

Before the Hearings Panel

For the Proposed Queenstown Lakes District Plan

**Under the**

Resource Management Act 1991

**In the matter**

of a variation to Chapter 21 Rural Zone of the Proposed Queenstown Lakes District Plan, to introduce Priority Area Landscape Schedules 21.22 and 21.23

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**OPENING SUBMISSIONS / REPRESENTATIONS FOR QUEENSTOWN LAKES  
DISTRICT COUNCIL**

**13 October 2023**

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## MAY IT PLEASE THE PANEL

### 1. INTRODUCTION

1.1 These opening legal submissions / representations are presented on behalf of Queenstown Lakes District Council (**Council**) in relation to the Variation to Chapter 21 - Rural Zone of the Proposed Queenstown Lakes District Plan (**PDP**). The Variation is for the purpose of introducing Priority Area (**PA**) schedules (29 in total) into Chapter 21 – Rural Zone, in order to satisfy the direction provided by Chapter 3 of the PDP (**Variation**).

1.2 In summary, the matters that require the Hearing Panel’s (**Panel**) recommendations are the submissions made on:

- (a) The content of the 24 schedules for the Priority Areas within Outstanding Natural Features (**ONF**) and Outstanding Natural Landscapes (**ONL**), being those identified in Strategic Policy 3.3.36; and
- (b) The content of the 5 schedules for the Priority Areas within the Upper Clutha Rural Character Landscapes (**RCL**), being those identified in Strategic Policy 3.3.39.

1.3 As no changes have been proposed to any other PDP provisions, any relief seeking new or amended PDP provisions is out of scope of the Panel’s jurisdiction. The purpose of this Variation is the schedule content only. For completeness, the relevant Chapter 3 and 6 provisions, as well as the boundaries for the PAs, were confirmed by the Environment Court through the Topic 2 - Rural Landscapes appeal process.<sup>1</sup> To assist the Panel section 2 of these submissions elaborates on the background and findings made through the Topic 2 appeal process, which have led to this Variation.

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1 Decision 2.5, [2020] NZEnvC 158, which confirmed that QLDC’s proposed PA mapping boundaries were appropriate (subject to noted mapping amendments and reservation of determination of the appropriateness of the proposed Clutha River ONF PA), at [67] and [83]; Decision 2.7, [2021] NZEnvC 60, which confirmed the Upper Clutha PA mapping boundaries, see [17] and [26].

**1.4** Following consideration of the Expert Conferencing Report and associated joint witness statements, the following schedule-related issues remain unresolved between the experts that attended conferencing:

- (a) Structure - relating to the approach to showing and describing the ratings of landscape values (ie. as “Key” or “Summary”);
- (b) Content - whether there should be greater articulation of key physical landscape values *versus* the Council’s summary approach;
- (c) Content - whether the phrase “estimates an unknown future” should be included in the preambles;
- (d) Content - the approach to defining certain activities; and
- (e) Content - some residual disagreement in relation to the descriptions and ratings for specific PA schedules.

**1.5** These submissions also address several other issues, which have been raised in submissions, but which were not considered during expert conferencing, including:

- (a) The matter of scope;
- (b) Mapping relief, including Council’s limited power to alter Priority Area mapping;
- (c) Landscape capacity;
- (d) The intended role and application of the Priority Area schedules;
- (e) Definitions; and
- (f) Parallel proceedings.

## **2. TOPIC 2 APPEALS - RELEVANT BACKGROUND AND KEY FINDINGS**

**2.1** It is important to outline why the Council has initiated this Variation, as it assists to frame the matters for consideration and recommendation by the Panel.

**2.2** In simple terms, the Variation is the culmination of a long and complex *de novo* Stage 1 appeal process before the Environment Court (allocated to Topic 2 – Rural Landscapes). That process concerned both the mapping of, and policy framework for, the rural landscapes of the District. The ‘rural landscapes’ involved were all of

the ONF, ONL and RCL categories, and included the supporting objectives and policies. Chapter 21 – Rural Zone was dealt with separately, through a different appeal topic (Topic 18).

### **Scheduling of rural landscapes**

**2.3** The issues at large through the Topic 2 process were varied, but the one that garnered significant attention was how the PDP framework (specifically the relevant objectives and policies of Chapters 3 and 6) should be framed to achieve the policy intentions for ONF, ONL and RCLs.

**2.4** The relief sought on this matter was varied, ranging from a full first principles rural landscape assessment and associated scheduling of values in the PDP (ie. a district-wide scheduling outcome), to no scheduling and reliance on site-specific landscape assessments in all cases. In terms of the approach to the policy framework regulation, the relief varied from a complete overhaul of the ONF/L and RCL framework, to a return to the Operative District Plan ‘fully discretionary’ regime, which provided for the mapping of ONF/L and RCL as part of the processing of separate applications.

