

Queenstown Lakes District Council

Variation to Chapter 21 (Rural Zone) of the Proposed Queenstown Lakes District Plan

Introduction of Priority Area Landscape Schedules: 21.22 (Outstanding Natural Features and Landscapes) and 21.23 (Rural Character Landscapes)

**Report and Recommendations of Hearing Commissioners
9 May 2024**

Commissioners
D Jane Taylor (Chair)
Peter Kensington
Quentin Smith

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Terminology and abbreviations

The following terminology and abbreviations are used throughout this report:

Queenstown Lakes District Council	Council
Queenstown Lakes District	District
Hearing Commissioners	Panel
Priority Area Landscape Schedules Variation	Variation
Partially Operative Otago Regional Policy Statement 2019	POORPS
Operative District Plan	ODP
Proposed District Plan	PDP
Outstanding Natural Feature	ONF
Outstanding Natural Landscape	ONL
Outstanding Nature Feature and Outstanding Natural Landscape	ONFL
Rural Character Landscape	RCL
Priority Area(s)	PA(s)

Attendances

For the Queenstown Lakes District Council:

Mr Mike Wakefield, Counsel
Ms Shanae Richardson, Counsel
Ms Ruth Evans, Planning
Ms Bridget Gilbert, Landscape Architecture
Mr Jeremy Head, Landscape Architecture

For the Submitters:

Please refer to the Hearing Timetable located under General Hearing Information section on the QLDC website:

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

Introduction

1. This report sets out the recommendations of the Panel to the Council, following the hearing of submissions and evidence with regard to the Variation, which proposes additions to Chapter 21 (Rural Zone) of the PDP. The Variation seeks to introduce proposed Schedules 21.22 and 21.23, with associated preambles, relating to twenty-nine (29) identified Priority Areas (PA) within the District.
2. Proposed Schedule 21.22 seeks to document identified landscape values and related landscape capacity for PAs that relate to existing ONF and ONL landscapes within the PDP; whereas proposed Schedule 21.23 seeks to document identified landscape character and visual amenity values and related landscape capacity for those PAs that relate to existing RCL landscapes within the PDP.

How do the landscape schedules relate to the PDP and what is their role and purpose?

Background Environment Court considerations

3. By way of background context, the policy framework set out in Chapter 3 (Strategic Direction) of the PDP that has given rise to the Variation was confirmed by the Environment Court through a complex *de novo* Stage 1 appeal process (Topic 2 – Rural Landscapes) comprising a number of separate but related interim decisions.¹ We understand that the relevant Chapter 3 PDP provisions are now settled, as there are no outstanding appeals.²
4. Briefly, the Decisions Version of the PDP (following Stage 1 of the PDP process) did not include any landscape schedules or other text to describe the attributes and values of the District's ONFs, ONLs or RCLs. Rather, the Decisions Version methodology relied on other processes, primarily through applications for resource consent, to provide for the identification of the relevant landscape values to be protected. The Council has noted that there was significant opposition to the initial regime throughout the Stage 1 hearings, and on appeal, with the relief sought challenging both the location of the mapped ONF, ONL and RCL boundaries and whether the regime would adequately protect the District's rural landscapes from inappropriate levels of development, due (in part) to the absence of clearly identified landscape values.
5. The Environment Court subsequently held that, due to the absence of schedules or other descriptions of landscape values, the Decisions Version regime did not provide sufficient certainty to ensure the intended policy direction for ONF, ONL and RCL landscapes was achieved. In Decision 2.1,³ the Court held that: *"Mapping only assists in identifying the geographic extent of what is sought to be protected. Listing those landscape 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*

¹ The Court's findings have been summarised in paragraphs 4.1 to 4.8 of the Section 32 Evaluation Report dated 30 June 2022; paragraphs 2.1 to 2.13 of the opening Submissions/Representations for Queenstown Lakes District Council, dated 13 October 2023; and also in paragraphs 2.2 to 2.9 of the Reply Legal Submissions for Queenstown Lakes District Council, dated 15 December 2023.

² This was not disputed by any of the parties.

³ *Hawthenden Limited et Ors v Queenstown Lakes District Council* [2019] NZEnvC 160 (Decision 2.1) at [30].

protected". At paragraph [31] the Court went on to explain that: "*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*".

6. At paragraph [57] of Decision 2.1 the Court found: "*Queenstown District stands somewhat apart in being well endowed with landscapes and features of special quality. While comparison is appropriately undertaken at a district level, for a district plan, it is not unsound conceptually for QLDC to have adjudged that 97% of its entire District land area is either ONL or ONF. However, as we discuss at [27] and following, mapping ONFs and ONLs is just one necessary part of ensuring the ODP properly responds to s 6(b), RMA*".
7. Subsequently, in Decision 2.2,⁴ the Court held that: "*[L]andscape 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 ss 6(b) and 7(c)*".
8. As set out in the Council's s 32 Report,⁵ the Variation:
"...addresses an issue identified by the Environment Court that it is difficult to protect the landscape values of ONFLs, and maintain the landscape character, and maintain or enhance visual amenity values of RCLs, without first identifying these values. Further, that it is more efficient and effective to identify these values at the district plan level, than to leave the identification to a case-by-case situation via individual resource consent applications."
9. Through a series of subsequent interim decisions, commencing with Decision 2.2, the Court made a number of directions to give effect to the scheduling of landscape values. These included joint witness conferencing to produce draft *Values Identification Framework* strategic policies, together with associated maps depicting the geographic extent, at "*proper landscape scale*", of the PAs to which those strategic policies would apply.⁶ The Court also directed that the *Values Identification Framework* should be targeted to PAs, and that scheduling should not extend beyond specified PAs, nor provide an avenue to revisit ONF, ONL or RCL overlays on the planning maps.⁷ The PAs were subsequently endorsed in Decision 2.5, subject to some mapping adjustments and reservation of determination of the proposed Clutha River ONF PA.⁸
10. In summary, through lengthy evidence exchange, expert conferencing and the exchange of various legal submissions and memoranda, the series of interim decisions issued by the Environment Court in Topic 2 resulted in the current set of PDP Chapter 3 (Strategic Direction)

⁴ At [127] and [128].

⁵ Section 32 Report, paragraph 7.1.

⁶ Decision 2.2 at [525].

⁷ Decision 2.2 at [162] to [164].

⁸ Decision 2.5 at [67] – [71] and [83].

and 6 (Landscapes – Rural Character) provisions. We note that these provisions have been significantly amended from the Stage 1 Decisions Version of the PDP. Of most relevance to this Variation, the Chapter 3 amendments added policies that: (i) direct how plan changes are to be pursued for the inclusion of PA schedules; and (ii) provide policy direction that identifies specific mapped PAs. The additional policies also further direct how schedules of landscape values and landscape capacity are to be prepared for inclusion in Chapter 21 (Rural Zone) of the PDP.

11. In Decision 2.9, the Court confirmed, by way of Strategic Policy 3.3.42, that a plan change (or Variation in this instance) be notified by 30 June 2022 to implement the strategic policies that provide for the PA schedules, including the content that has been specified in the associated strategic policies. The relevant strategic policies, which have informed our approach to the Variation, are further described below.
12. We are cognisant that although the process leading to the Variation has been long and complex, the relevant objectives and policies within Chapters 3 and 6 of the PDP are now settled and uncontested. Accordingly, it is plain that we do not have any jurisdiction to make any recommendations that purport to amend any of the PDP Chapter 3 strategic policies, for example. Rather, our role is limited to an assessment (through the Variation) of the requirements of the applicable strategic policies within the PDP, in order to give effect to the Values Identification Framework which underpins the content of proposed Schedules 21.22 and 21.23.
13. We are also mindful of the submission on behalf of the Upper Clutha Environmental Society Incorporated that the overarching objective of the relevant Chapter 3 strategic policies and the associated Values Identification Framework is to *protect* rural landscape values from inappropriate levels of development.⁹ To this end, we are cognisant that this Variation, which seeks to give greater clarity as to the landscape attributes and values sought to be protected in areas of ONF, ONL and RCL that are subject to development pressure, is vitally important in terms of “*deciding the fate of rural landscapes for generations to come*”. We concur that the schedules, and in particular the high level assessment of landscape capacity, should, if appropriately constructed, be instrumental in establishing a metaphorical “*line in the sand*” for appropriate levels of development in the ONF, ONL and RCL landscapes.¹⁰

Structure and requirements of the PDP to prepare landscape schedules

14. The Variation to the PDP responds and gives effect to the wider strategic direction provided by Chapter 3 of the PDP relating to the management of landscapes in the Rural Zone. As outlined in the evidence of Ms Evans,¹¹ at its core the purpose of the Variation is to give effect to and implement the requirements of strategic policy 3.3.42 of the PDP, which requires the Council to notify a plan change (or variation in this instance), to achieve the following prescriptive direction:

⁹ Submission on behalf of UCESI dated 13 October 2023 at 6 and 19.

¹⁰ Ibid.

¹¹ Evans, Section 42A evidence at para 4.3; and with reference to the Section 32 Report at paragraphs 1.2 to 1.4, and 3.1 to 3.4.

“The Council shall notify a proposed plan change to the District Plan by 30 June 2022 to implement SPs 3.3.36, 3.3.37, 3.3.39 and 3.3.40.”

15. We have also had regard to the other strategic objectives and policies that are relevant to our consideration of the *application* of proposed PA Schedules 21.22 and 21.23 and hence, in particular, the preambles to each of these schedules.¹²
16. Strategic policy 3.3.42 is located within Chapter 3 (Strategic Direction) under Part Two (Strategy) of the PDP, which sets out the over-arching strategic direction for the management of growth, land use and development within the District, in a manner that ensures sustainable management of the District’s special qualities, which includes (at 3.1(a)) *“distinctive lakes, rivers, alpine and high country landscapes free of inappropriate development”*.
17. Ms Lucas provided us with a succinct summary of the District’s landscapes:¹³

“As identified in the PDP, some 97% of QLD qualifies as an outstanding natural feature or landscape (ONFL) at the District scale, and is thus of national importance. The ONFL are almost all bedrock country – large mountain ranges above and isolated mountains within the deposition lands below. The small areas not included as ONFL are primarily the gentle lowlands of deposition country of the valley floors and lake basins where built development and occupation has been concentrated.

