

Before the Hearings Panel
Appointed by the Queenstown Lakes District Council

Under the Resource Management Act 1991

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

and **Cardrona Cattle Company Ltd**
(Submitter #94 and Further Submitter 233)

Planning Evidence of Brett James Giddens

11 September 2023



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GROUP

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INTRODUCTION

- 1 My full name is Brett James Giddens.
- 2 I am the Managing Director of Town Planning Group (NZ) Limited, a resource management and planning consultancy established in 2006 that provides planning and resource development advice to private clients, local authorities and government agencies New Zealand-wide.
- 3 I hold a Bachelor of Science in Geology from the University of Canterbury, a Master of Applied Science in Environmental Management from Lincoln University, and have partially completed a Master of Resource & Environmental Planning from Massey University. I am an Associate of the New Zealand Planning Institute, a member of the New Zealand Resource Management Law Association, and a member of the Urban Design Forum of New Zealand.
- 4 I have over 20 years' experience as a practicing planner in New Zealand, with a focus on statutory planning, environmental assessment, policy development and analysis, and consenting. I am regularly engaged as an expert planning witness before Council hearings and the Courts. I have been involved in numerous district and regional plan change processes throughout New Zealand.
- 5 I have a working knowledge of the Queenstown Lakes Proposed District Plan (**PDP**) and have worked extensively in the district through my planning career. I have been involved in the plan formulation processes relating to the former Operative District Plan as well Stages 1, 2 and 3 of the PDP (and its variations).

CODE OF CONDUCT

- 6 Although this is not an Environment Court hearing, I note that in preparing my evidence I have reviewed the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. I have complied with it in preparing my evidence. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

- 7 I have been asked by the Cardrona Cattle Company Ltd (**Submitter**) to provide planning evidence with respect to the variation to the PDP relating to the inclusion of landscape schedules for the Victoria Flats Landscape Priority Area (**VF-LPA**).

- 8 My planning evidence is relatively confined to the issue relating to the inclusion of land zoned Gibbston Character (**GCZ**) within the Landscape Priority Area (**LPA**) Schedules and mapping.
- 9 I have read the landscape evidence by Mr Paul Smith on behalf of the Submitter and rely on his findings, in particular, his opinion that the 'flats' of Victoria Flats are highly modified and are not located in an ONL. In my evidence I will provide further context to the landscape classification.
- 10 I am very familiar with Victoria Flats and the consents that have been authorised in this area (having been involved in the majority of them). The locations of the consents are depicted on Sheet 6 of the Plan Set appended to the evidence of Mr Smith, reproduced below as my Figure 1, being focussed primarily on the valley floor of the Victoria Flats.

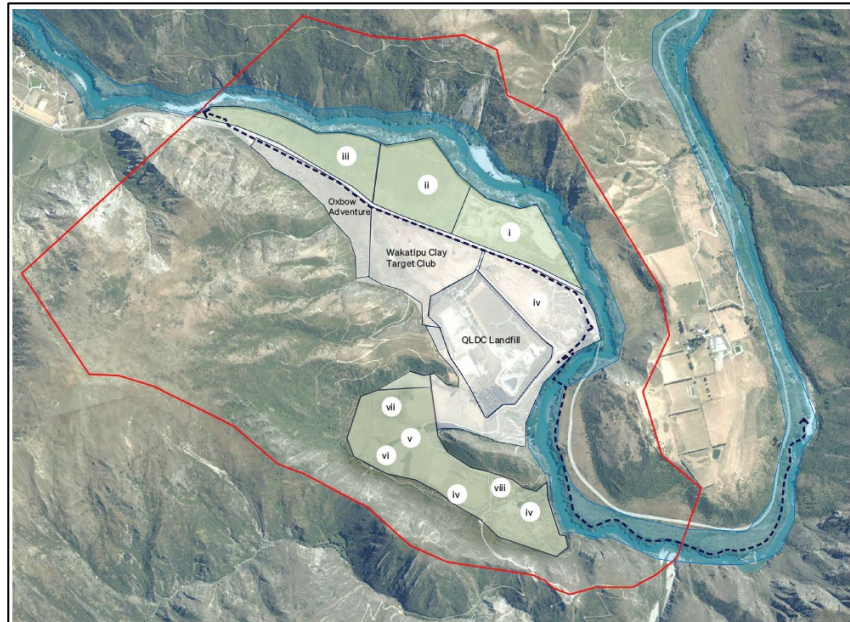


Figure 1: Consent locations respective of zone and VF-LA (in red)

- 11 I have read the evidence provided by the Council¹ in support of the variation.