**2.5** After considering the evidence presented by the various parties with an interest in the matter of scheduling, the Court determined (relevantly):

In Decision 2.1:<sup>2</sup>

[30] As *Man O’War Station Limited v Auckland City Council* recognised (in the context of a policy instrument that enunciated related values), much turns on what is sought to be protected. Mapping only assists in identifying the geographic extent of what is sought to be protected. Listing those values that inform why a feature or landscape is an ONF or ONL is an important further element of setting out what is sought to be protected...

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2 [2019] NZEnvC 160.

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

And in Decision 2.2:<sup>3</sup>

[125] ... in order that the appropriateness or otherwise of activities can be adjudged at the time of resource consenting, the absorption [*landscape*] capacity of the landscape and effects of a development on that landscape need to be known.

...

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

### **The origin of the Priority Area approach to landscape scheduling**

**2.6** Due to concerns raised (largely) by Council in relation to the cost effectiveness of scheduling all of the rural landscapes in the District (with approximately 97% of the District categorised as being either ONF or ONL), the Court determined that a “Priority Area” scheduling approach was appropriate.<sup>4</sup> The theory underlying this approach was to identify and schedule areas of the ONF/L and RCL that were subject to higher development pressure, and prepare schedules for those areas. The Court determined that this approach was appropriate, on the basis that there was no differentiation between Priority or non-Priority areas in terms of the protection afforded to the landscapes by the PDP.

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3 [2019] NZEnvC 205.

4 Decision 2.2, [2019] NZEnvC 205, at [162].

**2.7** The Court was not prepared to allow Council to decide on the Priority Areas itself, instead finding that “these are matters more properly directed by our decision on the evidence such that the Priority Areas are specified in the relevant Ch 3 policies for Sch 1 plan changes”.<sup>5</sup> In making this determination, the Court held that it would not direct Council “to undertake a District-wide landscape assessment or to progress ONF/L values scheduling beyond specified Priority Areas or to re-visit the ONF/L or RCL overlays on the planning maps”.<sup>6</sup>

**2.8** The determinations by the Court in Decision 2.2<sup>7</sup> set in train further process steps, including expert conferencing between select witnesses for relevant parties involved in Topic 2. As set out in Ms Gilbert’s EiC, the following then occurred:<sup>8</sup>

- (a) Council prepared preliminary mapping of the areas within ONF/L and RCL that it considered were subject to higher development pressure. Ms Helen Mellsop reviewed the preliminary mapping and used that to prepare mapping for the boundaries of the PAs, with Council then providing its ‘Final Draft PA Mapping’ to the Court. This final draft PA mapping was considered by the Court in Decision 2.5, and confirmed as being “fit for purpose for expert conferencing”;<sup>9</sup>
- (b) The ‘Final Draft PA Mapping’ was considered at planner and landscape expert conferencing between September and October 2020, with two joint witness statements then produced: the October 2020 VIF and PA ONF/L JWS, and the October 2020 Upper Clutha PA Mapping JWS. Both were filed with the Environment Court;
- (c) In May 2021, by way of Decision 2.7<sup>10</sup> the Environment Court confirmed the PA mapping that was filed with the joint witness statements.<sup>11</sup>

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5 Decision 2.2, [2019] NZEnvC 205, at [163].

6 Decision 2.2, [2019] NZEnvC 205, at [164].

7 Decision 2.2, [2019] NZEnvC 205, see [525].

8 Ms Gilbert Evidence in Chief (dated 11 August 2023) at [3.9].

9 Decision 2.5, [2020] NZEnvC 158, at [67] and [83].

10 Decision 2.7, [2021] NZEnvC 60, at [26].

11 Decision 2.7, [2021] NZEnvC 60 also notes that “Decision 2.5 considered QLDC’s proposed Priority Areas (‘PAs’) for both ONLs and ONFs and broadly confirmed them as appropriate”, at [17].

**2.9** Overall, through evidence exchange, expert conferencing, the exchange of various legal submissions / memoranda and the series of interim decisions issued by the Court in Topic 2, a final set of Chapter 3 and 6 provisions have culminated that are significantly amended from the Stage 1 Council Decisions Version of those provisions. Of most relevance to this Variation, the Chapter 3 amendments – which were described by the Court as the “Values Identification Framework”:<sup>12</sup>

- (a) Added to Chapter 3 policies that direct how plan changes are to be pursued for the inclusion of Priority Area schedules; and
- (b) Provide policy direction that identifies specific mapped PAs, and directs how schedules of landscape values and landscape capacity are to be prepared for inclusion in Chapter 21 – Rural Zone of the PDP.

