residential units.

Advice note: For the avoidance of doubt this consent only authorises 42 visitor accommodation/residential units. **Any further application for up to eight additional visitor accommodation/residential units within Lots 2, 10 and 11 DP 457489 will require a variation to this consent or a new consent and a rigorous assessment of the measures proposed to sufficiently mitigate any potential adverse visibility/domestication effects.**

[Emphasis added]

- 13 This advice note suggests that a variation to GBTL's current consents for the additional homesites is possible, and that key considerations would be regarding visibility and domestication effects.

JWS agreement on basis of 'extremely limited or no landscape capacity'

- 14 Counsel however notes that the revised capacity statements above were supported at the point in time where joint planning and landscape experts had agreed on the revised capacity rating for rural living would be the new rating terminology changed to:

Extremely limited or no landscape capacity: there are extremely limited or no opportunities for development of this type. Typically this corresponds to a situation where development of this type is likely to materially compromise the identified landscape values. However, there may be exceptions where occasional, unique or discrete development protects identified landscape values.

- 15 As set out in Counsel's general submissions above, and in the First AL Submissions, Submitters seek this revised wording be retained. The exceptions listed in the final sentence are an important 'nod' to the accepted 'high-level' nature of the schedules, the discretionary ONL / ONF rule framework, and are not considered to be unduly or inappropriately vague. As noted in Mr Bentley's summary statement, he supports retention of the JWS-agreed wording on the basis that:

I consider that the now-proposed council description removes to a degree, the high-level status of the

Schedules, where carefully located development may still be able to be identified whilst protecting landscape values²⁰

16 This issue is referred to across the remaining appendices below.

²⁰ Summary statement of Mr James Bentley, at 11.

Coneburn Preserve Holdings Limited and Henley Downs Farm Holdings Limited (Coneburn)

- 1 Coneburn has an interest as developer and owner of significant land within the Jacks Point Zone. The Submitter Land is partly included within the proposed Peninsula Hill ONF Priority Area Schedule 21.22.1.
- 2 Within the general description of the PA, it is acknowledged that the southern part of the ONF overlaps with the Jacks Point Zone (Exception Zone) and the Jacks Point Urban Growth Boundary. The Coneburn land interests are overlaid below with the Jacks Point Zone, urban growth boundary, homesites, and PA mapping (from Figure 1 of Mr Bentley's evidence).



- 3 Of critical importance to Coneburn, is ensuring that the values and overall landscape descriptions accurately portray the PA at a relevant scale. This includes existing consented developments, activities provided for as appropriate in the Jacks Point Zone part of the PA and identification of statutory planning instruments (such as Structure Plans) and potentially identifying opportunities for future enhancement where some landscape values are degraded.
- 4 Since creation of the Jacks Point Zone, development has been sensitively designed in accordance with the area's original master planning assessment under the Coneburn Area Resource Study. This has included

establishing several residential neighbourhoods, the Golf Course, village, tablelands, and associated public access, recreation and trail opportunities throughout the Zone.

- 5 The Submitter has worked together with the Council under the PDP, including through the design of a single structure plan for the wider Jacks Point area, drafting new and updated provisions, section 32 reports, specialist landscape reports, consultation and other background investigations. Further changes have been enabled through the incorporation of a Comprehensive Development Plan for the Village.

Exception zones – common theme

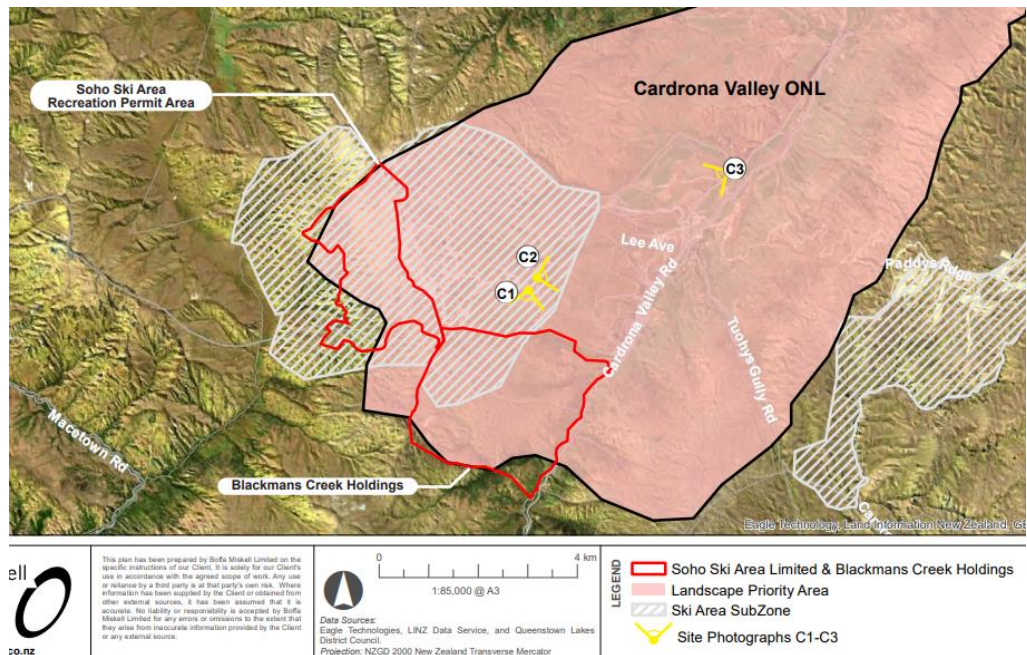
- 6 The Jacks Point Zone is a listed exception zone within the PDP, the zone is effectively self-contained insofar as it already provides for an approach to protection of landscape values without needing further resort to chapters 3 and 6 for future planning decisions. As set out above in the general section of submissions, and alongside the First AL Submissions, care needs to be taken 'vertically and horizontally' across the chapters in the PDP, and in the preamble text of the schedules, to ensure absolute clarity on how the schedules would, or could, be considered in a non-Rural Zone, and to what extent capacity ratings are accurately reflective of those non-Rural Zones.
- 7 As the Panel is now aware, one point of appeal remains on hold pending the resolution and outcome of this hearing process, which relates to the Structure Plan and policy framework for the Peninsula Hill Landscape Protection Area (**PHLPA**). That separate appeal process is not a matter for this Panel to consider or make recommendations in relation to. Whether the result of these landscape schedules is to be reflected in the Jacks Point Zone / PHLPA policy framework (or not) is an entirely separate matter, and there is a live (but on hold) process to progress that integration.