EXECUTIVE SUMMARY

- 12 My evidence is primarily focused on whether land within the GCZ should be included with the LPA Schedules and mapping under the Variation. Ms Evans justifies the VF-LPA being located over land zoned Gibbston Character on the basis that the GCZ is one of the "rural zones" (plural) in the PDP. I do not share Ms Evans' approach.

12.1 The Council is bound by what it notified, which was a variation to the Rural Zone of the PDP; and

¹ <https://www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/hearings/landscape-schedules>

- 12.2 The policies that direct the Variation and LPA relate to land zoned Rural and do not relate to the other zones under the heading of "rural environments" under Part 4 of the PDP.
- 13 Including non-Rural zone land will create perverse planning outcomes and difficulties for the application of the schedules in practice (which I consider is evidenced through the explanations provided in the section 42A report from [9.42]). After reading that explanation, I do not have any confidence that the proposed landscape schedules "make clearer" what aspects of these landscapes are to be protected, maintained or enhanced², rather it would create a complicated, costly and unnecessary planning framework.
- 14 Focussing on the GCZ, introducing a schedule containing values, character and capacity directions for a zone that that (1) does not have objectives and policies relating to ONLs or ONFs; and (2) is specifically excluded as an exception zone from the ONL and ONF policies in Chapter 6 (Landscapes) is highly problematic, and not intended by the policy underpinning the Variation.
- 15 The GCZ at Victoria Flats has not been considered as an ONL in either the ODP or PDP, rather the Environment Court and a number of Commissioner decisions have confirmed that the GCZ is not located in an ONL. This is a problem against the backdrop of the Council's position that the entirety of the GCZ is an ONL.
- 16 Turning to the VF-LPA schedule, no consideration has been given to the effect that permitted and controlled activities within the GCZ could have on landscape values and character. Furthermore, no consideration has been given to the consented storage facility authorised under RM220327, which encompasses some 7.2ha of the Submitter's property. This resulted in "urban development" as defined being located in Victoria Flats.
- 17 In my opinion, the LPAs and schedules should be amended. This would mean that:
- 17.1 the notified mapping of the VF-LPA would need to exclude land zoned GCZ; and
- 17.2 the schedules would need to reflect that land within the LPA that is zoned Rural.
- 18 In doing so, the Variation would fully, and correctly, give effect to the strategic policies it is intended to achieve.

VARIATION BACKGROUND

- 19 The Council publicly notified the Variation to the PDP on 30 June 2022 as directed by SP 3.3.42. The introductory statement is set out as follows:

² <https://www.qldc.govt.nz/landscape-schedules#make-a-further-submission>

Queenstown Lakes District Council has prepared changes to the Queenstown Lakes Proposed District Plan (PDP) under Schedule 1 of the Resource Management Act 1991 (RMA). This proposal is a variation to Chapter 21 Rural Zone of the PDP, to introduce proposed landscape schedules 21.22 and 21.23.

(My emphasis)

- 20 The Variation relates to Chapter 21, which is the Rural Zone under the PDP. The scope of the Variation is plainly clear to any reader that it relates to the Rural Zone and no other zone under the PDP.
- 21 Following the link on the public notice, it takes the reader to another introductory statement that further reinforces that the Variation relates to the Rural Zone, noting that the schedules are intended to “make clearer what aspects of these landscapes are to be protected, maintained or enhanced”:

This proposal is a variation to Chapter 21 Rural Zone of the Proposed District Plan, to introduce landscape schedules 21.22 and 21.23. These schedules set out the landscape values for twenty-nine Priority Area landscapes across the Whakatipu Basin and Upper Clutha.

The District’s landscapes are of significant value to the people who live in, work in or visit the District. The Proposed District Plan sets out a policy framework that seeks to protect, enhance or maintain these landscapes. The proposed landscape schedules seek to make clearer what aspects of these landscapes are to be protected, maintained or enhanced.