The type of land is a major contributor to the valued natural landscape and rural character of this district. The legibility of the land-forming processes, with the mountain slopes shorn off by substantial former glacial flows, and the gouged-out lakes, moraine dumps and outwash terraces left below. The naturalness of land cover and lack of built clutter is important in allowing for the legibility. It is the natural landscape legibility that is the essence to the district’s landscapes in total. Addressed at the national scale, the district’s rural landscapes are in total outstanding for their dramatic natural landscape attributes based on geomorphic character complemented by vegetated naturalness. Their qualities are vulnerable to cumulative degradation through dispersed development.”
18. In order to achieve strategic objective 3.2.5, being *“the retention of the District’s distinctive landscapes”*, the PDP requires (under objective 3.2.5.1) the identification of landscape values and related landscape capacity for the District’s ONFs and ONLs.¹⁴ Objectives 3.2.5.2 to 3.2.5.4 provide further direction on how these identified landscape values are to be protected for ONFs and ONLs. A similar strategic objective at 3.2.5.7(b) requires the identification of landscape character and visual amenity values and related landscape capacity for RCLs; while objective 3.2.5.5 focuses on the maintenance of landscape character and the maintenance or enhancement of visual amenity values within RCLs.
19. Where applicable to our consideration of the PA schedules, we have also had regard to the key strategic objectives and policies provided in: 3.1B.5, 3.1B.6, 3.2.1.7 and 3.2.1.8; 3.2.4 (protection

¹² We discuss the composition of the Schedules more fully later in this report.

¹³ Lucas summary statement, dated 6 November 2023, page 1.

¹⁴ Noting that the term ‘landscape capacity’ is as defined in Strategic Policy 3.1B.5 b.

of the distinctive natural environments and ecosystems of the District); 3.3.21 to 3.3.23 (rural activities); 3.3.28 to 3.3.35 (ONF, ONL and RCL landscapes); 3.3.45 to 3.3.46 (landscape assessment methodology); and 3.3.47 to 3.3.48 (rural zone landscape monitoring).

20. Strategic objectives 3.2.5.2(a) (for ONFs and ONLs) and 3.2.5.7(b) (for RCLs) focus attention toward identified PAs, which we understand are geographically/spatially defined areas within the District that include areas of land classified as either ONF, ONL and/or RCL where there is higher development pressure than in other areas.¹⁵
21. It is important to highlight and recognise that PAs are not necessarily landscape units or landscape character areas in their own right – they are areas of wider ONF, ONL and/or RCL that have been identified (through the Environment Court processes) as anticipated to be *under significant development pressure* during the life of the PDP.¹⁶ Accordingly, in a technical sense, they may comprise one or more discrete landscapes, or be part landscapes (that is, the remaining area of what is considered the relevant landscape is not included in the PA). Hence it is necessary to be cognisant of the other Chapter 3 strategic policies that apply to the ‘non-Priority Area’ ONF, ONL and RCL landscapes, which may form part of a development proposal or the receiving environment.¹⁷ For completeness, the Court noted that the identification of an area as a PA is not intended to connote any higher relative ONF, ONL or RCL quality rating.¹⁸ This was subsequently codified in strategic policy 3.3.44, which clarifies that any, or any part of an ONF, ONL or RCL not identified as a PA in Schedule 21.22 or 21.23 does not imply that the relevant area is more or less important than the identified PA in terms of: the identified landscape attributes and values (ONFs and ONLs) or the identified landscape character and visual amenity values (RCLs); or is more or less vulnerable to subdivision, use and development.
22. A PA is defined at clause 3.1B5 e. of the PDP as:
 - i. *in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means an area listed in SP 3.3.36 and shown on the maps [held on [QLDC reference file]];*
 - ii. *in relation to the Upper Clutha Rural Character Landscape, means an area listed in SP 3.3.39 and shown on the maps in Schedule 21 [held on [QLDC reference file]].”*
23. Strategic policy 3.3.36 lists the Rural Zone PAs for ONF and ONL, which were identified and mapped through the Court processes, as noted above, being:
 - 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,*

¹⁵ Refer Decision 2.2 discussion at [7] - [14].

¹⁶ [2019] NZEnvC 205 at [166] – [167].

¹⁷ Including strategic policy 3.2.5.4, which seeks to ensure that any application for subdivision, use or development not provided for within an Exception Zone protects the landscape values of the relevant ONF or ONL; and strategic policy 3.2.5.6, which seeks to ensure that any subdivision, use or development in an RCL in proximity to an ONF or ONL does not compromise the landscape values of that ONF or ONL.

¹⁸ Ibid at [167].

Mount Alpha, Roys Bay, West Wanaka, Dublin Bay, Hāwea South and North Grandview, and Lake McKay Station and environs.”

Importantly, both clauses (a) and (b) under strategic policy 3.3.36 refer to “parts of” ONF or ONL, rather than the geographic extents of the PAs following the full ONF or ONL mapped areas.

24. Strategic policy 3.3.39 lists the Rural Zone PAs within the Upper Clutha RCL, being:

- a. Cardrona River/Mt Barker Road RCL PA;*
- b. Halliday Road/Corbridge RCL PA;*
- c. West of Hāwea River RCL PA;*
- d. Church Road/Shortcut Road RCL PA;*
- e. Maungawera Valley RCL PA.”*

While strategic policy 3.3.39 does not have a similar reference to “parts of” the RCL for each PA, we have approached the geographic extents of the RCL PAs in a similar way to the ONFs and ONLs.

25. Strategic policy 3.3.29(a) further directs the identification of landscape values and landscape capacity (of related ONFs and ONLs) for the PAs which have been identified for inclusion in Schedule 21.22 of the PDP; while strategic policy 3.3.33(a) directs the identification of landscape character and visual amenity values and related landscape capacity (of related RCLs) for the PAs in the Upper Clutha Basin which have been identified for inclusion in Schedule 21.23 of the PDP.

26. Populating the content of both Schedule 21.2 and Schedule 21.3 of the PDP, with associated preambles, is the subject of this Variation. The PDP provides guidance as to what the schedules are to include, as discussed below, with further guidance provided through the various Environment Court decisions that have shaped the content of the PDP to date.¹⁹ In short, the Court anticipated that the schedules would identify the landscape values of ONFs and ONLs and the landscape character and visual amenity values of RCLs, to assist in providing enough certainty to ensure that the relevant PDP policy direction can be achieved.²⁰

27. As outlined in the Council’s s 32 Report for the Variation,²¹ the Court found that it would be more efficient and effective to identify the landscape values at the district plan level, rather than leaving the identification to a case-by-case situation via individual applications for resource consent(s). Mr Farrell also stressed, in his written and verbal evidence at the hearing,²² that confirmation of the schedules will assist with the Council’s obligations in responding to policies 3.2.4 and 3.2.6 of the POORPS 2019, which require the identification and maintenance of the values that contribute to a natural feature or natural landscape being outstanding.

¹⁹ The first stage of the PDP was notified in August 2015 with subsequent appeals being made to the Court on the Council’s decisions version. As previously discussed, the Court has issued a number of interim decisions on Topic 2 (Landscapes and Rural Character) of the PDP Appeals, including decisions which have shaped the current PDP provisions of relevance.

²⁰ Requiring: the protection of the landscape values of ONL and ONF; and the maintenance of the landscape character, or the maintenance and enhancement of the visual amenity values of RCL.

²¹ Section 32 Report, paragraph 7.1.

²² Farrell, 17 October 2023 summary statement.

28. Strategic policy 3.3.37, under the heading *Values Identification Framework*, further refines the ‘task at hand’²³ and requires, in addition to a description of landscape values and related landscape capacity, a description of the landscape attributes (physical, sensory and associative) for listed PAs, “*at an appropriate scale*” (a phrase that we discuss further in this recommendation in relation to methodology). A similar requirement for RCLs is mandated in strategic policy 3.3.40.
29. Strategic policy 3.3.38 further specifies how to achieve the directive of strategic policy 3.3.37 for the PAs applicable to ONFs and ONLs through a requirement to:
- a. identify the key physical, sensory and associative attributes that contribute to the values of the Feature or Landscape that are to be protected;*
 - b. describe in accordance with SP 3.3.43, and then rate, those attributes; and*
 - c. assess and record the related landscape capacity for subdivision, use and development activities including but not limited to:*
 - i. commercial recreational activities;*
 - ii. visitor accommodation and tourism related activities;*
 - iii. urban expansions;*
 - iv. intensive agriculture;*
 - v. earthworks;*
 - vi. farm buildings;*
 - vii. mineral extraction;*
 - viii. transport infrastructure;*
 - ix. utilities and regionally significant infrastructure;*
 - x. renewable energy generation;*
 - xi. forestry;*
 - xii. rural living.”*
30. Similarly, for PAs applicable to RCLs, under strategic policy 3.4.41 the following requirements are specified:
- a. identify and describe key public routes and viewpoints both within and in proximity to the Priority Areas (including waterbodies, roads, walkways and cycleways);*
 - b. identify the key physical, sensory and associative attributes that contribute to the landscape character and visual amenity values of the Priority Area;*
 - c. describe in accordance with SP 3.3.43, and then rate, those attributes;*
 - d. assess and record the relationship between the Priority Area and the wider Rural Character Landscape context;*
 - e. assess and record the relationship between the Priority Area and the Outstanding Natural Features within the Upper Clutha Basin;*
 - f. assess and record the relationship between the Priority Area and the Outstanding Natural Landscapes that frame the Upper Clutha Basin; and*
 - g. assess and record the related landscape capacity for subdivision, use and development activities including but not limited to:*
 - i. commercial recreational activities;*

²³ This policy was referenced by Mr Krüger as “setting the brief for this work”.

- ii. *visitor accommodation and tourism related activities;*
- iii. *urban expansions;*
- iv. *intensive agriculture;*
- v. *earthworks;*
- vi. *farm buildings;*
- vii. *mineral extraction;*
- viii. *transport infrastructure;*
- ix. *utilities and regionally significant infrastructure;*
- x. *renewable energy generation;*
- xi. *forestry;*
- xii. *rural living.”*

31. In achieving the above outcomes, strategic policy 3.3.43 requires regard to be had to “*physical, sensory (or experiential) and associated attributes*”, as listed in the PDP at 3.3.43(a) to (c).
32. Ms Gilbert confirmed that the structure of the proposed PA schedules has been derived from, and is organised to follow, the strategic policy direction of the PDP outlined above.²⁴ That is, the proposed PA schedules “...describe the landscape attributes, landscape values (ONFs and ONLs) or landscape character and visual amenity values (RCLs) and the related landscape capacity of each PA...” to assist with the “...protection of identified landscape values of ONF and ONL PAs; and the maintenance and enhancement of identified landscape character and visual amenity values of RCL PAs.”