Agreed matters from JWS

- 8 The experts, Mr Bentley and Ms Gilbert, through conferencing have confirmed no outstanding areas of disagreement now in respect of the schedule 21.22.1.
- 9 As with other parts of these submissions, this agreement is on the basis that the revision to the capacity rating for 'extremely limited to no capacity' is retained as agreed between landscape and planning experts.

Soho Ski Area Limited and Blackmans Creek Holdings No. 1 LP

- 1 The Submitter retains an interest within the broader Soho ski area, including planned visitor accommodation / lodge style development, as follows:
 - (a) Blackmans Creek Holdings No. 1 LP owns land legally described as Section 10-11 Survey Office Plan 459834 and Section 5 Block I Knuckle Peak Survey District and Section 83 Survey Office Plan 357952 held in Record of Title 727253.
 - (b) Soho Ski Area Limited has a recreation permit over Part Run 25 and Section 2 SO 476808 held in Record of Title 727254. The Soho Ski Area is included within the Ski Area Sub Zone (**SASZ**) under the PDP, which is an Exception Zone under Chapter 3
- 2 These are identified in Figure 3 of Mr Bentley's evidence as shown below:



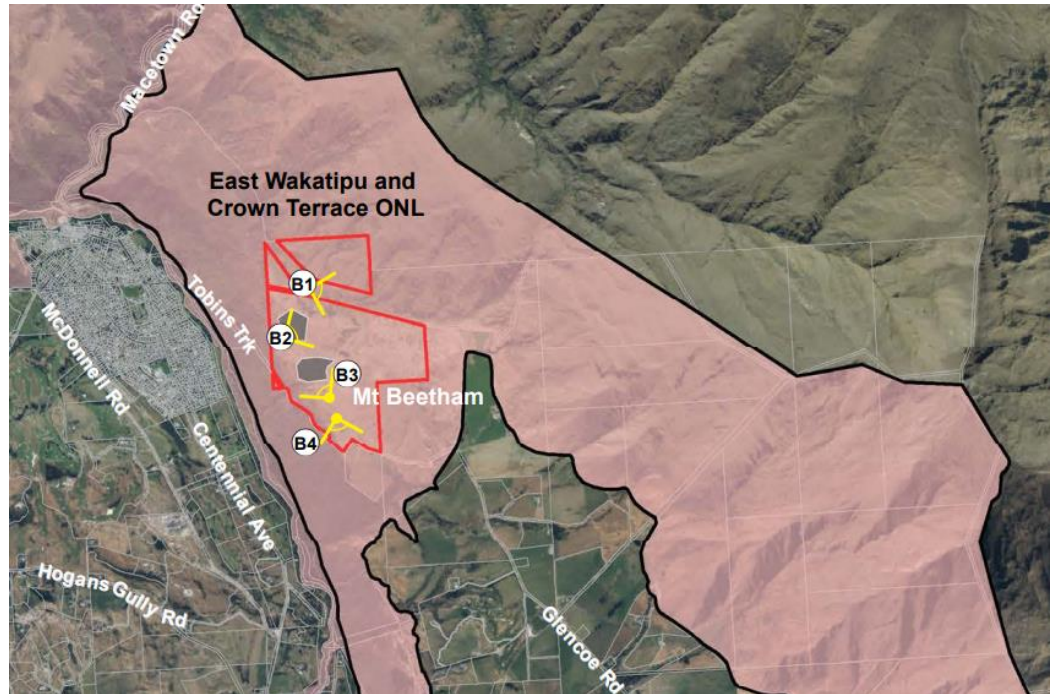
- 3 The experts, Mr Bentley and Mr Head, through conferencing have confirmed no outstanding areas of disagreement now in respect of the schedule 21.22.1 (as related to Soho/ Blackmans Creek issues).

- 4 This conferencing also resulted in amendments to the capacity ratings for Passenger Lift Systems, arising from the change to the definition of Passenger Lift Systems in the Preamble to Schedule 21.22²¹.
- 5 However, as with other parts of these submissions, the two general themes are applicable:
 - (a) The agreements from the JWS are on the basis that the revision to the capacity rating for 'extremely limited to no capacity' is retained as agreed between landscape and planning experts; and
 - (b) The Exception Zone / non-Rural Zone issues of clarification.

²¹ Agreed in the joint planning and landscape conferencing session on 3 October 2023

Glencoe Station Limited and Glencoe Land Development Company Limited (Glencoe)

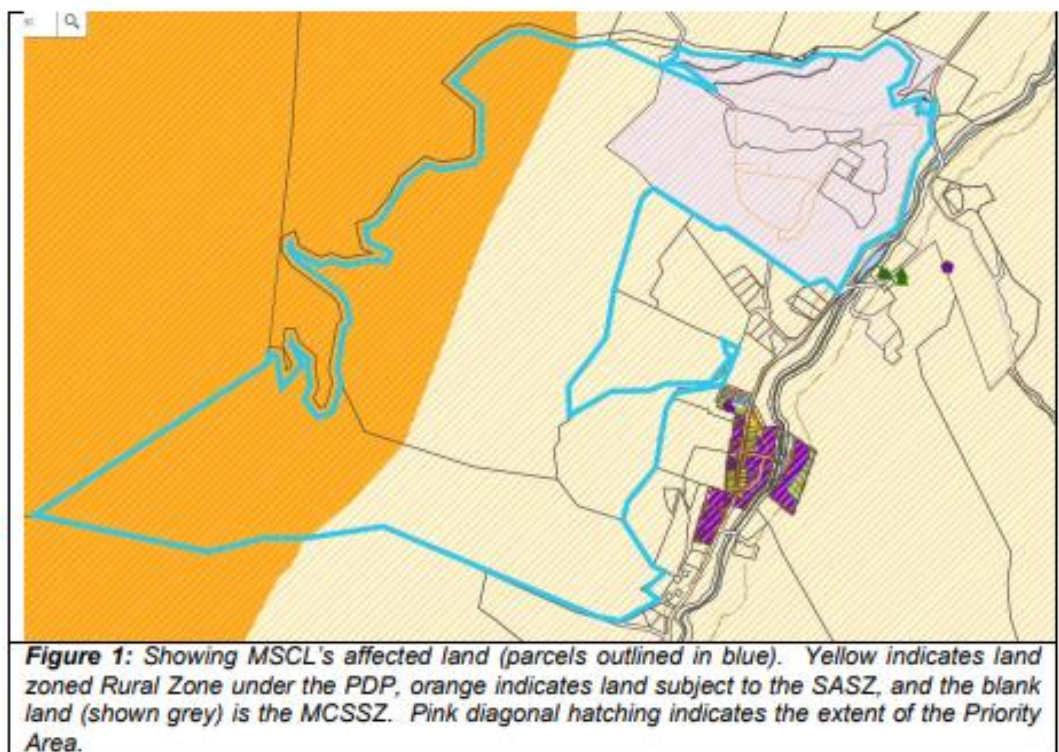
- 1 Glencoe has an interest in land at within the Eastern Whakatipu Basin priority area, as outlined in red in the screenshot below taken from Mr Bentley's evidence:



- 2 The JWS between Mr Bentley and Ms Gilbert has largely resolved remaining issues raised by GBTL on the Schedule.
- 3 However, as with other parts of these submissions, the general issue remains relevant, that:
 - (a) The agreements from the JWS are on the basis that the revision to the capacity rating for 'extremely limited to no capacity' is retained as agreed between landscape and planning experts.