**2.10** For areas not included within any mapped PA, the amendments made to Chapter 3 require a specific approach to landscape assessments, to achieve consistency in methodology.<sup>13</sup> For completeness, SP 3.3.44 clarifies that any part of the ONF, ONL or RCL that is not comprised within a PA is not to be treated as any different in policy terms from areas within a PA.

### **Approach to the Priority Area mapping**

**2.11** The Court’s Decision 2.7 addressed the mapping of the Priority Areas in the following terms:

[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).

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12 Decision 2.2, [2019] NZEnvC 205, at [151] and [152].  
13 Refer: Strategic Policies 3.3.45 and 3.3.46.

[14] We find that the balance weighs in favour of having mapping accompany the listing of Priority Areas. The maps can either be set out in the PDP or incorporated by reference to a suitable QLDC file.

[15] **Our determination allows for QLDC to elect which of those two approaches it prefers** (i.e. an amended SP XA 1 that provides for the mapping in the PDP at this stage or one that incorporates that mapping by reference to an accessible QLDC file). Directions are made for QLDC to report back on its election.

**2.12** By way of memorandum dated 16 June 2021,<sup>14</sup> Council responded to this direction by confirming that it elected to hold the Priority Area mapping on a document incorporated by reference, rather than on the PDP maps. This document is a separate ArcGIS file from the PDP maps, which can be accessed from the dedicated Landscape Schedules page on Council’s webpage.<sup>15</sup>

**2.13** The Court endorsed the final versions of SP 3.3.36 and 3.3.39 in its Decision 2.9<sup>16</sup>, at [23], which has led to the current references in Chapter 3 to mapping held on “[QLDC reference file]”.<sup>17</sup> Council is currently in the process of including the link to this reference file in Chapter 3, as part of a wider workstream to update the PDP provisions to reflect recent Court decisions and consent orders.

### **3. SCOPE - LIMITED TO THE TEXT OF THE SCHEDULES**

**3.1** Several submitters have raised issues that are unrelated to the text of the Priority Area schedules. This includes relief<sup>18</sup> seeking amendments to Priority Area

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14 Memorandum on behalf of QLDC dated 16 June 2021.

15 Accessible at: <https://experience.arcgis.com/experience/d9fba0542af340feb12b54406dff9ca2>.

16 Decision 2.9 [2021] NZEnvC 124.

17 SP 3.1B.5(e), SP 3.3.36, and SP 3.3.39.

18 For example OS183 which requests that the landscape schedule 21.22.1 Peninsula Hill is amended to remove the site at 48 Peninsula Road, Kelvin heights and have the site rezoned to the Proposed District Plan’s Lower Density Suburban Residential zone, OS80.4 which requests that Provision 3.1B.5 and Policy 6.3.1 be amended (if required) to exclude the Maungawera Rural Visitor Zone from landscape schedule 21.23.3; and alternative relief ‘catch all’ submission points such as OS122.24, OS125.10 which seek additional or consequential relief to address matters raised in the submission, including to PDP provisions, OS132 which requests that the That Outstanding Natural Feature boundary be amended to exclude the submitters land (State Highway 6, Gibbston Valley, east of Nevis Bluff -Part Lot 3 DP 27395) or if the landscape classification is not amended, that the priority area 21.22.9 Kawarau River priority area be amended to exclude the submitter’s land.



mapping boundaries, changes to zoning, changes to ONF/L boundaries, and changes to PDP text (beyond the Priority Area schedules).

**3.2** As addressed by Ms Evans<sup>19</sup> in her section 42A report, the scope of this Variation is confined to the text of the Priority Area schedules, as it was only that text that was notified for submissions by the Council.<sup>20</sup> To the extent that submitters have raised other matters, including changes to other PDP provisions, zoning, ONF/L or RCL boundaries and even Priority Area boundaries, it is submitted that those submissions are seeking to relitigate matters that have previously been settled through earlier stages of the PDP process.

**3.3** Council acknowledges that the ArcGIS file link was included on the Council's website page when it notified the Variation (being the dedicated page for the Landscape Schedules Variation: [Landscape Schedules \(qldc.govt.nz\)](https://www.qldc.govt.nz)). However, because the Variation is for the purpose of preparing the content of the schedules, with the content needing to derive from the identified landscape values, attributes and landscape capacity within the Priority Areas, it was necessary to provide access to the mapping. Put another way, potential submitters need to know the location of the PAs in order to be able to inform the preparation of the content.