Role and purpose of the schedules

33. Once confirmed, the content of Schedules 21.22 and 21.23, alongside the associated preambles, will assist with administration of the PDP and provide ‘high level’ guidance in relation to the assessment of applications for resource consent(s) when relevant objectives and policies²⁵ are engaged. Importantly, as Mr Ferguson informed us,²⁶ it is not the role of the PA schedules to be directive or to set out management aspirations (that is, they do not set policy direction) in relation to landscape capacity for ONFs and ONLs, rather their content simply identifies, describes, assesses and records what is to be protected; while the existing PDP objectives and policies, which remain unchanged through the Variation, provide the necessary strategic direction. Ms Hill also submitted that it was important for the schedules to be descriptive, rather than setting new policy.²⁷
34. As noted by Ms Evans in her s 42A Report,²⁸ the PA Schedules are not linked to specific rules in the PDP, and do not introduce any new resource consent requirements. Rather, the content of the schedules is intended to assist with the assessment of land use and subdivision proposals

²⁴ Gilbert EIC, para 3.11.

²⁵ Including, for example: Strategic Objectives 3.2.5.2 (for ONF and ONL) and 3.3.34 (for RCL) of Chapter 3 (Strategic Direction) under Part Two (Strategy); Policies 6.3.3.6 and 6.3.4.6 (relating to the upgrading or development of the National Grid and Regionally Significant Infrastructure) of Chapter 6 (Landscapes – Rural Character) under Part Two (Strategy); and the relevant Assessment Matters (Landscape) 21.21.1-21.21.3 and 21.21.2 of Chapter 21 (Rural Zone) under Part Four (Rural Environment) of the PDP.

²⁶ Ferguson evidence summary, dated 8 November 2023, para 25.

²⁷ Anderson Lloyd submissions dated 7 November 2023, at para 5.

²⁸ Section 42A Report at 4.2.

within the Rural Zone when an application for resource consent is being considered by the Council. However, as Ms Evans also explains, the schedules do provide an element of direction through the *'qualifying comments'* associated with the landscape capacity descriptions.²⁹ We agree with Ms Evans that these comments should remain in the schedules because they provide useful context and guidance for understanding the capacity ratings.

35. Mr Krüger reminded us that the schedules should achieve what the Environment Court had intended, including:³⁰
- *"Overall: improvements in the implementation of s6(b) RMA – "The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development"*
 - *To afford the identified PA (being those areas that are perceived to be subject to higher development pressure) the necessary attention and protection.*
 - *Instantaneous information on landscape-related content in resource management application processes for experts and lay-people.*
 - *"Simplification" or streamlining of landscape assessment processes.*
 - *More uniform outcomes in expert opinions."*
36. We were informed by various landscape experts, as confirmed in their Joint Witness Statement, that the attributes and values outlined within each proposed schedule are at a necessarily *'high level'* given the wide geographic extent/scale of each PA. As such, site-specific landscape assessments, which accompany applications for proposals requiring resource consent(s),³¹ will generally be required to provide more localised and *'in depth'* identification and evaluation of specific relevant attributes and values, informed by the overarching content of the PA schedules. Landscape capacity considerations within the proposed schedules, we were told, have also been undertaken at a *'high level'* and will need to be re-evaluated in the context of each specific application. It was generally agreed by the experts that attended expert conferencing that the PA schedules, and in particular the landscape capacity ratings, are not a substitute for a site-specific landscape assessment at the consenting stage.
37. Importantly, strategic policies 3.3.47 to 3.3.48 of the PDP require the Council to monitor the efficiency and effectiveness of Rural Zone provisions (at intervals of not more than two and a half years), in order to check whether Strategic Objective 3.2.5 is being achieved. The content of Schedules 21.22 and 21.23 will assist with this *'Rural Zone Landscape Monitoring'* process.
38. As the assessed landscape values and landscape capacity descriptions in the Schedules represent a *'snapshot'* of the landscape at a particular point in time, we consider it essential that Council plans and conducts regular monitoring in accordance with strategic policies 3.3.47 and 3.3.48, to ensure that the schedules, and in particular the capacity ratings, are updated to take account of the potential cumulative effects of subdivision, use and development over time, together with permitted or consented changes in land use. In this regard, we acknowledge the submission from Federated Farmers of NZ, which stressed the importance of recognising that

²⁹ Evans reply statement at paras 4.1-4.6.

³⁰ Krüger evidence summary, dated 29 October 2023, at para 14.

³¹ As required under strategic policies 3.3.45 and 3.3.46, for example.

the landscape is constantly changing, particularly through *permitted* rural activities that have previously shaped and will continue to shape the landscape.

39. In summary, the Variation proposes the introduction of twenty-nine (29) Priority Area 'landscape' schedules to Chapter 21 (Rural) of the PDP, as Schedules 21.22 and 21.23. Twenty-four (24) Priority Areas relating to ONFs and ONLs are to be included, as listed under strategic policy 3.3.36; and five (5) Priority Areas that relate to RCLs, as listed under strategic policy 3.3.39. The Variation does not propose to change any objectives and policies in the PDP, or seek to introduce new provisions (other than the PA schedules themselves, with associated preambles).³²

Preliminary matters

40. A number of preliminary matters were considered and decided prior to and during the Hearing, summarised as follows:
- (i) Alleged potential bias and conflict of interest in relation to Commissioner Smith;
 - (ii) The adequacy of Council's consultation with respect to the Variation;
 - (iii) The Panel's scope to consider and recommend changes to the PA boundaries and/or the ONF, ONL and RCL boundaries (collectively referred to as the "mapping amendments");
 - (iv) The adequacy of the s 32 Report;
 - (v) The Partially Operative Otago Regional Policy Statement 2019 (POORPS) and the Proposed Otago Regional Policy Statement 2021 (PORPS);
 - (vi) The relevance of the National Policy Statement for Urban Development (NPS-UD); and
 - (vii) Expert Conferencing outcomes.
41. For completeness, the appropriateness of the landscape methodology employed by the Council was also raised prior to the hearing in a number of submissions and memoranda. Our response to this matter is set out in our Minute dated 11 October 2023 (attached as **Appendix 3**) and addressed further in the main body of findings below.³³
42. We discuss and record our findings on the preliminary matters as follows.

Alleged Conflict of Interest – Commissioner Smith

43. By way of a memorandum dated 7th August 2023, Dr John Cossens challenged the appointment of Councillor and Deputy Mayor Smith to the Panel on the grounds of alleged "*potential bias and conflict of interest*". The grounds giving rise to the allegations related to Commissioner Smith's involvement as a member of the Queenstown Lakes District Council Planning and Strategy committee and, in particular, his participation and voting record in relation to various motions concerning the process surrounding the landscape variations schedules.

³² Evans, section 42 evidence at para 4.4.

³³ Refer to the Minute of the Hearing Panel dated 11 October 2023.

44. Our preliminary views on the allegations were set out in a Minute dated 30 August 2023, which is attached as **Appendix 1** to this Report, at the conclusion of which we invited further memoranda from any other parties that wished to be heard on the matter of Commissioner Smith's alleged bias or conflict of interest. This Minute also noted Commissioner Smith's role as a trustee of the Upper Clutha Tracks Trust (the Trust), and our determination that Commissioner Smith would, as a consequence, not be involved in deliberations or any subsequent recommendations in relation to the Trust's submission.
45. In response to our invitation, a further memorandum on behalf of the Cardrona Cattle Company Limited (CCCL) dated 6 September 2023 was subsequently received. The CCCL memorandum discussed the relevant principles of law in relation to allegations of bias and conflict of interest, and supported the general concerns raised in Dr Cossens' memorandum.
46. Our response to the CCCL memorandum was set out in a Minute dated 14 September 2023, which is attached as **Appendix 2** to this Report.
47. Our findings on the matter of the alleged bias and conflict of interest of Commissioner Smith are summarised as follows:³⁴
- (a) Having had regard to the applicable legal principles and authoritative guidance, we concluded that a fair-minded observer would not reasonably think Councillor Smith might not bring an impartial mind to the recommendations, and that no question of predetermination, bias or conflict of interest arises, except as specifically noted in relation to the Trust (as per our Minute dated 30 August 2023) and the particular concerns of CCCL as outlined in its memorandum of 6 September 2023.
 - (b) We determined, applying an abundance of caution, that in addition to not taking part in deliberations and recommendations in relation to the Trust's submission, Councillor Smith would not take part in any deliberations or any subsequent recommendations in relation to CCCL's submission or further submission and, to the extent that it concerns CCCL's submission or further submission, the Councils submission (which CCCL further submitted on).
48. We confirm that Commissioner Smith has not taken part in the deliberations or the formulation of recommendations in relation to the matters raised in the submissions and further submissions of both the Trust and CCCL as they apply to those entities. Commissioner Smith also elected to recuse himself from the hearing during the oral representations and submissions on behalf of CCCL, and in relation to the Gibbston Character Zone generally.

Adequacy of Consultation

49. In a second memorandum dated 12 September 2023, Dr Cossens requested that the Panel:
- “(a) Consider the matter of whether the landscape schedule methodology, in particular the community consultation, was fair, reliable, robust and representative.*

³⁴ Minute of the Panel dated 14 September 2023 at 22 to 23.

- (b) Initiate an expert peer review of the consultative method and landscape methodology employed by [Council]; and*
- (c) Allow for submissions to be received on the methodology employed by [Council]”*

50. At paragraph 30 of his memorandum, Dr Cossens outlines the relief sought as follows:
- “(a) To find there is a case to be heard in regard the consultative and landscape schedules methodology employed by the QLDC.*
 - (b) To call for submissions on the matter of the landscape and consultation method employed by the QLDC, and*
 - (c) Once having had the evidence and submissions, determine whether the landscape and consultative methodology was fair, reasonable and provided sufficient information for respondents to make an informed submission on landscape values.*
 - (d) If the Commission finds the consultative process was not fair, then it is submitted the Commission would have no choice in calling for the consultative process to be redone in a more reliable, fair and representative manner.”*
51. For the reasons set out in our Minute dated 11 October 2023, attached as **Appendix 3** to this Report, we declined the relief sought by Dr Cossens with respect to the alleged deficiencies in the Council’s *public consultation* on landscape methodology. We noted, however, that the hearing would consider submissions and expert evidence from all parties on the landscape methodology employed by the Council in formulating the schedules, as part of the statutory process.