Mount Cardrona Station Limited (MCSL)

- 1 MCSL's submission pertains to schedule 21.22.18 (Cardrona Valley) which includes a multitude of zones associated with the Cardrona village area.
- 2 MCSL has an interest in land zoned Mount Cardrona Station Special Zone (**MCSSZ**) under the Operative District Plan (**ODP**), Rural Zone under the PDP and SASZ under the PDP on the slopes of Cardrona Valley
- 3 The screenshot below is taken from the MCSL submission, and includes the previous 'pink hatched overlay' taken from QLDC's PDP mapping when it was previously included online:



- 4 While the MCSSZ is currently an operative zone under the ODP, it is anticipated to be rolled over into the PDP in a forthcoming review stage. The Council has previously indicated to the Court in the topic 2 hearings that the MCSSZ is a candidate for the list of exception zones within the PDP framework once it is reviewed²².

²² Interim Decision 2.5 noted: 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 3.18.5 and 3.18.6 would apply [41].

- 5 The issue of the MCSSZ as an operative (volume B land) but subject to strategic chapters of the PDP (Volume A) is set out in the above general submissions.
- 6 MCSL is concerned that:
- (a) In the interim time before it is rolled over into a listed exception zone within the PDP framework, there will be a period of uncertainty where the operative MCSSZ will be subject to, or considered against, the PDP landscape schedules²³. Even when it is reviewed into the PDP, the same uncertainty will exist as expressed for listed exception zones in the general submissions above.
 - (b) In these scenarios, the general issues for non-Rural Zones as set out in the above submissions are relevant insofar as it seems the landscape schedules have not in all cases, or consistently, identified capacity for activities in non-Rural Zones.
 - (c) This is highly relevant for consenting currently underway at MCSSZ in accordance with that special zone.
- 7 A few examples are below based upon the current draft of Schedule 21.22.18 (post conferencing) provides for:
- (a) *"some" landscape capacity for visitor accommodation activities that are: co-located with existing facilities; designed to be of sympathetic scale, appearance and character; integrate appreciable landscape restoration and enhancement and enhance public access.* However, within the MCSSZ, such activities are controlled or discretionary in a number of activity areas in the Zone, and in either case the associated assessment matters do not trigger consideration of effects on landscape values.²⁴
 - (b) *"limited" landscape capacity for earthworks and trails that protect historic, naturalness and expressiveness attributes and values, and are sympathetically designed to integrate with existing natural landform patterns. **Some** capacity for public walking and cycle trails.* However, earthworks for the purposes of (inter alia) access roads, walkways, construction of golf course, farm tracks, construction of

²³ By virtue of the approach to volumes A and B in the PDP, which applies higher order chapters 3 and 6 to operative zoned land.

²⁴ See rules 12.22.2.2(ii) and 12.22.2.3(ii) and assessment matter 12.22.5(i)

buildings are controlled activities²⁵, and otherwise, generally discretionary. In either case, assessment matters do not trigger consideration of effects on landscape values.

- 8 Counsel refers to some of the solutions posed above in the general submissions (and the First AL Submissions) in respect of achieving greater clarity and consistency between the Schedules and non-Rural Zones.

²⁵ See rules 12.22.2.2(iii) and Site standard 12.22.4.1(xi)

Jeremy Burdon, Jo Batchelor, Andrea Donaldson

- 1 Jeremy Burdon, Joanne Batchelor and Andrea Donaldson (**Submitter**) have an interest in land at 1576 Makarora-Lake Hawea Road, Hawea legally described as Lot 1 DP 396356 held in Record of Title 384225 and included in the Hawea South and North Grandview Priority Area (**PA**). The Submitter's land is identified in Appendix 1 to the Submitter's submission reproduced as Figure 1 below:



Figure 1 – Submitter's land

- 2 The Submitter seeks its land, and the Glen Dene land immediately to the north, be excluded from the PA. Alternatively, the Submitter seeks that the Hawea South and North Grandview Schedule be updated to more accurately recognise and provide for the level of modification and range of established and historical activities at the Submitter land and their likely and anticipated future upgrade, replacement, or redevelopment.
- 3 The Hawea South and North Grandview PA encompasses a very large landscape area. The lower lying flats, including the Submitter and Glen Dene land, are geographically and topographically distinct from the line of mountains along the western side of Lake Hāwea and do not contribute to the values of the broader landscape. In particular

- (a) The lower-lying flats include a number of residential, lifestyle, and associated activities which exhibit human influence in the landscape.
 - (b) The lower-lying landscape has been highly modified by the artificial raising and enlargement of the lake, with much of the Submitter's original home-area paddock now being under water.
 - (c) Particular attributes existing at and around the Submitter land are:
 - (i) Historical and existing farming uses;
 - (ii) Farming infrastructure;
 - (iii) Roads;
 - (iv) Fences;
 - (v) Introduced and native vegetation;
 - (vi) Pest control;
 - (vii) Rural-residential development;
 - (viii) Proximity to urban development; and
 - (ix) The highly modified and eroded shoreline.
- 4 Jeremy Burdon was involved as a submitter²⁶ and appellant²⁷ in respect of Stage 1 of the PDP, including relating to:
- (a) The PDP Strategic Directions (3), Landscape (6), Rural (21), Rural Living (22) and Subdivision and Development (27) Chapters of the PDP; and
 - (b) Rezoning the Burdon Land to Rural Lifestyle Zone.
- 5 Jeremy Burdon did not participate in the Environment Court decisions leading to the Values Identification Framework (**VIF**) in Chapter 3 of the

²⁶ Submission 581.

²⁷ ENV-2018-CHC-091.

PDP but was identified by Counsel as being interested in, and affected by, the PAs.²⁸

²⁸ Memorandum of Counsel on behalf of various parties regarding Strategic Topic 2: Rural Landscape PAs, 21 July 2020 at [23-24].