(My emphasis)

- 22 The notified proposal included the proposed schedules themselves, and the mapping of the LPAs.
- 23 A copy of the public notice is contained as my **Annexure A**.
- 24 The Variation seeks to implement SPs 3.3.36, 3.3.37, 3.3.39 and 3.3.40. SP 3.3.36 is clear that it is only the Rural zone that can be considered:

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

a. parts of the Outstanding Natural Features of Peninsula Hill, Ferry Hill, Shotover River, Morven Hill, Lake Hayes, Slope Hill, Feehly Hill, Arrow River, Kawarau River, Mt Barker, and Mt Iron.

b. parts of the Outstanding Natural Landscapes of West Wakatipu Basin, Queenstown Bay and environs, Northern Remarkables, Central Wakatipu Basin Coronet Area, East Wakatipu Basin and Crown Terrace Area, Victoria Flats, Cardrona Valley, Mount Alpha, Roys Bay, West Wanaka, Dublin Bay, Hāwea South and North Grandview, and Lake McKay Station and environs.

(My emphasis)

25 There is no reference in SP 3.3.36 to any other zone in the PDP, rural environments, or rural zones (plural).

26 The s42A report at [9.30] states:

Both SPs 3.3.36 and 3.3.37 provide policy direction to achieve SO 3.2.5.1, which is not limited to Rural Zoned land.

(My emphasis)

27 Both SP 3.3.36 and 3.3.37 refer to the "Rural Zone" and no other zone from the rural environment. Both policies give effect to SO 3.2.5.1 and while that strategic objective does not refer to any zones, that should not be seen as determinative as meaning it refers to all rural environments under Part 4; the strategic objective does not need to state a zone as the more specific policies provide the clear focus on the Rural Zone.

28 In summary, I am of the opinion that the LPA schedules and mapping are confined to the Rural Zone of the PDP.

RELATIONSHIP TO THE GIBBSTON CHARACTER ZONE

29 The GCZ is a standalone zone within the PDP. It has its own purpose, objectives, policies and rules. There is no cross over in the provisions with the Rural zone. These features were also inherent in the ODP version of the zone.

30 Under the PDP, the GCZ is within an exception zone in 3.1B.5, meaning the ONL and ONF policies under Chapter 6 (Landscapes) do not apply.

31 Ms Evans refers at [9.31] to the circumstances when the Landscape Assessment Methodology required by SP 3.3.45 is to be implemented, noting limb (d) of SP 3.3.46:

a resource consent where the proposal (or part thereof) is in an Exception Zone in 3.1B.5 and gives rise to landscape effects on the receiving environment that includes an Outstanding Natural Feature or Outstanding Natural Landscape on land with Rural zoning outside that Exception Zone

32 From an examination of the objectives and policies of the GCZ in Chapter 23, there is no mention of ONLs or ONFs. I would expect to see policy direction if there was intended to be any consideration of ONLs and ONFs within this framework. In effect, this means that when a consent is triggered under the rule framework, there is no direction or requirement to consider matters pertinent to section 6 landscapes of national importance under the Resource Management Act 1991 (**RMA**).

33 The assessment matters under 23.7 (which apply to any discretionary or activity within the GCZ) refer to ONLs and ONFs under the heading of "Effects on landscape character":

23.7.1.1 Where the activity is adjacent to an Outstanding Natural Feature or Landscape, whether and the extent to which the proposed development will adversely affect the quality or character of the adjacent Outstanding Natural Landscape or Feature.

(My emphasis)

- 34 This assessment matter makes it clear that an activity within the GCZ could be adjacent to an ONL and ONF. The Kawarau River is an ONF, for example, and there are many locations where the GCZ is adjacent to that ONF and the wider ONL.
- 35 There is no direction at all in Chapter 23 that would indicate that the GCZ is within an ONL or ONF.
- 36 The GCZ is part of the “rural environment” under Part 4 of the PDP. In the recently released Wakatipu Equities Limited v QLDC (Decision No. [2023] NZEnvC 188), the Environment Court discusses the overall design of approach of the PDP to the ‘rural environment’.

[40] In PDP Part 1: Introduction, it is explained that the rural environment is split “into several zones to allow different provisions to apply to each”. That is to allow development in each zone “to be reflective of the effects anticipated” by the PDP (with “District Wide Matters” applying over all zones) (provision 1.6.10).