**3.4** With reference to *Clearwater Resort Limited v Christchurch City Council*<sup>21</sup> tests, which is the leading authority for determining whether submissions are "on" a plan change or variation, the *Clearwater* two-step test is fundamentally concerned with observing the principles of natural justice, and states that:

1. A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.
2. But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without a real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submissions is truly "on" the variation.

**3.5** With that test in mind, it is submitted that the Variation seeks to change the status quo only by including schedules into the PDP. The Public Notice, section 32 report

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19 Ruth Evans section 42A report, section 7

20 Public Notice dated 30 June 2022.

21 HC Christchurch AP34/02, 14 March 2003.

and associated material that formed the notification of the Variation support that interpretation. For example:

(a) The Council's public notice, dated 30 June 2022, states:

This proposal is a variation to Chapter 21 Rural Zone of the PDP, **to introduce proposed landscape schedules 21.22 and 21.23.**

(b) The section 32 report states:

The scope of this proposal is therefore **limited to the content of the schedules**, including the way the schedules describe the landscape attributes, landscape values (ONFLs) or landscape character and visual amenity values (RCLs), and the related landscape capacity of each of the 29 Priority Area landscapes.<sup>22</sup>

And:

**It does not change any aspect of the identification or mapping of the Priority Areas themselves**, nor does it seek to introduce new Priority Areas or delete identified Priority Areas. Identification and mapping of the Priority Areas has already occurred and is already set out in Chapter 3 of the PDP and the web mapping application.<sup>23</sup>

(c) The information sheet accompanying the above notes:

The 29 schedules cover areas across the Whakatipu Basin and Upper Clutha. **A separate process confirmed the areas that are referred to as 'Priority Area' landscapes.** To view the areas head to: [www.qldc.govt.nz/landscape-schedules](http://www.qldc.govt.nz/landscape-schedules)

**3.6** It is submitted that these statements clearly confine the Variation to addressing the content of the Priority Area schedules, which will be included in Chapter 21 of the PDP. If the Panel was to recommend changes to the Priority Area mapping, it would not only be endorsing departures from the Environment Court determinations, but it would be permitting change without there being appropriate opportunities for participation by those that are potentially affected.

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22 At paragraph 1.5, page 3.

23 At paragraph 1.6, page 4.

**3.7** It is also worth highlighting the following reference from Decision 2.2,<sup>24</sup> which states, at [164]:

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

**3.8** It is submitted that this excerpt highlights the distinction between undertaking the values identification / scheduling process, and how the ONF/L and RCL boundaries were confirmed, with the Court acknowledging that Council, as the planning authority, has discretion to decide how it would advance any plan change or variation to introduce the Priority Area schedules.

**3.9** Had it wanted to, Council could have notified the Variation so that the changes from the status quo included all aspects of the Priority Areas (mapping and identification) and the mapping of ONF/L and RCL boundaries, alongside the content of the Priority Area schedules. It chose not to, and instead the Variation remains confined to the content of the schedules.

**3.10** In summary, the Variation is not an opportunity to relitigate findings made in Topic 2, or through other stages of the PDP process (including appeals), or to seek to amend settled Chapter 3 and 6 provisions. Instead, the Panel's role is to hear submissions, and make recommendations that will assist the Council to confirm the text of the Priority Area schedules for inclusion in Chapter 21.

#### **4. COUNCIL'S LIMITED POWER TO ALTER PRIORITY AREA MAPPING**

**4.1** As noted above, Council elected to hold the PA mapping on a document incorporated by reference, rather than on the PDP maps.

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<sup>24</sup> Decision 2.2, [2019] NZEnvC 205.

- 4.2** Under clause 30 of Schedule 1 to the RMA, material incorporated by reference has legal effect as part of a plan or proposed plan. As a result, Council’s view is that the power under clause 16(2) to amend a proposed plan where an alteration is of “minor effect, or may correct any minor errors” extends to material incorporated by reference. For any non-minor amendments to material incorporated by reference (ie. changes that are not neutral in effect), clause 31 will be triggered, which requires a variation or plan change for that purpose.
- 4.3** In taking this view, Council notes that the PA mapping was not, itself, the subject of the notified Council Stage 1 provisions relating to Chapters 3 and 6, or the notified ONF/L and RCL boundaries. Instead, the Priority Area framework and mapping was the consequence of relief granted through Environment Court decisions on the Topic 2 appeals.
- 4.4** Through those appeals, and in partially accepting relief sought by certain parties, the Court determined that the PAs should be identified and mapped, and it endorsed the Council’s decision to elect that the mapping be held on a document incorporated by reference. As a result, and because of clause 30 of Schedule 1, the mapping is a part of the proposed plan. We note that there is no provision that excludes clause 16 from applying to material incorporated by reference, and it is submitted that this is not surprising because:
- (a) Any amendment to, or replacement of, material incorporated by reference relies on the Part 1, 4 or 5 processes within Schedule 1 (pursuant to clause 31); and
  - (b) If clause 16 is used to change any *provision* in a proposed plan which cross-refers to material that is incorporated by reference, then it would be logical for that same power to be used to ensure alignment.
- 4.5** Council’s evidence has noted that there are several potential minor errors with the Priority Area mapping that require amendment.<sup>25</sup> To avoid any confusion and inefficiency, Council’s proposal is to make one clause 16 change to the Priority Area