Scope to include proposed Mapping Amendments to PA, and ONFL and RCL, boundaries

52. Whether or not the Panel has scope to recommend mapping changes to PAs, which in some cases also extended to corresponding changes to ONF, ONL and RCL boundaries, was a significant issue in relation to this Variation. Ms Baker-Galloway submitted that *“it was a common public/submitter perception and understanding that the mapping of PA boundaries and ONL boundaries are indeed the subject of submissions and the Variation”*.³⁵ At the hearing she advised that approximately 55, equating to 25% of total submissions received by the Council (excluding further submissions) had requested changes to the PA and/or ONF and ONL boundaries, or alternatively had sought retention of the boundaries,³⁶ and that this provided strong evidence that the scope of the notified Schedule 1 process was widely understood to include proposed mapping amendments.
53. The relief sought in relation to changes to the PA boundaries included both significant and relatively minor changes to the PA boundaries, in some cases with corresponding changes to the ONF, ONL or RCL boundaries; together with the exclusion of land within non-Rural Zones and Operative Zones from PAs, including Exception Zones and parts of the Gibbston Valley Resort Zone and the Northlake Special Zone.

³⁵ Legal submissions of Anderson Lloyd dated 16 October 2023 at 12.

³⁶ Refer also to Anderson Lloyd Legal Submissions dated 24 October 2023 at 25.

54. Council's position is that any requested mapping amendments to the PAs, together with the separate PDP ONF, ONL and RCL landscape classification lines, are not within the scope of the Variation.
55. It was not in contention that the Panel, together with the Council in its decision-making role, can only operate within its jurisdiction (scope). Scope is a matter of interpretation by reference to the applicable case law and the notified proposal.³⁷
56. The leading authority on scope is *Clearwater Resort Limited v Christchurch City Council*.³⁸ The High Court's approach was subsequently endorsed in *Palmerston North City Council v Motor Machinists Ltd*,³⁹ which summed up the required test as follows:

[80] For a submission to be on a plan change, therefore, it must address the proposed plan change itself. That is, to the alteration of the status quo brought about by that change. The first limb in Clearwater serves as a filter, based on direct connection between the submission and the degree of notified change proposed to the extant plan. It is the dominant consideration. It involves itself two aspects: the breadth of alteration to the status quo entailed in the proposed plan change, and whether the submission then addresses that alteration.

....

[91] To sum up:

(a) [The] approach requires analysis as to whether, first the submission addresses the plan change to the status quo advanced by the proposed plan change and, secondly, there is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process.

...

(d) The first limb of the Clearwater test requires that the submission address the alteration to the status quo entailed in the proposed plan change. The submission must reasonably be said to fall within the ambit of that plan change. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime and a district plan for a particular resource is altered by the plan change. If it is not, then a submission seeking a new management regime for that resource is unlikely to be 'on' the plan change, unless the change is merely incidental or consequential.

(e) The second limb of the Clearwater test asks whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the

³⁷ We record here that the Panel did not request "expert evidence" on this jurisdictional matter, as has been assumed by Mr Wakefield and recorded at paragraph 3.4 of the Reply Legal Submissions for Council dated 15 December 2023. Plainly the issue of scope is not a matter of expert evidence, as the Panel is fully aware. Rather, had we determined that the scope of the Variation extended to mapping amendments, the Panel was minded to afford Council's experts the opportunity to respond to the submitter evidence that had been filed and presented prior to and during the Hearing.

³⁸ HC, Christchurch, AP34/02, 14 March 2003 ("*Clearwater*").

³⁹ [2013] NZHC 1290 ("*Motor Machinists*").

submission have been denied an effective opportunity to respond to those additional changes in the plan change process.

57. Applying the *Clearwater* test, the Council submitted that:

- (i) Mapping amendments to the PAs, ONFL and RCL proposed by various submitters are not “on” the Variation, and could not have reasonably been contemplated to be within the scope of the Variation, as:
- Any recommended changes to the respective PA, ONFL or RCL boundaries, or the potential for them to be made, were not addressed in the s 32 evaluation and report. On the contrary, the s 32 Report made it clear that the Variation was limited to the *content* of the PA schedules.
 - The public was not notified of any changes to the PA areas, or the potential for such changes, in the Public Notice that accompanied the Variation.⁴⁰ The Public Notice expressly references the introduction of PA Schedules 21.22 and 21.23 but makes no mention of the potential for any related mapping amendments.
 - The link to the mapping of the PAs was only referenced (by way of a weblink) under the topic heading “*Landscape Schedules Variation*” to ensure that submitters were aware of the spatial area that the proposed PA schedules would apply to. This does not amount to notification of the PA boundaries, either expressly or by inference. The information on the dedicated webpage for the Variation, which includes the Information Sheet and the s 32 Report, also makes it clear the PA mapping was not part of the Variation.
 - The Variation is not seeking to change the management regime for any ONFs, ONLs or RCLs, or the Rural Zone, other than by introducing PA schedules to guide the operation and implementation of the relevant policy regime for ONF, ONL and RCL landscapes (as the Court determined to be appropriate through Topic 2).
 - The exclusion of the potential for mapping amendments was a deliberate decision of Council, and one that it was plainly within its discretion.
- (ii) No notice of the potential for mapping amendments was given to those who may have otherwise taken part in the proceeding. Accordingly, were the Panel to make recommendations in favour of amendments to the PA mapping and/or ONFL and/or RCL boundaries, this would raise clear procedural fairness concerns. The Council submitted that there exists the real potential that parties that would have, had they known, taken part in the process (including by way of further submissions) could be prejudiced by the making of such recommendations.⁴¹

58. Counsel for various submitters, together with their advisors and expert witnesses, maintain that a correct interpretation and application of the *Clearwater* tests provides scope for mapping

⁴⁰ The Public Notice dated 30 June 2022 advising of the proposed variation to the QLDC PDP.

⁴¹ In support of this submission, Council notes in its Reply Legal submissions at 4.11 that a number of submitters have expressed their understanding that PA mapping is not within the scope of the Variation, including the Upper Clutha Environmental Society Inc (submitter #67).

adjustments, at a minimum with respect to the PA boundaries. Their arguments are summarised as follows:

- (i) The decision of the Environment Court to decline to exercise its powers under s 293 to notify the PA mapping and schedules through the Topic 2 process,⁴² raised a legitimate expectation that there would be the potential for affected parties to be able to participate at a later date.⁴³
- (ii) The values and attributes assessment, which is the focus of the s 32 assessment, is the “*first time*” the values, attributes, character and related capacity of a number of already identified ONLs and ONFs have been considered in detail. Because capacity ratings change over time, it follows that a more detailed assessment undertaken as part of the Variation may also lead to better and “*more defensible*” boundaries, informed by best practice landscape assessment methodology. Accordingly, assessment of the values and attributes of the identified landscapes, and “*consequent mapping of boundaries supported by the values and attributes identification*”, which is an iterative process, is squarely within the ambit of the s 32 report, as envisaged in the *Clearwater* tests.⁴⁴
- (iii) Failure to include mapping amendments, as supported by a more fine-grained analysis, within the scope of the Variation will necessitate the need for any deficiencies to be corrected through another Schedule 1 process, which is neither efficient nor effective.⁴⁵
- (iv) The Variation is not a ‘*narrow*’ or ‘*minor*’ change to the PDP. The PAs are subject to an additional and new “*step*” of planning assessment, against identified values and capacity. Consequently, submissions on this “*new management regime*” must be able to critique the associated spatial areas.⁴⁶
- (v) That the PA overlays were notified or incorporated is supported by Ms Gilbert's references to the “*notified PA mapping*” throughout her evidence, including Appendix 3.⁴⁷
- (vi) Changes subsequently made to the PA mapping after the Topic 2 Court decision by the Council, which is indicated by the differently coloured spatial layers on the Council's website, supports the submitters' position that the PA mapping was notified through the Variation. Importantly, where those mapped areas differ from the Court-ordered boundaries in Topic 2, landowners have had no opportunity for involvement in the “*regulatory change*” to their land.⁴⁸ Having had regard to the consequential amendments and in particular the use of Clause 16 amendments,⁴⁹ for the Council to

⁴² *Upper Clutha Environmental Society the Queenstown Lakes District Council* [2020] NZEnvC 158 at [33] and [68]. Interim Decision 2.5.

⁴³ Anderson Lloyd Legal Submissions on behalf of Passion Developments Limited dated 16 October 2023 at 28 and 29.

⁴⁴ *Ibid* at 21 to 22. This submission was also supported in the Representations on behalf of CCCL and Milstead Trust dated 13 October 2023 at 10 to 15.

⁴⁵ Representations on behalf of CCCL and Milstead Trust dated 13 October 2023 at 13.

⁴⁶ Anderson Lloyd, *ibid* at 19, with reference to the decision in *High Country Rosehip Orchards Ltd v MacKenzie District Council* [2011] NZEnvC 387 at [27].

⁴⁷ *Ibid* at 25.

⁴⁸ *Ibid* at 24 to 27.

⁴⁹ Anderson Lloyd Submissions dated 24 October 2023 at 25 to 31.

maintain its position that the mapping was not notified would result in a “*flawed and misleading*” process.

- (vii) With respect to the ONF, ONL and/or RCL boundaries, any consequential change to these boundaries as a result of the amended PA boundaries is a matter that is reasonably anticipated to be the subject of submissions (applying the *Clearwater* tests).⁵⁰
- (viii) There is no risk that persons directly or potentially directly affected by the additional changes proposed will have been denied an effective opportunity to respond. Many submitters understood the PA boundaries to be the subject of the Variation and did not seek amendments to those boundaries. Anyone specifically interested in the ONL or PA boundaries could have lodged a submission or further submission, as part of the process.⁵¹

59. Other submissions raised the issue of natural justice in relation to those submitters that were not involved in the PDP Topic 2 appeals, and consequently were not able to have input into the identification of PAs and schedules. It was submitted that the Variation does change the policy framework or direction, contrary to the s 32 Report and analysis; accordingly the inability to “*look behind*” the Environment Court direction and question the appropriateness or effectiveness of the PAs and accompanying schedules, as a method, unfairly prejudices affected landowners.⁵²

Discussion

60. In explaining our findings on scope, it is important to first set out the background context surrounding the introduction and mapping of the PAs.
61. The appropriateness of the priority area scheduling approach was determined by the Environment Court in Decision 2.2.⁵³ The Court’s approach envisaged the identification and scheduling of areas of ONF, ONL and RCL landscapes subject to significant development pressure, and the preparation of associated landscape schedules for these areas. It was made very clear by the Court that this approach was not intended to differentiate between the protection afforded to ONF, ONL and RCL landscapes (by the PDP) as between ‘priority’ or ‘non-priority’ areas.
62. Further, the Court was not prepared to allow the Council to decide on the Priority Areas, 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 Chapter 3 policies for Schedule 1 plan changes*”.⁵⁴ In making this determination, the Court held that it would not direct the Council “*to undertake a District-wide landscape assessment, or to progress ONFL values scheduling beyond specified*

⁵⁰ Ibid at 27.

⁵¹ Ibid at 23.