Allenby Farms Limited (Allenby)

- 1 Allenby has interests in land ownership, partly within the proposed Mt Iron ONF Priority Area, legally described as:
 - (a) Lot 1 DP 539413 (**Lot 1**) and
 - (b) Lot 4 DP 471320 (**Lot 4**).
- 2 The Allenby Submission identified the PA overlay mapping relative to its land interests as set out below. The PA mapping does not extend to cover the LLRB land adjacent to the Mt Iron ONF:



- 3 On the basis of the Allenby submission lodged, a number of changes to the proposed schedule 21.22.11 have been supported by QLDC rebuttal evidence, including a more accurate description of the numbers of existing dwellings and consented platforms, roading and other structures within the Allenby land. These are supported to give clarity regarding the location of the more modified parts of the ONF that contain buildings, as stated in Mr Espie's evidence at [79].
- 4 Further amendments have also been agreed to the capacity statements, including greater recognition for:
 - (a) Capacity for infrastructure and utilities in circumstances where there is a functional or operational need for its location and structures are designed and located to limit their visual prominence, including associated earthworks;
 - (b) Capacity for rural living is amended from (as originally notified 'no capacity') to the new 'extremely limited to no' capacity excepting for the replacement or repairs of existing dwellings at the current building

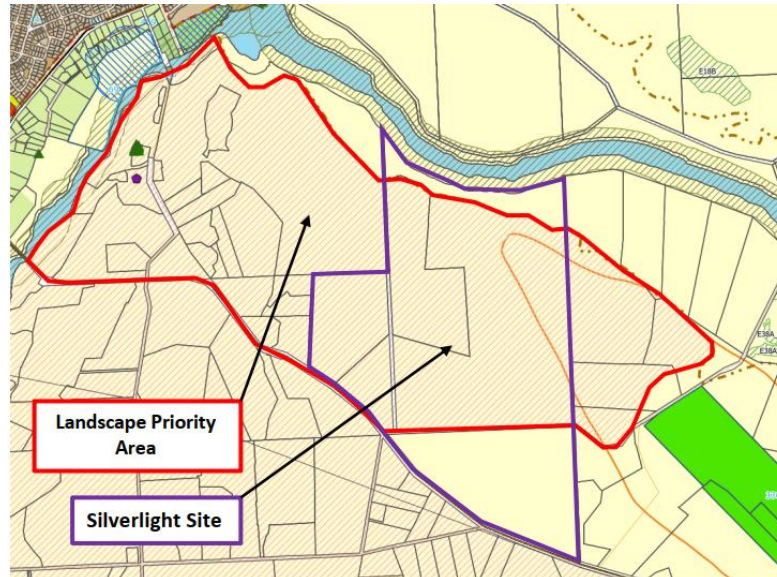
locations where the existing footprint and building height is not substantially exceeded and if so, other positive effects are included so that the landscape values are protected.²⁹

- 5 Allenby are particularly interested in the above amendments, and support where the JWS has amended the notified schedules. Allenby supports recognition that there is capacity to include further rural lifestyle development within the Allenby land, including by way of upgrade, extension, and consolidation of existing lifestyle / residential activities that are present already. Existing dwellings in this location have developed over time within the Mt Iron ONF setting, and as supported in Mr Espie's evidence at [80] there is there is at least some capacity for additions and alterations to the existing buildings within these 'more modified' parts of the ONF.
- 6 As with other parts of these submissions, this agreement is on the basis that the revision to the capacity rating for 'extremely limited to no capacity' is retained as agreed between landscape and planning experts.

²⁹ 4th October 2023 JWS between Mr Head and Mr Espie.

Silverlight Studios Limited

- 1 Silverlight Studios Limited (**Submitter**) has an interest in land at 707 Wanaka-Luggate Highway, Wanaka, legally described as Part Sections 64-67, Block IV, Lower Wanaka Survey District held in Record of Title OT14C/457 and Section 1, Block II Lower Wanaka Survey District held in Record of Title OT17A/336 and partially located within the Halliday Road / Corbridge RCL Priority Area as demonstrated on Figure 1 below (**Silverlight Site**):



- 2 The Submitter holds consents granted under the COVID-19 Recovery (Fast-track Consenting) Act 2020 to construct and operate a comprehensive film park and worker accommodation at the Silverlight Consent including:
 - (a) 12 sound stage buildings up to 17m in height and production support and visitor industry activities within precincts constructed to recreate portions of Venice, Paris and New York as well as seaside, Italian and medieval villages;
 - (b) a film school, theatres, and commercial recreation activities;
 - (c) earthworks covering an area of approximately 55.5ha and comprising a total volume of approximately 1,600,000m³;
 - (d) an 11 hectare man-made lake;
 - (e) up to 300 apartments constructed within the Venice, Paris and New York precincts and to be used as worker accommodation for cast, crew and/or students engaged in the consented activities on site.

- 3 There is also a live appeal under Stage 3 of the PDP seeking the Silverlight Site be rezoned to something other than Rural Zone.
- 4 Given the consented development on the Silverlight Studios site the landscape character and visual amenity values of the site and wider Priority Area are likely to change reasonably significantly over time as the various elements of the Silverlight Studios consents are implemented.
- 5 Mr Edgar's statement of evidence dated 11 September 2023 sets out his recommended amendments to the Schedule to better recognise and provide for the presence of the consented activity.

Gertrude Saddlery Limited – response to Panel questions

- 1 These points of submission refer to, and provide further comment on, questions raised by the Panel on 24 October 2023.

Q1 - If identified as ONF PA, but not mapped as ONF classification on PDP maps, is there confusion as to what rules apply?

- 2 Yes, there is potential for plan administration uncertainty if land is identified as within an ONF priority area, but is not mapped as within an ONF classification on PDP Planning maps.
- 3 As the Panel is aware, different rules flow from whether land is ONF or ONL (including farm buildings, earthworks volumes, mineral extraction activities). If land is identified as PA ONF, but not ONF on planning maps, there is potential for confusion as to whether the land is indeed ONF or not. Past practice in the administration of the PDP and ODP has been to differentiate ONFs (and apply ONF rules) where land is listed or described in the plan provisions as such, although might not have been mapped on the planning maps.
- 4 As previously noted, several expert witnesses have unanimously agreed that the GSL Site is not, and should not be, within or part of the Shotover River ONF. This Panel has no expert evidence to support a contrary decision in respect of the ONF PA. Furthermore, any such decision would be confusing for plan administration, require significant amendments to the ONF PA schedule (beyond scope), and be contrary to the Environment Court's direction from its interim decisions in Topic 2.