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<sup>25</sup> Paragraphs [5.1] – [5.2] Ms Evans’ Rebuttal Evidence.

mapping for all qualifying minor errors, following the conclusion of the hearing of this Variation.

- 4.6** This approach will allow Council's experts to compile a list of the errors identified to date that will fit within clause 16(2), and also hear from submitters (through the hearing, or separately) as to other potential errors that may be amendable to the power under clause 16(2), ahead of confirming (potentially as part of Council's reply) which errors will be amended by the Council. Council will be available to discuss this suggestion with the Panel.
- 4.7** To avoid any doubt, Council remains of the view that any substantive (non-minor) changes to the Priority Area mapping are out of scope of this Variation (and clause 16(2)), and should not be considered by the Panel.

**5. THE PROCESS TO DATE, AND COUNCIL'S POSITION SUBSEQUENT TO EXPERT CONFERENCING**

- 5.1** The section 32 report<sup>26</sup> outlines the early consultation that was undertaken by the Council prior to notification. Once notified, a total of 208 submissions and 37 further submissions were received, and subsequent to that 32 briefs of evidence have been filed on behalf of submitters.<sup>27</sup>
- 5.2** Through their evidence in chief and rebuttal evidence, Council's witnesses have made a significant effort to respond to the submissions and evidence filed. The issues were narrowed going into expert conferencing, and appear to have narrowed further still.
- 5.3** As recorded in the Expert Conferencing Report and Joint Witness Statements, following conferencing during the week of 2 October, significant progress has been made on both the preambles and the specific Priority Area schedules. There are a number of specific schedules that are agreed as between Council and relevant

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26 Section 32 Evaluation PDP Chapter 21 Landscape Values Schedules at [5.1] – [5.10].  
27 The figure '35' includes one memorandum of counsel on behalf of Jon Waterson (submitter #145), filed in lieu of the submitters expert being able to produce evidence due to being overseas, and three lay briefs respectively filed on behalf of Sir Robert Stewart (submitter #84), Kincardine Angus Ltd (submitter #110), and the Grant Stalker Family Trust (submitter #139) and Maryhill Ltd (submitter #140).

experts, and only one phrase disagreed in the preamble schedules. Council notes that not all experts were in attendance at conferencing, and the agreements reached were therefore with those experts that were involved in conferencing.

**5.4** Council's recommendations on the content of the Priority Area schedules (which have been updated as part of expert conferencing), reflect the output of detailed assessments, peer review, and further analysis undertaken since notification, including after considering the submissions and evidence received and expert conferencing.

**5.5** The **attached** Priority Area schedules comprise two versions:

- (a) **Appendix A:** A full track changed version that shows all changes made through Council's evidence, as well as expert conferencing; and
- (b) **Appendix B:** A clean version, that shows only the points of disagreement between the experts involved in conferencing (as was suggested in the Facilitation Report of Ken Fletcher, at paragraph 8). The Council experts will address those points of disagreement in their summaries, and speak to those during the hearing.

**5.6** Council considers this to be an excellent starting point for the hearing itself, with the Panel now tasked with considering what has been agreed at conferencing (subject to additional input from submitters that were not represented at expert conferencing) and making recommendations to the Council on the submissions (including the remaining areas of disagreement).

**5.7** In order to assist the Panel, the unresolved issues between the experts involved in conferencing, in relation to the structure of the specific PA schedules, and content of the preamble schedules, can be summarised as:

- (a) Structure: being where the ratings of landscape values in the specific Priority Area schedules should be located, and how those ratings should be described (ie. as "Key" or "Summary");

- (b) Content: whether there should be greater articulation of the key physical landscape values *versus* the summary approach preferred in the rebuttal version of the specific Priority Area schedules;
- (c) Content: whether the phrase “estimates an unknown future” should be included in the preambles, under when describing the concept of “landscape capacity”; and
- (d) Content: the approach to defining certain activities described in the schedules remains at issue between certain experts.