⁵² Submission #109 by Kiwi Vineyard Holdings Ltd dated 26 August 2022 at 3.1.

⁵³ [2019] NZEnvC 205 at [162].

⁵⁴ Ibid at [163].

priority areas, or to revisit the ONFL or RCL overlays on the planning maps".⁵⁵ The Court then set in train a process to identify the Priority Areas, as has been described in the evidence in chief of Ms Gilbert.⁵⁶ Ultimately, the PA mapping that accompanied the associated Joint Witness Statement was confirmed in Decision 2.7.⁵⁷ The Court recognised that greater clarity was needed as to the geographic boundaries of each listed PA, finding that the balance weighed in favour of having mapping accompany the listing of PAs. In its determination, the Court provided for the Council to elect whether it wished to include the mapping directly in the PDP, or to have it incorporated by reference to a suitable Council file.⁵⁸ The Council chose the latter option by way of a Memorandum dated 16 June 2021. We were advised by the Council that it is currently in the process of including the link to the mapping reference file in Chapter 3, as part of a wider workstream to update the PDP provisions to reflect recent Court decisions and consent orders.⁵⁹

63. Under clause 30 of Schedule 1 of the RMA, the Council is of the view that its powers under Clause 16(2) to amend a proposed plan where an alteration is of minor effect, or to correct any minor errors, extends to material incorporated by reference. For any non-minor amendments to material incorporated by reference, that is, changes that are not neutral in effect, clause 31 would be triggered, which requires a variation or plan change for that purpose.⁶⁰ We note that the lawfulness of this approach, and the Council's subsequent application of clause 16 to the PA mapping determined through the Court processes, is not a matter that we are required to turn our minds to, as it does not impact on our findings below with regard the scope of the Variation. We comment on this aspect further below.

Findings

64. Applying the first limb of the *Clearwater* test, we find that the mapping amendments proposed by submitters are not 'on' the Variation for the following reasons:
- (i) The Public Notice, together with the s 32 Report and associated material that informed the notification of the Variation, make it unambiguously clear that the scope of the proposal is limited to the content of the Schedules. The s 32 report in particular explicitly states that the Variation does not change any aspect of the identification or mapping of the PAs, nor does it seek to introduce new PAs or delete identified PAs: "*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*".⁶¹ We therefore accept the Council's submission that these statements plainly confine the Variation to the *content* of the PA schedules to be included in Chapter 21 of the PDP.
 - (ii) We further consider the submission that Ms Gilbert's references to "*notified PA mapping*" in her Evidence in Chief, which was filed after the submission period closed, to be somewhat disingenuous. It seems plain to us, on a purposive interpretation, that Ms

⁵⁵ Ibid at [164].

⁵⁶ EIC Ms Gilbert dated 11 August 2023 at [3.9].

⁵⁷ [2017] NZEnvC60 at [26].

⁵⁸ Ibid at [13] to [15].

⁵⁹ Opening Legal Submissions for Council dated 13 October 2023 at 2.13.

⁶⁰ Ibid at 4.2 to 4.3.

⁶¹ Refer s 32 Report at 1.5 and 1.6.

Gilbert was simply referring to the PA maps that accompanied the Variation (by way of a weblink) as a point of reference for submitters. This is supported by the observation that Ms Gilbert's evidence did not directly address the various submissions that had been made with respect to PA (or ONF, ONL and/or RCL) mapping, which would otherwise necessarily have been the case. We observe that had access to the PA mapping not been made readily available by the Council, the ability of submitters to meaningfully participate in the Variation process would have been significantly impeded.

- (iii) While a more detailed assessment of values, attributes and capacity (as informed by best practice landscape methodology) may or may not result in "*more defensible [PA] boundaries*", this was not the purpose of the Variation and, with respect, appears to misinterpret the basis on which the PAs were determined by the Court. The PAs comprise areas that are subject to *substantial development pressure*, which may not necessarily comprise landscapes or part landscapes in their own right. The '*iterative*' landscape process advanced by the submitters does not necessarily, therefore, bear any relationship to the identified PA boundaries, which are for a different purpose (as explained by the Court). We are not aware of any arguments that addressed the absence of significant development pressure within a mapped PA; on the contrary, most if not all submissions, either directly or by implication, sought intensification of subdivision, use and development.

- (iv) In any event, the Court has made it plain, supported by the inclusion of Chapter 3 Strategic Policy 3.3.44, that the protection to be afforded to 'Non-PA' ONFL and RCL areas is no less important than an identified PA in terms of the landscape attributes and values (ONFs and ONLs) or landscape character and amenity values (RCLs), or is less vulnerable to subdivision, use and development than a PA. Accordingly, unless we had scope to also change the corresponding ONF, ONL or RCL boundaries, any recommendations that we might purport to make with respect to PA mapping may have little practical effect given the role and purpose of the schedules (which we discuss further in the substantive section of this report below) and in particular the need for a site-specific assessment with respect to any proposed development. The ONF, ONL and RCL boundaries have been determined through robust Court processes, as set out in Decision 2.2,⁶² which specifically addressed the Council's ability to re-visit the ONF, ONL or RCL overlays on the planning maps. We do not consider that we have authority to relitigate the Court's decision by adopting what would amount to a very strained approach to the scope of this Variation. Any substantial change to these boundaries will therefore require a Schedule 1 process to be initiated or, in the case of 'minor' changes to the PA boundaries, an appeal to the Council for exercise of its powers under clause 16. We note that as a result of the mapping submissions filed in response to this Variation, the Council has prepared a schedule of proposed minor clause 16 changes to the PAs.⁶³ While this appears to be an appropriate response by the Council in the circumstances, as set out above, it is not necessary for us to express a view on the *vires* of this method.

⁶² Decision 2.2 at [164].

⁶³ Refer Reply Submissions for Council at Appendix 3.

- (v) We also note that, in some instances, substantive relief with respect to mapping amendments has already been sought through (unrelated) Court processes.⁶⁴ Council notes that the boundaries at issue in these proceedings have not been re-notified as part of this Variation. For us to purport to make recommendations with respect to PA, or ONF, ONL and/or RCL boundaries on a matter that is currently before the Court would serve no useful purpose, and we agree with the Council that these submissions are tantamount to an opportunistic attempt to relitigate the concerns of those submitters.
- (vi) We have considered whether the Court, in declining to exercise its powers under s 293 to notify the PA mapping and schedules through the Topic 2 process, anticipated the potential for affected parties to be able to ‘participate’ at a later date. While on its face this is a possible interpretation of Judge Hassan’s observations (although in our view there are equally valid interpretations that would confine participation to the content of the schedules), it is also very clear that the Court ultimately left such matters to the Council in its discretionary judgement as the planning authority.⁶⁵ As we have found above, the Council chose not to notify the PA maps as part of this Variation on the basis that the PA mapping had been endorsed for incorporation in the PDP by the Court;⁶⁶ accordingly, the submitters’ argument falls moot on this point.
- (vii) Finally, we find that nothing turns on the submissions concerning a range of changes to the PA mapping incorporated by reference (as evidenced on the Council’s website) following the Court’s decision on the boundaries of the PAs, together with any confusion arising from the green and yellow spatial overlay mapping layers or the Council’s subsequent clause 16 amendments. While we are cognisant of the potential misperception that may have been raised, in our view any alleged deficiencies in this process do not have any bearing on the matter of jurisdiction under the first limb of the *Clearwater* test, for the reasons outlined above. To find otherwise would be at odds with the express wording used in the s 32 Report and the Public Notice.

65. With regard to the second limb of the *Clearwater* test, we accept the Council's submission that recommendations on the requested PA mapping changes, or any of the separate PDP landscape boundaries, would create significant procedural fairness issues that are unable to be rectified through this process. We concur that any attempt to relocate the PDP landscape lines would amount to a re-litigation of matters progressed and determined through the Topic 2 Court decisions referenced above, which was plainly regarded by some submitters to now be settled and, as such, not a matter that was open for review through this Variation.

66. We note here that a number of the more substantial mapping submissions concerned the ‘carve-out’ of non-Rural zoned land, including Exception Zones and Operative Zones, from the PA

⁶⁴ Opening Submissions for Council dated 13 October 2023 at 6.30 to 6.34, including Hawthenden [ref]; Cardrona Cattle Company Limited; Sticky Forest; the landscape classification of the Rural Zone outside the mapped extent of the Kimiākau Shotover River ONF with respect to properties located at 111 and 163 Atley Road– refer to Council’s Memorandum regarding Priority Area mapping dated 20 October 2023 at 9 to 11.

⁶⁵ Decision 2.2 at [164].

⁶⁶ Reply Legal Submissions for Council at 4.23.

Schedules.⁶⁷ During the course of the hearing it was generally agreed by all parties that the PA schedules do not apply to non-Rural zoned land. Accordingly, while we do not have jurisdiction to make any changes to the PA boundaries, we concur with the Council that as the schedules plainly do not apply to non-Rural Zoned land located within PAs, including Exception Zones and Operative Zones, there is no specific need to ‘carve out’ the mapping.⁶⁸ The application of the PAs (to Rural zoned land only) has been clarified in the preambles for the avoidance of any doubt in this respect.

67. Other submissions of note were concerned with the extension of the PA boundaries into Resort and Urban zoned land; specifically parts of the Gibbston Valley Resort Zone and the Northlake Special Zone. The Council has acknowledged that these minor boundary ‘overlaps’ are anomalous, and that the PA boundaries should logically follow the respective Resort and Special Zone boundaries in these locations. Corrections to the respective PA boundaries through a clause 16 adjustment has been proposed by the Council.⁶⁹
68. Overall, we find that we have no jurisdiction to consider or make recommendations on the PA, ONF, ONL and RCL mapping amendments proposed in submissions and further submissions. As set out above, our scope is limited to the *content* of proposed Schedules 21.22 and 21.23, including the proposed preambles. Although it is possible that some submitters may have harboured a misperception that mapping amendments were ‘on’ the Variation and prepared submissions accordingly, this does not, in our view, impact on our consideration of and recommendations with respect to the schedules and the preambles. We observe, however, that as noted above, a number of the mapping submissions have very helpfully assisted us with clarification of the *application* of the PA Schedules to non-Rural zoned land and, in some cases, will lead to minor adjustments through the Council’s proposed clause 16 process.