- 37 And at [45]:

[45] With the addition of the WBRAZ, the PDP now provides for five classes of zone for its rural environment. Dedicated zone chapters are included in the PDP (their provisions applying in conjunction with Ch 27: Subdivision and Development) ...

- 38 This is consistent with Part 2 (Strategic) of the PDP with regard to the GCZ, where SP 6.3.1.3 under Chapter 6 directs the PDP to:

Provide a separate regulatory regime for the Gibbston Valley (identified as the Gibbston Character Zone), Rural Residential Zone, Rural Lifestyle Zone and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories and the policies of this Chapter related to those categories do not apply unless otherwise stated. (SO 3.1B.5 and 3.1B.6).

(My emphasis)

- 39 In summary, the GCZ is a standalone zone in the PDP that has no objectives and policies indicating it is located in an ONL or ONF.

CASE LAW & OTHER DECISIONS

- 40 To further examine the relationship of the GCZ to section 6 of the RMA, I have reviewed past decisions that have traversed the matter.
- 41 The Environment Court noted in Wakatipu Environmental Society v QLDC C180/99 at [107] that:

"We find as facts that:

...

(3) The Kawarau valley east of the Kawarau Bridge is not an outstanding natural landscape. Viticulture may be turning it into an outstanding landscape (but not a natural landscape). It is certainly an increasingly important landscape and its visual amenities require careful consideration"

(my emphasis)

42 The Environment Court noted further at [115]:

"We have also already identified an example of a landscape that is at least potentially outstanding but is not an outstanding natural landscape nor likely to be one: the Kawarau Gorge below the bungy bridge. Its landscape has been greatly modified over the last 1000 or so years, and at an exponentially increasing rate - first burning, followed by gold mining, grazing, more burning, introduction of exotic grasses, trees, and weeds (elder thistles, sweet briar, hawthorn are the larger species) and animals (sheep, rabbits, mustelids), farm houses and buildings, and fences. All these have occurred in a handsome gorge that when pristine may have been an outstanding natural landscape. Largely within the last decade the flats in the gorge have sprouted grape vines and lines - and it is the Tatters' posts, wires and tubular plastic shelters which reduce the naturalness of this landscape. Yet the meticulous orderliness of the vineyards makes (to some eyes) a most attractive landscape when contrasted with the wildness of the backdrop of sweet briar, shrubland and tussock. The vineyards are a useful example of the way human intervention through operation of the market can achieve largely beneficial environmental outcomes".

(My emphasis)

43 The landscape classification was specifically traversed in the decision for RM060059 by Commissioners J.G. Matthews and M. Parker for a whisky distillery in the Gibbston Character Zone at Victoria Flats (within the VF-PA), where the Commissioners recorded at A.6 "Landscape Classification" (from page 7):

We will set out our views on this [the council taking the approach that the Gibbston Character Zone is within an ONL] in some detail, because it is important to this decision and may be important to other decisions relating to the Gibbston Character Zone that these views are expressed. We start by stating the obvious, that the Gibbston Character Zone is just that, a zone, and not a sub-zone of the Rural Zone. With that firmly in mind we turn to Part 5.4 of the Plan which relates to Rural Zones (and not to the Gibbston Character Zone). Part 5.4.2 contains the steps for the landscape assessment process including analysis of the site and surrounding landscape and determination of landscape category, followed by application of assessment matters. It is that process which Mr Rewcastle sought to follow in relation to this site, in a different zone. In fairness to Mr Rewcastle this is not the first time that these commissioners have been faced with such an assessment of a site within the Gibbston Character Zone.

Provisions relating to the Gibbston Character Zone are in Part 5.5. In that Part there is no such classification exercise provided for, so on the face of it no such classification is necessary. Indeed, that would appear entirely consistent with the very existence of the Gibbston Character Zone which was set aside for a specific stated reason and is accorded its own objectives and policies and rules. These are relatively permissive of certain kinds of developments and activities to a much greater degree than is the case in the Rural Zone. In particular, where an area of general rural land is classified as Outstanding Natural Landscape, the opportunities for development are extremely limited, and the provisions which apply in that circumstance are at total variance with the provisions which apply in the Gibbston Character Zone. It would be a major anomaly to classify land in the Gibbston Character Zone as being part of an Outstanding Natural Landscape because to do so would bring in to consideration diametrically different and to some extent conflicting considerations.