**5.8** Council notes that there may be residual disagreement on the specific Priority Area schedules (and potentially the preambles), as the experts involved in conferencing did not represent all submitters involved in the Variation process.

## **6. MATTERS RAISED IN SUBMISSIONS AND EVIDENCE**

**6.1** The following section addresses several matters that have been raised in submissions and evidence, but which have not been completely captured through expert conferencing.

**6.2** For completeness, the fact that these submissions have not responded to all matters raised in submissions or evidence should not be taken to mean that Council accepts those matters. In the interests of efficiency, Council has attempted to focus on certain matters only, but if other issues arise that warrant a response, Council can address those in reply.

### **Landscape capacity**

**6.3** As addressed by Ms Evans in her section 42A report, from paragraph [9.76], a number of submissions have sought that the landscape capacity section of the schedules be deleted outright.

**6.4** As explained by Ms Evans the Court’s Topic 2 decisions, and SP 3.3.37 in particular, require that “the related landscape capacity” of the PAs be identified. Ms Evans’ view is that deleting the landscape capacity section would not assist in achieving

the relevant Chapter 3 objectives and policies, and recommends rejection of those submissions. Taking this point further, and in terms of the requirement under section 84 of the RMA for local authorities to observe their plan, it is submitted that removing the landscape capacity section would fail to observe and implement SPs 3.3.37 and 3.3.38.

- 6.5** Through evidence exchange there was a contest to the rating scale that had been initially recommended by Council's experts, including to the "no landscape capacity" rating. These issues have now been resolved through expert conferencing (albeit that not all relevant experts were in attendance).
- 6.6** As recorded in the 2 October and 3 October JWSs, a modified rating scale has been agreed, which makes a modification to Ms Gilbert's rebuttal version to soften the "No" capacity rating, so that it reads "Extremely limited or no".
- 6.7** In making this modification the experts have agreed (at paragraph 9 of the 3 October JWS) that within the Priority Areas "the starting position is that in general, landscape capacity is limited and that the rating scales represent small downward increments from some to extremely limited or no landscape capacity".
- 6.8** It is submitted for Council that this modification recognises the underlying landscape context for the Priority Areas, and appropriately reflects the PDP policy direction which regulates land use within the ONF/L and RCL. Council supports the 3 October JWS modification, and calibration of the rating scales against the underlying s6(b) and 7(c) context, and submits that the Panel should be live to the risk of modifications that could dilute the scale in a way that loses the general starting point referenced in the JWS.

#### **The intended role and application of the PA Schedules**

- 6.9** A number of submissions sought clarity or confirmation in relation to how the Priority Area schedules will apply. These cover two contexts: plan implementation, and spatial application.



- 6.10** To a significant extent the preamble schedules now address this matter, by addressing the purpose and role of the schedules, and application beyond the Rural Zone.
- 6.11** From a **plan implementation** perspective, and as recorded in the 2 and 3 October JWSs, the schedules themselves are a “summary of a large amount of technical detail”. Council agrees with this statement, and it is submitted that they comprise a technical landscape resource that will be primarily engaged when undertaking landscape assessments.
- 6.12** The Chapter 3 provisions now provide clarity in relation to what such assessments are required to consider, and how and when they are to be undertaken. This is through SPs 3.3.45 and 3.3.46, with the Priority Area schedules providing a resource that captures the matters outlined in SP 3.3.45, to assist with assessments. SP 3.3.46 requires that the methodology is implemented when assessing proposed plan changes, applications for certain types of resource consent and applications for notices of requirement. In addition, the guidelines provided by Te Tangi a te Manu will be relevant for landscape assessments.
- 6.13** With reference to the Court’s findings in Topic 2, noted in paragraph 2.5 above, objectives, policies, assessment matters and rules are relatively limited in their capacity to enunciate particular ONF or ONL values. These schedules are intended to ‘plug the gap’, by giving greater meaning to the landscape attributes and values that are sought to be protected for ONF/L, and the landscape character and visual amenity values for the RCL. Flowing from that is the ability to assess the potential effects of proposals, and impact on related landscape capacity, with the schedules also including a high-level assessment of the landscape capacity for certain activities (being those specified in SP 3.3.41(g)).
- 6.14** Several submitters have sought the identification or a description of specific areas within Priority Areas where they say development can be successfully absorbed. This type of request amounts to something akin to a site-by-site consideration of landscape capacity. This relief has been addressed by Ms Gilbert,<sup>28</sup> and was

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28 Refer to the discussion beginning at [9.27] of Ms Gilbert’s EIC.

discussed in the context of expert conferencing. The 3 October JWS notes at paragraph 8, relevantly, that:

- (a) “the schedules are written at the broad scale PA level, they are a high level description and assessment, and any proposal will be set at a smaller scale within the PA”; and
- (b) “each proposal will require a specific landscape assessment that identifies how the project sites within the PA, which attributes and values of the PA are relevant to the proposal, and as assessment against those values and related capacity”.