The Adequacy of the section 32 Report

69. Several submissions allege that the s 32 analysis is inadequate, as it relies solely on the Environment Court’s direction as the reason for the Variation and provides no assessment of options or considered cost benefit analysis. Further, the methodology adopted states that the starting point is the collective decisions of the Environment Court, rather than a zero-based approach. The submitters invited us to consider whether the Variation is the most appropriate method to achieve the Chapter 3 strategic objectives and policies, the costs and benefits, efficiency and effectiveness and risks of implementation; in particular, the use of the proposed schedules against the option of the status quo.
70. As set out above, the purpose of the Variation is to give effect to the Environment Court’s directions as recorded in strategic policy 3.3.42. The scope of the proposal is therefore limited to the content of the schedules, including the way the schedules describe the landscape attributes and landscape values (ONFs and ONLs) or the landscape character and visual amenity

⁶⁷ These included in relation to Mt Cardrona Station, Coneburn Preserve Holdings Limited and Henley Downs Farm Holdings Limited, Soho Ski Area Limited and Blackmans Creek Holdings 1 LP, Cardrona Cattle Company Limited; RealNZ Limited; Rock Supplies NZ Limited and The Station at Waitiri Limited.

⁶⁸ Refer opening submissions of Council at 6.19, which we adopt.

⁶⁹ Reply Legal Submissions for Council dated 15 December 2023 at Appendix 3.

values (RCLs), and the related capacity of the landscape within each of the 29 PAs. The Variation does not change any objectives or policies in the PDP or seek to introduce new objectives or policies.

71. We note that in paragraphs 9 to 11 of the s 32 Report, the Council examined the extent to which the proposed objectives are the most appropriate way to achieve the purpose of the RMA, noting that the Variation does not propose any new objectives or changes to the existing objectives. The s 32 Report concluded that because the Variation is a direct result of the processes directed by the Court, which was required to adhere to the requirements of s 32, the Variation is the most appropriate way to achieve the purpose of the RMA. We are satisfied that this is an appropriate conclusion, and that a “zero-based approach” is neither practicable nor would it necessarily give effect to the Court’s directions, as now codified in Chapter 3.
72. The Council also carried out an assessment of whether the proposed provisions are the most appropriate way to achieve the objective or purpose of the proposal, noting that this assessment must identify other reasonably practicable options for achieving the objectives, assess the efficiency and effectiveness of the provisions in achieving objectives, including consideration of the benefits and costs anticipated from the implementation of the provisions, and the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. The required analysis was included in section 11 of the s 32 Report. The Council concluded that there are no other reasonably practicable options to achieve the purpose of the variation or the objectives of Chapter 3 of the PDP, noting that Chapter 3 sets out a clear and direct approach by identifying the PAs, specifying the methodology to be used to identify and describe the values, and setting the date by which notification was required. As such, the Council considered there are no other reasonable options to achieve such a specific direction.
73. Having had regard to the s 32 Report, we are satisfied that the Council’s analysis was adequate, meets the statutory requirements and that no further analysis is required. We further note that the adequacy of the s 32 report was not raised in oral submissions at the hearing.

Partially Operative Otago Regional Policy Statement 2019 (POORPS) and the Proposed Otago Regional Policy Statement 2021 (PORPS)

74. As noted by Ms Evans in her evidence before us, the PORPS is a matter that we must have regard to under section 74(2)(a) of the RMA. The POORPS is the operative planning instrument for the purpose of section 75(3)(c) of the RMA, and must be given effect to. We are satisfied that the proposed schedules are consistent with the applicable PORPS and POORPS policies, where relevant. In this regard, as mentioned earlier in this Report, Mr Farrell helpfully drew our attention to PORPS policy 3.2.4, which requires the identification and maintenance of the values that contribute to the natural feature or natural landscape being outstanding, and policy 3.2.6, which is concerned with managing highly valued natural features, landscapes, and seascapes.⁷⁰

⁷⁰ Farrell, 17 October 2023 summary statement.

75. Given the relevant Chapter 3 provisions, and the purpose of this Variation, we agree with the submission of counsel for the Council that it is difficult to see how future decisions on the PORPS would materially impact on our consideration of the content of the PA schedules. Should the PORPS make any significant policy shifts, which would ultimately be reflected in the PDP through a subsequent process, the starting position would necessarily be with the relevant objectives and policies, rather than the content of the PA schedules.

Relevance of the National Policy Statement for Urban Development (NPS-UD)

76. In his planning evidence for Passion Developments Limited, Mr Richard Kemp considered the NPS-UD to be relevant to the Variation, on the basis that section 1.3 references “*planning decisions ... that affect an urban environment*”, which provides the necessary link between the NPS-UD and the Variation. Mr Kemp also identified a number of objectives and policies of the NPS-UD that he considered relevant to matters addressed by the Variation.⁷¹
77. Ms Evans comprehensively responded to this issue and her rebuttal evidence, concluding that as the focus of the variation is on section 6 and 7 landscapes (Part 2 of the RMA), and implementing the strategic direction set in Chapter 3 of the PDP, the NPS-UD direction is not material to the Variation. She stated:⁷²
- “... urban environment is described in the NPSUD as land that is or is intended to be predominantly urban in character. The Rural Zone (to which the PA schedules directly apply) is not part of the urban environment. In addition, the relevant landscapes are - other than limited exceptions - entirely outside the existing urban environment in the District, which is defined by the mapped Urban Growth Boundary. For these reasons, I consider that the NPSUD has very limited relevance to the proposed variation.”*
78. In his Reply legal submissions for the Council,⁷³ Mr Wakefield submitted that Ms Evans’s evidence is correct. He noted that the NPS-UD does not, as a policy document, engage with the Rural Zone, or any non-rural environment, unless there is a relevant proposal to rezone land so that it comes within the urban environment. Accordingly, as the Variation addresses the content of new schedules for inclusion in Chapter 21, Rural Zone of the PDP, the NPS-UD is of no relevance.
79. We accept the evidence of Ms Evans and, concurring with Mr Wakefield, find the NPS-UD is not relevant to our consideration of this Variation.

Expert Conferencing

80. Expert conferencing of landscape experts and planners, facilitated by Independent Commissioner Ken Fletcher, took place during the week of 2 to 6 October 2023 and resulted in two Joint Witness Statements dated 4 October 2023 (landscape architects only) and 6 to 10 October 2023 (landscape architects and planners). Although not all experts were able to attend conferencing, or only able to attend in part, significant agreement was reached between those

⁷¹ Statement of Evidence of Mr Richard Kemp dated 11 September 2023 at 5.1 – 5.6.

⁷² Rebuttal evidence of Ms Evans at 4.5 – 4.6.

⁷³ Reply Legal Submissions of Council at 13.4 – 13.5.

present (which included the Council's experts) with respect to the content of the PA schedules and the preambles.

81. We wish to acknowledge the benefit of the expert conferencing that occurred following the exchange of evidence in chief and before the hearing commenced. This process significantly narrowed areas of disagreement and made the hearing process more efficient than it might otherwise have been had conferencing not occurred. In that regard, we thank the mediator, Commissioner Fletcher and all parties and participants for their role in this process, and in particular for the professional manner in which the conferencing was approached and the clear outcomes that were communicated via the Joint Witness Statements.
82. We note the Joint Witness Statements helpfully recorded agreement amongst experts that:
 - (a) Each PA Schedule has been written to be read in its entirety and selected excerpts should not be read in isolation or taken out of the context of the entire schedule; and
 - (b) Each PA Schedule should be read in conjunction with the associated preamble and not in isolation, particularly because:
 - (i) As the schedules are written at the broad PA level, they are a high-level description and assessment, and any proposed project will be set at a smaller scale within the PA; and
 - (ii) Each proposed project will require a specific landscape assessment that identifies how the project sits within the PA, which attributes and values of the PA are relevant to the project, and an assessment against those values and related capacity.

We acknowledge Mr Farrell's contribution to the Joint Witness Statement, in which it was recorded that: *"...landscape assessments for some proposals may need to assess landscape values beyond those identified in the PA Schedule (e.g. where an identified PA forms only part of a larger ONF/L). This is because ONF/L policy directives tend to apply across the full extent of a ONF/L, not just the extent of a PA."*

83. One of the most significant issues raised in submissions concerned the landscape capacity rating scale adopted by the Council, and in particular the *"no landscape capacity"* rating. This issue was very helpfully largely resolved during expert conferencing (albeit that not all experts were in attendance), and a modified rating scale agreed by those present. In making their recommendation with respect to the rating scale, the experts agreed that within the PAs, the starting position is that, in general, landscape capacity is limited and that the rating scales represent small downward increments from some extremely limited to no landscape capacity.
84. The resulting scale proposed by the Council in Ms Gilbert's rebuttal evidence softened the *"No"* landscape capacity rating so that it reads *"Extremely limited or no"*. In the Council's view, this modification recognises the underlying landscape context of the PAs, and appropriately reflects

the PDP policy direction, within the context of ss 6(b) and 7(c) of the RMA, that regulates land use within the ONF, ONL and RCL landscapes.

85. The two Joint Witness Statements have been of considerable assistance in narrowing the *unresolved* issues between the experts involved in conferencing, which are broadly summarised as:
- (i) Where the ratings of landscape values in the specific PA schedules should be located, and how those ratings should be described; that is, as “*key*” or “*summary*”;
 - (ii) Whether there should be greater articulation of the key physical landscape values, as opposed to the summary approach preferred in the Council’s rebuttal vision of the individual PA schedules;
 - (iii) Whether the phrase “*estimates in unknown future*” should be included in the preambles, when describing the concept of “*landscape capacity*”; and
 - (iv) The approach to defining certain activities described in the schedules.
86. It should be noted that not all issues raised in submissions were able to be addressed through expert conferencing, and we discuss any further significant residual matters later in this Report.

Summary of our role in making a recommendation to the Council

87. Fundamentally, subject to the matter of scope discussed above, we accept the submission of counsel for the Council that our role is to make recommendations on:⁷⁴
- (a) The content of the twenty-four (24) schedules for the PAs located within ONFs and ONLs, being those identified in strategic policy 3.3.36 (forming proposed Schedule 21.22);
 - (b) The content of the five (5) schedules for the PAs within the Upper Clutha RCLs, being those identified in strategic policy 3.3.39 (forming proposed Schedule 21.23); and
 - (c) The proposed preambles to Schedules 21.22 and 21.23.
88. We note here that the word ‘*preamble*’ does not feature in any of the relevant strategic policies, nor, strictly speaking, is there any requirement in the PDP to include a preamble to the schedules. The purpose, scope and content of the preambles was the subject of a large number of submissions and expert evidence, together with discussion at the hearing. Opinions on content ranged from a narrow view of the purpose and content of the preambles, essentially limited to explaining the terms used in the PA schedules, to a wider, more interpretative view that includes comment on the *application* of the schedules to both the Rural Zone and non-Rural zones. We note that the latter approach, if taken to its extreme, may require an

⁷⁴ Reply Legal Submissions on behalf of Council at 3.1.

interpretation of a number of other strategic objectives and policies in Chapter 3, and potentially other sections of the PDP.