44 The decision further records on page 9:

[Our decision] ... accords with common sense that there should be no further classification of the landscape within the Gibbston Character Zone, the land in that zone having been specifically zoned to take account of its landscape qualities, its potential for certain forms of productivity, and the development which had occurred at the time the PODP was processed. Finally, of course, it accords with common sense not to classify land in the Gibbston Character Zone as Outstanding Natural Landscape when the very purpose for which the zone exists is completely contrary to the very restrictive approach to development and land usage within areas of Outstanding Natural Landscape.

45 The above discussion regarding the GCZ holds true with the PDP. There is very little distinction between the ODP Gibbston Character Zone and the PDP Gibbston Character Zone.

46 There has been no process under the PDP that I am aware of that changed the landscape of the GCZ to an ONL.

47 In summary, the land zoned GCZ within the VF-LPA was never an ONL under the ODP and is not an ONL under the PDP. The matter has been traversed by decision makers and I am not aware of any decisions to the contrary.

IMPLICATION OF INCLUDING GCZ WITHIN THE SCHEDULES

48 The section 32 report states at [3.13] that:

The landscape schedules for the Priority Areas standalone within the PDP and do not change or alter any other overlays, zones or mapping notations.

49 I consider that the way the Council has approached the Variation in evidence is such that it will have an impact to change or alter zones and their administration under the PDP, in particular the GCZ. This is further evidenced in the explanation in the section 42A report for

how the LPA schedules will be applied to consent applications at [9.42] to [9.58].

- 50 If the approach adopted by Ms Evan's is correct, then it will mean – in effect – that for discretionary or non-complying activities (and arguably restricted discretionary activities where landscape is a matter of discretion), the schedules introduce a values assessment based on section 6 ONL criteria. This in my opinion fundamentally alters the GCZ and does not align at all with the PDP zone framework.
- 51 Ms Evans' traverses how the LPA schedules will be applied to consent applications from [9.42] of her section 42A report. If Ms Evans is correct, it would be a very difficult regime to follow and would result in a highly unclear and uncertain consenting pathway for consent applicants.
- 52 Adopting the same format as Ms Evan's at her [9.48], I set out below how I see the landscape schedules being applied in the GCZ:
- (a) *The GCZ is one of five zones within the Rural Environment under Part 4 of the PDP a rural zone, but and is not part of the Chapter 21 Rural Zone. The GCZ is also an Exception Zone meaning the ONL and ONF categories and related the policies of Chapter 6 do not apply.*
 - (b) *~~Similar to the SASZ, the schedules have been drafted (or are recommended to be drafted) so that they consider the activities anticipated within the GCZ within its PA landscape context (ONL and ONF), including the development enabled by the GCZ.~~*
 - (c) *The GCZ is regulated by the provisions in Chapter 23 ~~(as well as district wide chapters), which contain no objectives and policies relating to ONLs or ONFs reflecting that the GCZ sits outside these landscapes, which provides for the protection of the values of the ONF/L for activities that are anticipated by the zone, and~~*
 - (d) *The PA schedules do not apply to land within the GCZ. Where any activity is proposed that is not provided for (in SO 3.2.5.4 terms), the PA schedules could be used to inform the landscape assessments and determination of landscape capacity, as required by relevant Chapter 3 SOs and SPs (and where the activity has a restricted discretionary, discretionary or non-complying activity status).*

COMMENTS ON THE VF-LPA SCHEDULE

- 53 Setting to one side my evidence above and turning to the VF-LPA schedule, I consider that there are inherent issues with the schedule appended to the Council's landscape evidence.
- 54 The GCZ is much more permissive than the Rural zone. As I have noted above, the GCZ does not have objectives and policies relating to ONLs and ONFs so its rules are not geared towards the protection of section 6 landscapes. Conversely, the Rural zone has a full suite of objective and policies relating to the protection of ONLs and ONFs

and, alongside Chapter 6 (Landscapes), it must be said that the Rural zone is a regime that considers (and seeks to protect) section 6 landscapes within its framework.