Q2 - A number of other 'hybrid ONL/Fs' exist in the PAs, even if not named as such, for example:

- (a) Ruby Island and Roys Peninsula – are ONF's within an ONL PA;
 - (b) The Kawarau River ONF PA within the Victoria Flats ONL PA
- 5 No expert evidence has been provided to Commissioners to assess these scenarios, or their similarity to the GSL Site. It is submitted each of these examples is different to the GSL scenario. For Roys Peninsula, this is a mapped ONF within a wider ONL PA. It is identified as a separate landform, being a series of roche moutonnées within the PA Schedule. Its distinct values and characteristics are within, and contribute to, the broader ONL as recognised in the PA Schedule.

- 6 The Kawarau River ONF PA is separately mapped and scheduled, though it appears to run 'through' the Victoria Flats PA ONL on either side. The river ONF values and capacity are separately identified to the surrounding ONL PA- in two separate schedules.
- 7 Neither of these examples is a hybrid ONF/L where the Schedule is primarily limited to a Feature (not a landscape), but then 'tacks' on an adjacent, and distinctly separate (in terms of values and character) piece of (contested) ONL³⁰.

Q3 - Upper parts of the Shotover River ONF also appear to be 'hybrid' ONL

- 8 Mr Espie gave his indicative view that those upper parts were different to where the River comes into the vicinity of the Edith Cavell Bridge. He considered that in the upper areas, the values and attributes of the ONF and the adjacent ONL become much more blended and are likely to be similar or shared. He also had not looked closely at the mapping in these locations, and could not definitively comment on where the ONF boundary was likely to start or end. Whereas from the Shotover gorge including downstream in the vicinity of the urban areas of Arthurs Point and including the GSL Site, the ONF is distinctly contrasted to/different from the surrounding landscape.
- 9 Counsel submits that there is no evidence before the Panel on this point, and so it cannot be determined that these upper areas are (or are not) within or part of the Shotover River ONF. Therefore, the hypothesis that these parts of the PA for the ONF might extend further than the actual (unmapped) ONF, cannot be used to support a recommendation that, for the same reasons, the GSL Site should be included within the ONF, or the schedule be amended to a hybrid ONF/L schedule, especially where there is clear evidence to the contrary.
- 10 Where the Panel has expert evidence before it which is unopposed, i.e. that the GSL Site is not part of the ONF (and the ONF PA), it is reasonable to make a recommendation in accordance with that. If the Panel feels it has insufficient evidence to make findings for those other parts of the ONF, or consistency issues, it may seek more evidence, or a further process of public input to elicit the same.

³⁰ Putting aside the issue of the clear error in the PA mapping including operative LDSR Zoned GSL Site, GSL's position, based upon its expert evidence, remains that its Site is not ONL or part of an ONL, and the final determination of that matter is a current / live question for the Environment Court.

- 11 Should the Panel require Mr Espie's formal assessment of matters addressed indicatively, GSL will oblige within a date requested.

Potential solutions

- 12 Counsel considers a potential issue in the PDP is that some, but not all, rivers are now mapped separately as ONFs (even where nested in ONLs) for example, the Arrow and Clutha / Mata Au rivers. The updated PA mapping link tabled by QLDC now includes the PDP ONL and ONF mapping. Parts of the ONF of the Shotover River are separately mapped, and parts are not. If the PA for the Shotover River was intended to be about the ONF (and that appears the case from Judge Hassan's Interim Decision 2.5), then it follows that:

- (a) The mapping of PAs for ONFs appears to have been done at a very high level, not following ONF boundaries set in the PDP previously in all areas;
- (b) This values assessment process should (and still could if the Panel accept scope to do so) precede boundary identification;
- (c) Without identification of ONF classification on PDP maps there could be future plan interpretation issues for these PAs;

- 13 The Court's interim decision 2.5 set out the Council's intended listing of ONF PAs as separate to ONLs, and this included the Shotover River:

[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**

...

[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...

- 14 For these reasons, GSL continues to pursue relief that identifies the boundary of the Shotover River ONF PA as the green boundary, as

recently agreed through expert conferencing between Ms Gilbert and Mr Espie, and confirmed by Council's Memorandum³¹ (whether this is considered a clause 16 fix to 'go back' to the Court's directions, or to uphold the 'green' layer of mapping that was included in notification, or on the basis of scope to make mapping amendments in this process), because:

- (a) Per the First AL Submissions, both the Court-directed 'green' boundary was included within the public notification links at the same time as the yellow boundaries (with no explanation differentiating the two);
- (b) For this reason, along with the other arguments supporting scope for mapping amendments³², there are no jurisdictional restrictions on upholding the now agreed 'green' boundary per the JWS;
- (c) If the Panel were to make a finding that mapping was not 'notified' but was incorporated by reference, it is submitted there is no jurisdictional bar, given that (again) both green and yellow layers were included in the links to PA mapping supposedly incorporated by reference;
- (d) If the Panel is minded to include the GSL Site within a PA, the more accurate way to do this (and to avoid future plan confusion between ONF and ONL as set out above) would be to include the Site within one of the available ONL PAs. There would however be jurisdictional issues with such a change given we are not aware of any submissions seeking such an outcome, the GSL Site was not notified as such, and this would be contradictory to what the Court directed in its interim decisions. For the avoidance of doubt, this option is not supported by GSL³³.
- (e) As already submitted, to include the GSL Site as within the Shotover River ONF is problematic for scope and evidential reasons. A new hybrid ONF/L would require a re-assessment and re-write of the Schedule's values and attributes identification, which will run into scope issues in terms of what submissions sought. This would also require higher order changes to strategic policies to become a new PA label of ONF/L (again this has scope issues). And finally, it would

³¹ Dated 20 October 2023.

³² First AL Submissions at 32-37.

³³ Furthermore, as noted in para 32 of Mr Espie's evidence in chief, In the event that the GSL Site is found to be within an ONL overlay, then strong Objectives and Policies in the PDP will protect its landscape values, regardless of PA scheduling.

be contrary to uncontested expert evidence that the Site is not part of the ONF and has different values and attributes to the ONF. For the avoidance of doubt, this option is not supported by GSL.