89. An important consideration that was instrumental in informing our approach to the preamble content was the potential audience for the landscape schedules – who are the relevant Plan users, and are the schedules pitched at a level that will be helpful? The Council's view, summarised by Ms Evans,⁷⁵ is that the PA schedules are intended to be used to inform landscape assessments. As a result, they will primarily be used by landscape architects to assist plan users and decision makers in relation to plan implementation and, where required, plan development. Ms Evans acknowledged, however, that the schedules will also be read and used by a wide range of other plan users, including landowners and the community more generally, developers, planners, lawyers, and decision makers.
90. In their Reply submissions and evidence, the Council experts addressed our concern that the schedules may be drafted in too technical a manner for users other than landscape experts. Following this review, a number of amendments to the preambles were recommended, as discussed in paragraph 3.5 of Ms Evans's Reply evidence, although no material changes were recommended.
91. Having considered all of the evidence and views expressed by the parties, we are comfortable that the amendments to the schedules strike an appropriate balance between technical content and readability. We are mindful of Ms Evans's caution that any attempts to further simplify the content may run the risk of reducing the utility and intended role of the schedules in informing landscape assessments. We note that the schedules have been developed to meet the requirements of the policy framework in Chapter 3 of the PDP, which requires the PA schedules to identify and describe certain matters, as discussed above. Although the schedules will be of interest to a wide section of the community, we accept that the primary users of the schedules are likely to be landscape architects, as most, if not all, resource consents in PA Rural Zones will require a site-specific landscape assessment that will be informed by the relevant landscape attributes and values described in the PA schedules.
92. We also queried the integration of the PA schedules with the PDP, in particular the strategic objectives and policies in Chapter 3, and whether the preambles were sufficiently clear in this respect. Ms Evans comprehensively addressed this issue in her Reply evidence,⁷⁶ and as a result, references to the relevant Chapter 3 strategic objectives and policies have been made throughout the preambles, to provide a clearer link. We are satisfied that the amendments are appropriate and that, on balance, the more interpretive view adopted by the preambles will assist users of the Plan without compromising the integrity of the PDP when read as a whole.
93. Finally, we note that the content of the preambles and the schedules was generally agreed by the landscape architects involved in the expert conferencing, subject to the issues identified above. As such, we have confidence that the schedules are prima facie fit for purpose, subject to our recommendations that follow.

⁷⁵ Reply evidence of Ms Evans at 3.9 to 3.17.

⁷⁶ Ibid at 3.6 to 3.8.

94. For the purposes of this Report, we have adopted the Council’s Reply preambles and schedules as our starting point. We note that, as a result of the expert conferencing and discussion during the hearing, many of the material issues have been resolved, as reflected in the updated documents. The discussion that follows is, accordingly, focused on the remaining outstanding issues.

Has preparation of the schedules followed an appropriate methodology?

95. For the purpose of understanding the requirements of Chapter 3 of the PDP, Clause 3.1B.5 f. defines “*Best practice landscape methodology in relation to the identification of landscape values or related landscape capacity...*” as including “*...a methodology produced or recommended by a reputable professional body for landscape architects.*”

The methodology followed by the Council

96. Ms Gilbert informed us that the preparation of the proposed PA schedules, including the methodology undertaken and their structure and content, was consistent with the Tuia Pito Ora, New Zealand Institute of Landscape Architects, *Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines*, dated July 2022.⁷⁷
97. Ms Gilbert described the methodology that had been followed by the Council in preparing the proposed schedules.⁷⁸ While some submitters criticised the methodology that has been undertaken, primarily because it was suggested that the ‘*community voice was not engaged*’, Ms Gilbert was firmly of the opinion that the methodology employed by the Council had been ‘*fit for purpose*’.
98. The process that was used to complete the proposed schedules (as notified) included:⁷⁹
- i. a description of **other expert inputs** into the preparation of the PA Schedules;
 - ii. an explanation of how **associative values** have been addressed;
 - iii. an explanation of how **perceptual values** have been addressed;
 - iv. **other information sources** relied on;
 - v. the PA **Schedule templates**;
 - vi. a description of the **field survey**;
 - vii. a summary of the **peer review process**;
 - viii. the **delineation of ‘landscape character units’** within PAs;
 - ix. the **data sources** that have been relied on;
 - x. any **assumptions** that have underpinned the preparation of the PA Schedules; and
 - xi. the **step-by-step process** that has been used to complete the work.”
99. Following questioning by the Panel as to whether we could view other examples of similar ‘best practice’ landscape assessment methodology where landscape values had been identified, Dr

⁷⁷ Te Tangi a te Manu.

⁷⁸ Gilbert EIC, 11 August 2023, section 4, with reference to the section 32 report (attached as appendix to EIC).

⁷⁹ Ibid, paragraph 4.1(d).

Cossens provided us with an example from Banks Peninsula⁸⁰ where, in his opinion, effective community engagement had been undertaken. While this information was of interest, it did not convince us that the Council's approach to this particular process was inappropriate or in any way fatally flawed, as he has alleged. In reaching this view we are cognisant of the scale of the exercise before the Council to give effect to strategic policy 3.3.42 in this District, and the resulting limitations of the schedules, which are necessarily at a high level, and which are not a substitute for a site-specific assessment. At the hearing, Ms Gilbert emphasised that an exercise of the scope and magnitude required to give effect to the PDP Chapter 3 requirements has not been attempted in any other region of the country, to the best of her knowledge. Accordingly, while the approach taken has essentially been a pragmatic one, given the time and resources available, the output is nonetheless robust, detailed and of a high quality, and in accordance with best practice. No other examples of similar exercises were brought to our attention that would assist us in this respect.

100. Expert conferencing and the resulting Joint Witness Statements have confirmed general agreement with Ms Gilbert that the process adopted has indeed been 'fit for purpose', noting that not all landscape and planning experts attending the expert conferencing – notably, Ms Lucas and Mr Krüger. We acknowledge where differences remain in the discussion below.
101. We find, accordingly, that the methodology employed by the Council, subject to our findings below, was appropriate given the scale and magnitude of the exercise required, and that the resulting output achieves the purpose of the relevant strategic policies. In reaching this conclusion we are mindful that there may well have been other approaches available to the Council at varying degrees of cost and complexity, that may or may not have resulted in a different or more nuanced outcome.

Landscape attributes / values

102. Ms Gilbert identified a potential disconnect in the wording of the PDP when considering landscape attributes and values; acknowledging that some submitters had suggested that relevant attributes should be distinguished separately from values. Ms Gilbert stated that:⁸¹

"Best practice landscape assessment acknowledges that landscape attributes and landscape values are inextricably linked, and to understand (and protect) landscape values requires consideration of both landscape attributes and landscape values. Therefore, focussing on identifying and rating landscape attributes only (as suggested by 3.3.38), would amount to 'part of the picture' only and does not align well with best practice landscape assessment."

103. We also note that the s 32 reporting (methodology statement) refers (at para 2.8) to the explanation within *Te Tangi a te Manu* (at 5.06) quoted below:

"Landscape values are the various reasons a landscape is valued—the aspects that are important or special or meaningful. Values may relate to each of a landscape's

⁸⁰ Banks Peninsula Landscape Study, Final Report, May 2007 (Boffa Miskell for Christchurch City Council (attached to memo from Dr Cossens dated 12 November 2023).

⁸¹ Gilbert EIC, para 6.15.

dimensions—or, more typically, the interaction between the dimensions. Values can relate to the landscape’s physical condition, meanings associated with certain landscape attributes, and a landscape’s aesthetic or perceptual qualities. Importantly, landscape values depend on certain physical attributes. Values are not attributes but are embodied in attributes.”

104. Again, we have been guided by the Joint Witness Statements following expert conferencing which does not take this issue further and, as such, we accept Ms Gilbert’s advice to us.

Understanding the values of tangata whenua

105. The s 32 Report (at para 6.3) references two relevant iwi management plans applicable to the District, a review of which has informed the content of the schedules:

- Kāi Tahu ki Otago Natural Resource Management Plan 2005
- Te Tangi a Tauria – The Cry of the People.

106. We also note from the peer review undertaken by Mr Coombes for the Council that:⁸²

“Mana whenua input was also provided specifically for the Physical and Associative attributes and values sections of each of the schedules. The Mana whenua attributes and values have been incorporated into the schedules as provided by Kāi Tahu.

The Mana whenua values have not been specifically ‘rated’ as requested by Kāi Tahu, but have formed part of the consideration of the overall physical and associative values for each of the schedules.”

107. The s 32 Report also confirms (at para 5.4) that Ngāi Tahu ki Murihiku have contributed to the schedules through collaboration with Kāi Tahu Ki Otago.

At an appropriate landscape scale

108. We acknowledge that the scale and spatial extents of the identified PAs have already been defined through the Court process – these being necessarily broad in scale, noting that a site specific case-by-case assessment will still be required, with the schedules providing guidance for these application specific assessments. We also acknowledge that there is a tension between these two extremes of scale, particularly when determining landscape capacity.

109. Mr Krüger raises criticism that the methodology followed by the Council does not conform with the PDP,⁸³ which states that assessment be at “*an appropriate landscape scale*”, rather than following the ‘*pre-defined*’ PA scale. He suggested to us that the Council’s approach is “*dangerous*” because these areas (Priority Areas) are not necessarily a defined landscape and that “*...the PAs are rather arbitrarily delineated geographic areas . . . they have little to no relation with the landscapes they were designed to serve.*” In his opinion, it was open to the Council to adopt a ‘landscape scale’ approach, which he considered would provide more

⁸² Appendix E to the Council’s s 32 Report.

⁸³ At strategic policy 3.3.40.

appropriate information that is “*useful for the purpose*”. In this respect, he noted that PAs could comprise a number of discrete landscapes.