- 55 It is not logical in my opinion that activities permitted or controlled in the GCZ can be said to have "some", "very limited" or "no" capacity. For example, commercial recreation activity is permitted yet it is said to only have "some" landscape capacity in the VF-LPA. Farm buildings up to 500m² in area and 10m in height are controlled, yet it is said to have "limited landscape capacity" for such buildings.
- 56 Overlooking the impact of viticulture (permitted), farming buildings (controlled), winery buildings (controlled), frost fans (controlled) is significant in my opinion. Mr Smith has commented on this in his landscape evidence.
- 57 With regard to the Submitter's property, the VF-LPA schedule overlooks the consented storage facility authorised under RM220327, which encompasses some 7.2ha of the Submitter's property. It was concluded in the decision that this proposal represented "urban development" (as defined) outside the urban growth boundary and met all the necessary tests for approval.

Dated: 11 September 2023



Brett James Giddens

Annexure A – Notification of Variation dated 30 June 2022

VARIATION TO QUEENSTOWN LAKES PROPOSED DISTRICT PLAN Landscape Schedule 21.22 and Landscape Schedule 21.23

Queenstown Lakes District Council has prepared changes to the Queenstown Lakes Proposed District Plan (PDP) under Schedule 1 of the Resource Management Act 1991 (RMA). This proposal is a variation to Chapter 21 *Rural Zone* of the PDP, to introduce proposed landscape schedules 21.22 and 21.23.

Queenstown Lakes District Ratepayers will receive a copy of this notice by mail or email. If you have not received a copy, you can find it online at www.qldc.govt.nz/landscape-schedules.

Where to view the variation to the Proposed District Plan

In addition to viewing the notified proposal online at www.qldc.govt.nz/landscape-schedules, a physical copy of the proposal can be viewed at any of the following locations:

Council Offices, between 8.30am and 5pm, Monday to Friday:

- 10 Gorge Road, Queenstown
- 74 Shotover Street, Queenstown
- 47 Ardmore Street, Wānaka

Physical copies are not available at public libraries, but Council's Website can be accessed here free of charge:

Public Libraries, opening hours vary, please check <https://codc-qldc.govt.nz/> for details:

- Queenstown Library: 10 Gorge Road
- Wānaka Library: Dunmore Street
- Arrowtown Library: 58 Buckingham Street
- Makarora Library: Rata Road
- Glenorchy Library: 13 Islay Street
- Lake Hāwea Library: Myra Street
- Kingston Library: 48 Kent Street
- Frankton Library: Hawthorne Drive

Submissions

Options for making a submission are:

- **Online:** www.qldc.govt.nz/landscape-schedules
- **Post:** Queenstown Lakes District Council, Private Bag 50072, Queenstown 9348, Attention: Proposed and Operative District Plan Submission
- **Email:** pdpsubmission@qldc.govt.nz (subject line: Proposed District Plan Submission)

Any written submissions that do not use the online form must be made using Form 5, as prescribed by the Resource Management (Forms, Fees, and Procedure) Regulations 2003. All submissions must state whether or not you wish to be heard in support of your submission at a hearing. The submission form is available from the locations listed above, as well as the Ministry for the Environment and New Zealand Legislation websites.

The closing date for submissions is Friday 26 August 2022.

What happens next?

After submissions close:

- A summary of decisions requested by submitters will be prepared and publicly notified.
- People who represent a relevant aspect of the public interest or have an interest greater than the general public may make a further submission, in the prescribed form within 10 working days of notification of the summary of decisions sought, supporting or opposing submissions already made;
- A copy of the further submission must also be served on the Council and the person who made the original submission to which the further submission relates;
- Submitters may speak in support of their submission(s) at a hearing if they have indicated in their submission that they wish to be heard;
- Following the hearing, the Council will give public notice of its decisions and matters raised in submissions, including its reasons for accepting or rejecting submissions;
- Every submitter then has the right to appeal the Council's decisions on the proposal to the Environment Court.

Want more info or help understanding the proposal?

Visit www.qldc.govt.nz/landscape-schedules for a fact sheet to help you understand more about the proposal.

A duty planner will also be available during normal office hours during the notification period. Call 03 441 0499 (Queenstown) or 03 443 0024 (Wānaka) or email pdpinquiries@qldc.govt.nz.

This notice is in accordance with clause 5 of Schedule 1 of the Resource Management Act 1991.