15 In summary of the evidential reasons already provided to this Panel, we note:

- (a) The Court-directed 'green' boundary was from the October 2020 JWS (which was signed some 13 months after the initial Atley rezoning "suspension" decision by Judge Jackson). It is therefore no justification to state that green boundary was in error / did not reflect the suspension decision;

Footnote 31: "The 'green boundary' post-dates the suspension. Judge Jackson's decision ordering the drawing of the ONL boundary line around, the movement of the Urban Growth Boundary to include, and the rezoning of the Shotover Loop to Low Density Residential be suspended is dated 11 September 2019 (*Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 150). The JWS is dated 29 October 2020, being 13 months later, and the relevant Interim Decisions 2.5, 2.7 and 2.12 are dated 2020 and 2021."

- (b) The 'green' boundary aligns with the Environment Court Topic 2 decisions, which upheld the JWS process, and have directed this Variation process³⁴;
- (c) The 'green' boundary was included in one of two hyperlinks in the June 2022 public notice documents for the Variation, with no explanation or differentiation between those layers. Even if this were unintended, and notwithstanding Council's cl 16 memo, the green boundary was factually there for the public to submit on³⁵;
- (d) According to expert evidence from Ms Gilbert and Mr Espie, the notified text of the Shotover River ONF schedule had a values description which aligned with / reflected this 'green' boundary³⁶;

³⁴ First AL Submissions, at GSL Appendix , para 3a

³⁵ First AL Submissions, at para 24.

³⁶ Evidence in chief of Mr Espie at [37]

- (e) The 'green' boundary was included in Ms Gilbert's evidence and referred to as 'notified' and supported.³⁷ The same position is reaffirmed in the October 2023 JWS and Council's 20 October 2023 Memorandum;
- (f) No expert witness on the record has ever provided evidence that the GSL land is, or is part of, the ONF.³⁸

³⁷ PDL Submissions by Anderson Lloyd at para 25.

³⁸ First AL Submissions, at GSL Appendix, para 10

Attachment 1 – Reply Report

Reply Report

Proposed Otago Regional Policy Statement 2021

14: NFL – Natural Features and Landscapes

Andrew Maclellan

5. NFL-P1 – Identification of outstanding and highly valued natural features and landscapes

5.1. Introduction

34. NFL-P1 is discussed in section 14.6 of the section 42A report, with my analysis in paragraphs [94] to [106]. NFL-P1 is also discussed in my first brief of supplementary evidence.
35. The recommended version of this provision reads:²²

NFL-P1 – Identification

~~In order to manage~~²³ outstanding and *highly valued natural features and landscapes* outside the coastal environment,²⁴ ~~by~~ identifying²⁵:

- (1) the areas and values of outstanding and *highly valued natural features and landscapes* in accordance with APP9, and
- (2) the capacity of those natural features and landscapes to ~~accommodate~~ absorb²⁶ use or development while protecting the values that contribute to the natural feature and landscape being considered outstanding or maintaining the values that contribute to the natural feature and landscape being²⁷ highly valued.

5.2. Submissions and evidence

36. Mr Ferguson supports the submission of Darby Planning LP & Others which seeks the deletion of clause (2) of NFL-P1 due to concerns with the concept of ‘landscape capacity’ being applied at a regional scale. Mr Ferguson considers the costs, resources and time to undertake a region-wide study are unjustified, and it would be more efficient to leave the identification of landscape capacity, as part of the overall suite of tools to manage effects of subdivision use and development on their landscapes, to each district.²⁸
37. Mr Brass supports the submission of DOC which seeks to remove the reference to ‘values’ within NFL-P1 to ensure consistency with the approach taken to managing natural features and landscapes within the CE chapter, and to align with higher order documents such as the NZCPS and RMA.²⁹
38. Ms O’Callahan for Port Otago Ltd considers there is a lack of rationale for identifying highly valued natural features and landscapes, as directed by NFL-P1. Ms O’Callahan also raises concerns with the clarity of the definition for, and the methodology to identify,

²² This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

²³ 00226.298 Kāi Tahu ki Otago

²⁴ 00301.054 Port Otago

²⁵ 00226.298 Kāi Tahu ki Otago

²⁶ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00318.034 Contact Energy

²⁷ 00239.163 Federated Farmers

²⁸ Chris Ferguson for Darby Planning LP & Others, para [18]-[24].

²⁹ Murray Brass for DOC, para [227]-[231]

highly valued natural features and landscapes. Ms O’Callahan supports the submission of Port Otago which seeks the deletion of references to highly valued natural features and landscapes throughout the pORPS.³⁰

39. Mr Bathgate supports the submission of Kāi Tahu ki Otago seeking a minor amendment to improve the readability of NFL-P1.³¹

5.3. Analysis

40. In response to Mr Ferguson, I accept that the requirement to undertake an identification of landscape capacity for all outstanding natural features and landscape and (ONF/L) and highly valued natural features and landscapes (HVNFL) is an onerous task which may not be justified in all circumstances. I consider that a more efficient way of achieving NFL-O1 would be to include a more flexible approach to landscape capacity assessments which would allow territorial authorities to decide when a landscape capacity approach is required, and only require a landscape capacity assessment in areas likely to face development or growth pressure.
41. In my view, this reflects the current application of ONF/L and HVNFL in the Otago region. As highlighted by Ms Hill for Darby Planning LP & Others and Mt Cardrona Station Limited³², in the context of the QLDC for its Proposed District Plan (PDP) the landscape capacity assessments are only required in ‘priority areas’ rather than the whole of the district’s landscapes. In contrast, Dunedin City Council in its 2nd Generation District Plan (2GP) has identified the areas and values of ONF/L and HVNFL, and also the potential threats to those values, but has not gone to the next step of assessing the capacity of those landscapes or features. I consider both of these approaches are appropriate.
42. To achieve this more flexible approach to landscape capacity assessments, I recommend deleting NFL-P1(2), which remove the requirement for landscape capacity assessment to be undertaken in all cases and amending NFL-M1(2) so that it only requires territorial authorities to undertake landscape capacity assessments in areas likely to face development or growth pressure. I also recommend amendments to NFL-P2 to reflect the understanding that landscape capacity may not always be known.
43. In relation to the relief sought by Mr Brass, while I acknowledge that ‘values’ of natural features and landscapes are not referred to in section 6(b) of the RMA, I consider the reference is helpful as it provides a practical method of understanding what needs to be protected. If the values are not identified, it makes it very difficult to determine whether an activity within a landscape is appropriate or not.
44. In response to Ms O’Callahan, I retain the position set out in the section 42A report and supplementary evidence with regard to HVNF/Ls and consider they contribute to giving effect to section 7(c) and (f) of the RMA, and their identification and management is

³⁰ Mary O’Callahan for Port Otago, para [63]-[71] and Appendix 1

³¹ Michael Bathgate for Kāi Tahu ki Otago, para [143]

³² Paragraph [15] of Ms Hill’s legal submissions for Darby Planning LP & Others and Mt Cardrona Station Limited.

common practice throughout New Zealand. I do not support the deletion of the HVNF/L provisions from the pORPS.