**6.15** These statements align with the evidence presented by Ms Gilbert regarding the scale against which the schedules have been prepared, with her view being that the schedules are not intended to be a replacement for site-specific assessments, or required to capture all site-specific values and attributes. As Ms Gilbert notes in her evidence in chief, at [6.8(c)], if that finer grained approach were required, this would amount to structure planning of the Priority Areas, and involve an impossible level of detail.

**6.16** For the reasons set out by Ms Gilbert, at [6.1] to [6.9] of her evidence in chief, the scale at which the schedules have been prepared is submitted to be appropriate to achieve the relevant Chapter 3 policy directions. As required by SP 3.3.40, the descriptions are intended to be at “an appropriate landscape scale”, which is different from a site-specific basis. Based on the intended role of the schedules to inform the assessment of specific proposals, and its evidence, Council does not support relief seeking that a smaller, finer-grained scale is used for the scheduling of values, and submits that the JWS and amended preambles properly capture the intended approach.

**6.17** In relation to **spatial application**, the key issue raised in submissions is whether, and if so how, the Priority Area schedules apply to land that is not the Rural Zone. Ms Evans, in her Section 42A report and rebuttal evidence, has addressed this issue in depth, and we do not repeat her evidence here.<sup>29</sup>

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<sup>29</sup> Refer to Section 9 of Ms Evans’ s42A Report, and section 6 Ms Evans’ Rebuttal Evidence

- 6.18** In brief, the Chapter 3 provisions use several different terms – including Rural Zone, Rural Zone Priority Areas, Rural zoning and rural environment – in the context of the Priority Area schedules. The preambles (as amended by rebuttal evidence, and through expert conferencing) seek to clarify how and where the schedules will apply, noting that they “may inform landscape assessments for proposals involving any land within a PA but are not required to be considered”.<sup>30</sup>
- 6.19** It is submitted that the JWS version of the preambles is appropriate to clarify the spatial application of the Priority Area schedules. As a result of this clarification, there is no need to exclude non-Rural Zone land from the Priority Area mapping (spatially). It is also submitted that there is a logic in ensuring that the Priority Areas (as mapped) include, and describe, all land within their boundaries. This is because it is the *landscape* values and attributes that are being described, in order to inform the assessment of proposals within those areas. If any areas were excluded from the Priority Area mapping, based on non-Rural Zone zoning, this would potentially lead to an incomplete description of the landscape values, which could in turn impact on the assessment of landscape capacity within that area. It is submitted that this is not what the Court’s Topic 2 decisions were seeking when they determined that scheduling is required to “assist the ODP to fulfil its protective purposes”, and that the schedules include a description of attributes, character and visual amenity values “at an appropriate landscape scale” (without referencing the Rural Zone specifically).

## Definitions

- 6.20** The 3 October JWS records that the definition / interpretation of the terms “intensive agriculture”, “tourism related activities” and forestry” remain a concern.<sup>31</sup> However, the JWS notes that “while not ideal, these are the best available” given the activities specified in SPs 3.3.38 and 3.3.41.

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30 Ms Evans discussed the application of the Schedules in different zones in her Section 42A Report and rebuttal evidence. Refer to Section 9 – Topic 1: Application of the Schedules, Section 42A Report; and Section 6, Ms Evans’ Rebuttal Evidence.

31 3 October JWS, at 18.

**6.21** The fact that SPs 3.3.38 and 3.3.41 require that the capacity for certain specified activities is recorded does have a constraining effect, but it does not limit what can – in fact – be included in the schedules. Council’s experts have considered the meaning of the specified activities, as against the definitions used in the PDP (in Chapter 2 and elsewhere) and approached the assessment and recording of landscape capacity in what is submitted to be an appropriate way.

### **Procedural issues and concerns with methodology**

**6.22** Several submitters have raised process and methodology concerns, including Dr John Cossens (OS43), several submitters represented by Anderson Lloyd,<sup>32</sup> and others.<sup>33</sup>

**6.23** The process concerns raised by Dr Cossens have been addressed in a Minute issued by the Panel dated 11 October 2023. Council agrees with the Panel that its terms of reference are such that process issues are not able to be the subject of any recommendations. Irrespective of that, Council considers (and agrees with the Panel) that the public notification of the Variation has afforded opportunities to all affected persons to participate, through the making of submissions.