45. Within my opening statement, I agreed with Mr Bathgate's minor amendments to NFL-P1 to clarify the drafting. However, as I am recommending the removal of NFL-P1(2), I now consider the drafting of NFL-P1 can be refined to focus solely on the identification of the areas and values of outstanding and highly valued natural features and landscapes.

5.4. Final recommendation

46. My final recommended amendments to the notified version of the pORPS are:

NFL-P1- Identification

Identify the areas and values of outstanding and highly valued natural features and landscapes, in accordance with APP9.³³

~~In order to manage outstanding and highly valued natural features and landscapes identify~~

- ~~(1) the areas and values of outstanding and highly valued natural features and landscapes in accordance with APP9, and~~
- ~~(2) the capacity of those natural features and landscapes to accommodate use or development while protecting the values that contribute to the natural feature and landscape being considered outstanding or highly valued.~~

NFL-M1 – Identification

Territorial authorities must:

- (1) ...
- (2) in areas likely to face development or growth pressure,³⁴ include in their *district plans* a statement of the capacity of outstanding and highly valued natural features and landscapes to accommodate use or development while protecting the values that contribute to the natural feature and landscape being considered outstanding or maintaining the values that contribute to the natural feature and landscape being highly valued ~~change in use and development without their values being materially compromised or lost, in accordance with NFL-P1,~~³⁵

47. In terms of section 32AA, I consider the change is a more efficient method of achieving NFL-O1. As set out above, I consider the amendment provides a more flexible approach to landscape capacity assessments which would allow territorial authorities to decide when a landscape capacity approach is required, and only require a landscape capacity assessment in areas likely to face development or growth pressure. I consider this may be slightly less effective at achieving NFL-O1 as it may mean less will be known about the capacity of landscapes and features in the Otago region.

³³ 00014.065 Mt Cardrona Station

³⁴ 00014.065 Mt Cardrona Station

³⁵ 00014.065 Mt Cardrona Station

48. In terms of the costs and benefits of this approach, from an environmental, social and cultural perspective, I consider this approach will be largely neutral as the areas and values of all outstanding and highly valued natural features and landscapes in accordance will still need to be identified. From an economic perspective, I consider this will reduce the economic cost associated with achieving NFL-O1 considerably as it will ensure that only the areas facing development pressure will be required to undertake landscape capacity assessments. On balance, I consider the suggested approach can be justified from a section 32 perspective as I consider this will provide a more efficient approach to achieving NFL-O1.

6. NFL-P2 – Protection of outstanding natural features and landscapes

6.1. Introduction

49. NFL-P2 is discussed in section 14.7 of the section 42A report, with my analysis in paragraphs [126] to [134]. NFL-P2 is also discussed further in my first brief of supplementary evidence.

50. The recommended version of NFL-P2 reads:³⁶

NFL-P2 – Protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes outside the coastal environment from inappropriate *subdivision*, use and development³⁷ by:

- (1) avoiding adverse *effects* on the values of the natural features and landscapes where there ~~limited~~limited³⁸ or no capacity to absorb ~~change use or development~~³⁹ that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding, and
- (2) avoiding, remedying or mitigating other adverse *effects*, and
- (3) managing the adverse *effects* of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13.⁴⁰

6.2. Submissions and evidence⁴¹

51. Mr Brown considers the reference to limited capacity in clause (1) of NFL-P2 is unnecessary. He supports the submission of Mt Cardrona Station seeking its deletion. He seeks this relief on the basis that if there is limited capacity to absorb use or development,

³⁶ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

³⁷ 00301.054 Port Otago

³⁸ 00014.063 Mt Cardrona Station

³⁹ 00318.034 Contact Energy, 00014.063 Mt Cardrona Station

⁴⁰ 00315.073, 00315.074, 00315.075, 00315.076 Aurora Energy

⁴¹ Mr Horne for the Telecommunication Companies, Mr Coombs for Contact Energy, Ms McLeod for Transpower, and Mr Shaw for Waka Kotahi support the supplementary evidence version of NFL-P2.

the avoidance of any adverse effects on the values of the ONF/L may not be necessary in every case, and clause (2) of NFL-P2 would capture any adverse effects on the values of the ONF/L⁴². At the hearing, Mr Brown proposed an additional drafting option which included an addition to clause (2) as follows:

(2) avoiding, remedying or mitigating ~~other~~ adverse effects on the values of the natural features and landscapes where there is capacity for use or development.

52. Mr Ferguson for Darby Planning & Others considers it is inappropriate to require the avoidance of adverse effects on identified values of the feature or landscape where capacity to absorb development exists. Mr Ferguson also reiterates the same concerns with the concept of landscape capacity as for NFL-P1. Mr Ferguson prefers the notified clause (1), subject to protection being achieved by ‘maintaining’, rather than avoiding adverse effects on, landscape values⁴³.

53. Mr Brass for DOC⁴⁴ and Mr Bathgate for Kāi Tahu ki Otago⁴⁵ are concerned with the management of outstanding natural features and landscapes being linked to the capacity to absorb changes, as they consider it could promote a ‘maximum permissible harm’ approach. Both parties support the notified version of NFL-P2, and Mr Brass also supports the removal of references to the ‘values of’ natural features and landscapes.⁴⁶

54. Ms Hunter supports the submission of Contact Energy seeking an amendment to NFL-P2 to direct plan users to EIT-EN-P5 (a provision advanced by the submitter as part of its proposed energy sub-chapter of the pORPS) which establishes an effects management framework associated with renewable electricity generation activities.⁴⁷

55. Ms Collie for Matakanui Gold broadly supports the supplementary evidence version of NFL-P2 but seeks several amendments as follows:⁴⁸

Protect the landscape values of outstanding natural features and landscapes outside the coastal environment from inappropriate *subdivision*, use and development by:

(1) avoiding adverse *effects* on the identified landscape values of the natural features and landscapes where there is ~~little or~~ no capacity to absorb the effects of use or development,

(2) ...

56. Mr Devlin for Glenpanel Limited considers there is no policy framework to sit alongside new clause (3) in NFL-O1 regarding restoration, and recommends that clause (2) of NFL-P2 be amended as set out below, or alternatively, a new policy be inserted recognising

⁴² Jeff Brown for Mt Cardrona Station, para [3.1] to [3.6]

⁴³ Chris Ferguson for Darby Planning LP & Others, para [25] to [29]

⁴⁴ Murray Brass for DOC, para [232] to [236]

⁴⁵ Michael Bathgate for Kāi Tahu ki Otago, para [137] to [139]

⁴⁶ Murray Brass for DOC, para [231]

⁴⁷ Claire Hunter for Contact Energy, para [13.1]-[13.4]

⁴⁸ Anita Collie for Matakanui Gold, para [5.20]-[5.23]

activities in an ONF/L that do not involve permanent buildings and ‘are of less concern’. No specific wording is proposed for the new policy.⁴⁹

“avoiding, remedying or mitigating other adverse effects and recognising positive effects where restoration of the values of the natural features or landscapes is proposed.”

6.3. Analysis

57. As noted in the assessment of NFL-P1 above, I now recommend a more flexible approach be taken as to when a landscape capacity assessment is to be used, only requiring landscape capacity assessment in areas likely to face development or growth pressure. In my view, this suggested change to NFL-P1 requires consequential changes to NFL-P2 as NFL-P2(1) assumes that the capacity of natural features or landscapes will be known.

58. In order to align NFL-P2 with my recommended amendment to NFL-P1, I consider a new clause within NFL-P2 is required which relates directly to areas where a landscape capacity assessment has been undertaken, or where the landscape capacity may be at risk of being exceeded. Within these areas, I retain the view that NFL-P2 should include strong direction that the capacity of that landscape is not exceeded. As such, I recommend an additional clause be added to the NFL-P2 which sets this out.

59. I also support the suggestion of Mr Ferguson that NFL-P2(1) should reflect the current drafting in Policy 3.2.4(b) of the RPS19 which states:

‘...maintaining the values (even if those values are not themselves outstanding) that contribute to the natural feature, landscape or seascape being outstanding’

60. I note this drafting is largely aligned with the drafting of the notified version of NFL-P2(1) albeit that ‘avoid’ in the notified version of NFL-P2 is being replaced with ‘maintain’. I consider this amendment is important to ensure that the policy is not a ‘no change policy’, and appropriate subdivision, use and development can still be undertaken if those values are maintained. When read together with NFL-P2(1) and NFL-P2(3), I consider the combination of:

- a. not exceeding the capacity of a landscape,
- b. maintaining the values of the landscape (even those which are not, on their own, outstanding), and
- c. avoiding, remedying or mitigating other effects,

will achieve the requirement within NFL-O1 to protect outstanding natural features and landscapes from inappropriate subdivision, use and development.

⁴⁹ Blair Devlin for Glenpanel Limited Partnership, para [39]-[51]

61. I have also considered whether a definition of ‘landscape capacity’ is required within the pORPS. As noted by Ms Hill⁵⁰, the QLDC PDP includes a definition of ‘landscape capacity’ as follows:

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 while maintaining its identified visual amenity values;*

62. While I agree this definition provides helpful clarity, I note that the concept is referred to in NFL-P1(2) and NFL-M1(2). As such, rather than including a definition of ‘landscape capacity’, I consider it would be more helpful for the methods within the NFL chapter to articulate what a landscape capacity assessment should include. Given this, I consider NFL-M1(2) should be amended to set out what a landscape capacity assessment should include, using the definition within the QLDC PDP set out above as a guide.

63. In response to Mr Brass and Mr Bathgate, as set out in my section 42A report,⁵¹ I consider that section 6(b) of the RMA is not a ‘no change’ provision and, therefore, NFL-P2 needs to include some flexibility to provide for an appropriate level of development within ONF/Ls. In my view, the drafting proposed by Mr Brass and Mr Bathgate does not achieve this.

64. In relation to Ms Collie’s proposed amendments, I consider that the chapeau of the policy should be consistent with section 6(b) of the RMA and therefore disagree with the reference to ‘landscape values’. I also disagree with the inclusion of ‘the effects of’ as the effects are already captured by clause (1).

65. In response to Ms Hunter, I disagree an additional reference to EIT-EN-P5 is necessary. The NFL and EIT chapters of the PORPS are to be read together and form a package of provisions. The addition of clause (3), which references EIT-INF-P13, is recommended to highlight that this provision supersedes the requirements of NFL-P2(1) and (2). I do not recommend the inclusion of any further cross-references in this policy.

66. I do not consider the amendments sought by Mr Devlin are required as NFL-P4 is the primary policy for implementing restoration. I note that Mr Devlin has correctly raised within his evidence that my supplementary evidence has two different versions of the chapeau of NFL-P2. To clarify, I support the addition of ‘from inappropriate subdivision, use and development’ as set out in paragraph 11 of my supplementary evidence. I agree

⁵⁰ Paragraph [20] of Ms Hill’s legal submissions for Darby Planning LP & Others and Mt Cardrona Station Limited.

⁵¹ Paragraph [129] of the section 42A report.

that the chapeau in paragraph 18 of my supplementary evidence is incorrect. This change is reflected below.

6.4. Final recommendation

67. My final recommended amendments to the notified version of the pORPS are:

NFL-P2 – Protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes from inappropriate subdivision, use and development⁵² by:

(1A) avoiding exceeding the landscape capacity of the natural feature or landscape,⁵³

(1) maintaining ~~avoiding adverse effects on~~⁵⁴ the values (even if those values are not themselves outstanding) that contribute to the natural feature or landscape being considered outstanding, ~~and~~

(2) avoiding, remedying or mitigating other adverse effects, ~~and~~

(3) managing the adverse effects of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13.⁵⁵

68. In terms of section 32AA, this assessment is similar to the section 32AA assessment for NFL-P1 above. I consider the change is a more efficient method of achieving NFL-O1. I consider the recommended amendments provide a more flexible approach to landscape capacity assessments set out in NFL-P1. I consider this more effective than the notified version of NFL-P2 as it provides a greater understanding of what appropriate subdivision, use and development within ONF/L will need to achieve. In terms of the costs and benefits of this approach, I consider this approach will be largely neutral as both notified and proposed version of the policy require the protection of ONF/L, however, the suggested amendments provide a more nuanced approach to how that protection will be achieved.

7. NFL-P3 – Maintenance of highly valued natural features and landscapes

7.1. Introduction

69. NFL-P3 is discussed in section 14.8 of the section 42A report, with my analysis of paragraphs [148] to [155]. NFL-P3 is also discussed in my first and second briefs of supplementary evidence.

⁵² 00301.054 Port Otago

⁵³ 00014.063 Mt Cardona Station

⁵⁴ 00014.063 Mt Cardona Station

⁵⁵ 00315.073, 00315.074, 00315.075, 00315.076 Aurora Energy