**6.24** To the extent that there are disagreements with the methodology adopted by the Council, and bearing in mind that the focus of this Variation is to prepare and include the Priority Area schedules in Chapter 21, Council’s position is that where any methodological differences lead to a different description of the relevant landscape attributes or capacity, then that can be remedied through the wording of the schedules. Any differences in opinion on content, as raised in submissions, are within the Panel’s jurisdiction and a matter for recommendations.

### **Parallel proceedings**

**6.25** There are two instances of parallel proceedings, concerning land at Arthurs Point and Sticky Forest.

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32 OS132 – OS134, OS137 – OS142, OS145, OS177 – OS 178, OS182 – OS183, OS189, OS200.  
33 OS30, OS88, OS109 – OS111, OS151 – OS170.

- 6.26** The Arthurs Point scenario involves an Environment Court appeal seeking to rezone land and alter the landscape categorisation (and landscape (ONL) boundary) and urban growth boundary, to enable urban development on the land. The Council decision, issued recently, declined the relief sought, with the parties currently working to confirm case management steps. A part of the appeal land engages with the Kimiākau Shotover River ONF Priority Area, which is being considered through this Variation.
- 6.27** Sticky Forest also involves an Environment Court appeal seeking to rezone land in Wanaka for urban development. Part of the Sticky Forest site is within the ONL, and has been scheduled as part of the Dublin Bay ONL PA.
- 6.28** While there are parallel appeal processes running in relation to these areas, including in relation to zoning and the location of the ONL boundaries, the Panel cannot make any recommendations on matters that are not before it. The Panel is limited to considering the submissions on the Variation, for the Priority Areas that have been mapped through the Topic 2 appeal process.
- 6.29** To the extent that either of these scenarios involve minor mapping errors, Council refers to section 4 above.

#### **Submitters that have requested ONF/L boundary changes**

- 6.30** Further to the above submissions, where submitters have raised and seek relief in relation to boundary matters that were resolved through Decisions 2.1 and 2.3, it is submitted that those issues are beyond the scope of this Variation. Those boundaries have not been notified again, and the Panel should not allow those issues to be relitigated.
- 6.31** One example of an attempt to relitigate concerns the submission, evidence and legal submissions presented by Hawthenden Limited. Council has had the benefit of considering the legal submissions filed on behalf of Hawthenden Limited, which relates to the Mt Alpha ONL.

**6.32** In those submissions, counsel for Hawthenden Limited characterises the Variation as an “improper attempt to include the Hawthenden Land as part of the whole scenic and recreational attributes and values of the whole area”, and submits that the Council has failed to comply with the directions of the Environment Court. The relief sought by Hawthenden Limited is to remove their land from the Mt Alpha ONL, in addition to the Mt Alpha ONL Priority Area.

**6.33** With respect to this submitter, the ONL boundary in question (at the foot of the Hawthenden land) was recently determined by the Environment Court in *Lake Mckay Station Limited & Ors v Queenstown Lakes District Council* [2019] NZEnvC 206, and in support of that decision the Court relied on expert evidence presented by Ms Helen Mellsoop for the Council (contrary to paragraph 2.6 of the Hawthenden legal submissions).<sup>34</sup>

**6.34** In terms of the suggestion that the relevant Priority Area schedule has failed to list “actual ONL values” relative to the Hawthenden land, Council considers this an issue of design intentions, and refers to the 2 October and 3 October JWSs, which record agreement that the schedule content is intended to be “written at the broad scale PA level” (ie. representative of the entire Priority Area, as opposed to being site-specific). It is submitted that Hawthenden Limited is clearly seeking to relitigate an ONL boundary finding made by the Environment Court, which is beyond the scope of this Variation and should be rejected.

## **7. COUNCIL WITNESSES**

**7.1** Council’s witnesses (in the below order) are:

- (a) Ms Bridget Gilbert (landscape);
- (b) Mr Jeremy Head (landscape); and
- (c) Ms Ruth Evans (section 42A author, planning).

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34 See Decision 2.3, [2019] NZEnvC 206, at [10], [14], [15], [16], [52] to [60].

**7.2** Finally, in Ms Evans rebuttal, she noted that an updated version of the except / reject recommendations table would be provided either at the opening of the hearing, or as part of Council's reply. Subject to the Panel's views, Council respectfully suggests that an updated version be provided as part of Council's reply – to assist submitters and the Panel with their review of the Council's closing position for this hearing. In making this suggestion, Council observes that the amount of work involved in updating the table is extensive, and that it would be preferable to undertake another update only once.

**DATED** this 13<sup>th</sup> day of October 2023



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M G Wakefield / S L Richardson  
Counsel for Queenstown Lakes District Council