110. Ms Gilbert acknowledges that the PAs, which contain predominantly ONLs, are not necessarily the whole extent of a related ONL, as they are focused on areas where there is significant development pressure. Messrs Espie and Vivien also acknowledged that the PAs applicable to an ONL may be subsets of the landscape and not landscapes in themselves. These findings are shared by the experts that participated in conferencing, as recorded in the Joint Witness Statements.
111. On a related note, helpfully the legal submissions from Mr Ashton (on behalf of Queenstown Park Limited)⁸⁴ emphasise that “*[w]hile landscape scale is an important consideration, particularly when addressing expansive PAs that have discrete landscape units within them, it is unavoidable that descriptions of Landscape Values and Capacity will reference relatively specific parts of ONL and ONF.*”
112. While we have some sympathy with Mr Krüger’s views, we have found that the scale of PAs that has been utilised to inform the schedules is appropriate, primarily because it is clear to us that the identification of values for each PA has been informed by detailed analysis at a variety of landscape scales (some being detailed and some being wider than the PA extents). While it may have been possible to ‘re-frame’ the scale of each PA, particularly those that relate to ONLs, we have concluded that the Council has undertaken the required analysis and prepared the values and capacity identification for each PA at an appropriate landscape scale.
113. During our deliberations on this matter, we concluded that the proposed names for each of the PA schedules is potentially misleading. As proposed, each of the schedule titles includes either a reference to ONL, ONF or RCL. In our minds, this ‘labelling’ potentially misleads readers of the schedules into thinking that the PAs are in themselves complete ONLs, ONFs or RCLs. In reality, as was explained to us during the hearing, while some PAs might comprehensively relate to a single landscape unit (most commonly those related to ONFs), the majority of the PAs relate spatially to wider ONL, ONF and/or RCL landscape units. We therefore recommend, as set out in the attached tracked-change versions of the schedules, that the names of each PA schedule be amended to remove any references to ONL, ONF or RCL. We have also made minor changes to the introductory section of relevant schedules to reflect the changes to the titles, and to reinforce that the schedules relate to the defined PA as a part of a wider ONF, ONL or RCL.
114. At paragraph 7.2 of her Reply evidence, Ms Evans helpfully noted that the PA mapping is different to the landscape classification line (LCL) mapping in the PDP that identifies ONL boundaries, and some ONF boundaries. Rather, the PA mapping is intended to show the spatial extent of the PAs that each schedule applies to. Ms Evans noted that in most cases for ONL PAs, the PA mapping aligns with the LCL. However, there are PAs that comprise a smaller part of a much larger ONL, where the boundary of the PA may not necessarily coincide with the LCL

⁸⁴ Dated 18 October 2023, at para 1.8(a).

mapping. She also observed that it is not uncommon for an ONF to be nested within a wider LCL, such as the Kimiākau Shotover River ONF.

115. Ms Evans pointed out that *“whether a PA is an ONF or ONL”* is described in strategic policy 3.3.36. In her view, the schedule that matches the name of the mapped PA (as set out in the policy) should be used, to assist with clarity and certainty. While we respect Ms Evans’s view, we do not believe that removing the references to ONF, ONL or RCL in the headings will cause any confusion with the strategic policies, given the taxonomy, description and structure of the schedules that has been adopted by the Council, together with the amendments that we have suggested to the opening paragraphs. On balance, we consider that our preferred approach will avoid any confusion where PAs include areas of both ONF and ONL, and better assist users to interpret the content of the schedules.

Landscape capacity

116. Ms Gilbert informed us that a consideration of landscape capacity was not usually a consideration when undertaking ONL, ONF and/or RCL values assessments. However, in this instance, it is a requirement of the PDP, stemming from a Court directive, that landscape capacity be assessed for each of the PAs.
117. Ms Gilbert advised us verbally at the hearing that assessments as to whether there is capacity in a landscape to accommodate change through further development are usually undertaken in the context of the consideration of a specific application for resource consent(s). As such, the landscape capacity determination associated with this proposed Variation is somewhat of a new process for a landscape assessment task.
118. The Upper Clutha Environmental Society Incorporated submission supported the inclusion of *“development capacity ratings”* in the schedules, noting that these represent the key mechanism required by the Court to ensure protection and maintenance of landscape values. The Society observed that *“the schedules proposed in the variation have been carefully prepared for the Council by expert landscape architects in a disinterested manner”*, whereas *“the vast majority of submissions opposing the development capacity limits in the schedules are from landowners who will gain financially from more permissive development capacity provisions”*.⁸⁵
119. Mr Krüger, on the contrary, recommended removing the landscape capacity section from the schedules altogether, as in his opinion the concept can only be assessed when a specific development proposal is being considered. Given that a site specific assessment will always be required, in his view there was no need to *“consult ‘high level’ assumptions”*. He also suggested that the proposed landscape capacity assessment ‘goes against’ the guidelines of *Te Tangi a te Manu*.⁸⁶
120. In a similar vein, Mr Farrell was of the initial opinion that *“the framework is going to be of less assistance than it could have been”*, as no proposals for resource consent will be at the PA scale,

⁸⁵ Submission of UCESI at 11 to 13.

⁸⁶ Krüger evidence summary, dated 29 October 2023, at paras 17-21.

and that accordingly, the capacity ratings will not offer any meaningful assistance.⁸⁷ He considered the utility of the landscape capacity ratings to be questionable unless they can be relied on – “*and if they cannot be relied on, they do not achieve the intent of the strategic policies*”. Mr Farrell was also concerned that the failure of the landscape capacity ratings to provide “meaningful assistance” would create unreasonable and unnecessarily high financial costs and uncertainties on parties wanting to understand or debate what landscape capacity actually means for a property. We note, however, that in his summary evidence presented at the hearing, Mr Farrell generally supported the preambles agreed by the experts. Although he remained of the view that the landscape capacity ratings do not implement strategic objective 3.2.5.1, and strategic policies 3.3.29 and 3.3.38(c), he advanced what we consider to be a pragmatic view, stating: “*but the combination of the high-level approach followed by separate site-specific assessment is probably the most appropriate option given the extent of work actually required to determine landscape capacity at localised or site-specific scale*”.

121. On a related note, Mr Farrell recorded in the Joint Witness Statement that “*Schedule 24.8 Whakatipu Basin Landscape Character Units*” includes the term “*Capability to absorb additional development*”, which he suggests has “*effectively the same meaning as “Landscape Capacity”*”. While this is an interesting point, we do not have the benefit of evidence to test this observation; accordingly, we prefer to concentrate on the task at hand, as directed by the strategic policies, of confirming ‘Landscape Capacity’.
122. We return to our earlier observation, helpfully highlighted to us by Ms Evans, that the term ‘Landscape Capacity’, as this relates to ONFs, ONLs and RCLs, is as defined in strategic policy 3.1B.5 b, which states the following:⁸⁸
- “*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;”*
123. Paragraph 9a of the Joint Witness Statement of the planning and landscape experts noted the starting position of the PAs is that, in general, landscape capacity in ONFs, ONLs and/or RCLs will be limited. This was further highlighted by Mr Bentley when he summarised his evidence to us in person, describing the reality that landscape capacity ratings for development within each PA is currently at the lesser end of the spectrum; with even “*some landscape capacity*” (the highest description in the schedules) meaning ‘*some landscape capacity within the context of an already limited capacity*’.

⁸⁷ Brief of Evidence of Mr Farrell at 16.

⁸⁸ PDP clause 3.1B.5(b).

124. The legal submissions from Mr Ashton (on behalf of Queenstown Park Limited)⁸⁹ emphasised that *“[f]ine grained assessment will be required to identify the particular Landscape Values engaged by a proposal and the same is true of the related Landscape Capacity. The schedule is therefore a relevant consideration but not the end point for proposal specific assessments.”* Mr Ashton suggested to us that the landscape capacity statements should be somewhat directive in order to ensure the outcomes sought (such as landscape restoration) could be achieved.
125. Legal submissions from Ms Hill, Counsel for the Office for Māori Crown Relations - Te Arawhiti (provided by way of memorandum dated 16 November 2023), pointed us to the Bay of Plenty Regional Coastal Environment Plan, which contains an example of landscape capacity of an ONL in Schedule 3 relating to the Matakana Island ONL (noting that this has only a fleeting reference to landscape capacity and the concept is to be applied quite differently to that in the PDP context).
126. While we appreciate the professional opinion of Mr Krüger, ultimately the PDP directs a consideration of landscape capacity within the schedules and, accordingly, the Council is required to include such a consideration as an integral component of the schedules.⁹⁰

Is the structure of the proposed schedules appropriate?

127. Expert conferencing and the resulting Joint Witness Statements have confirmed that the overall structure of the proposed schedule documents is appropriate; however, there remained two significant areas of expert disagreement over terminology – that is: whether the use of the word *“important”* is required as a heading for the identified values; and whether the section that is titled *“summary of landscape values”* should be titled *“key landscape values”*.
128. In addition to these two issues, there was some disagreement amongst experts regarding the recording of landscape values due to the confusion between negative and neutral attributes, and key values.⁹¹ Ms Lucas was strongly of the view that the inclusion of selected neutral and negative attributes is unhelpful.⁹² She cited the example of *“identified pests”* as an example of a negative attribute, expressing concern that this may invite applicants to offer ways to address pest problems to gain development consent. As a solution, she proposed a *“traffic light”* rating to clarify but not *“clutter”* the PA schedules.
129. In her Reply evidence, Ms Gilbert addressed the references to neutral and negative landscape attributes and values, and suggested a number of refinements to the PA structure and the preambles to assist Plan users,⁹³ which we respectfully adopt. We are satisfied that the proposed amendments adequately address the issues raised by Ms Lucas, in that the additional text to be inserted into the preambles will avoid any confusion that the positive attributes and values are landscape elements deserving of protection, and will also avoid the impression that

⁸⁹ Dated 18 October 2023, at para 1.8(d).

⁹⁰ Refer strategic policies 3.3.37-3.3.38 and 3.3.40-3.3.41.

⁹¹ As noted in the Joint Witness Statement of the landscape experts.

⁹² Evidence of Ms Lucas dated 6 November 2023 at 4.

⁹³ Reply evidence of Ms Gilbert at 3.3.

the PA schedules have locked in existing land uses, or promote the retention of negative landscape attributes and values.

Reference to identified attributes and values as “Important”

130. Ms Lucas, who was not part of the expert conferencing discussion, did not support inclusion of the word “*important*” being used in the titles for each identified value under each schedule, which she considered was “*inappropriate and unnecessary*”.⁹⁴ Ms Smetham agreed with the views of Ms Lucas in this respect.
131. Ms Gilbert⁹⁵, supported by Mr Head, did not agree with Ms Lucas and Ms Smetham about the suggestion to remove the word “*important*” from the structure of each schedule document.
132. We also note that PDP strategic policy 3.3.38(a) uses the word “*key*” when requiring the identification of “*...physical, sensory and associative attributes that contribute to the values of the Feature or Landscape that are to be protected*” for PAs with ONF and ONL considerations; and PDP strategic policy 3.3.41(b) also uses the word “*key*” when requiring the identification of “*physical, sensory and associative attributes that contribute to the landscape character and visual amenity val[u]es*” for PAs with RCL considerations.

Findings

133. While we acknowledge that the schedules do provide a synthesis of a wider body of information relating to landscape attributes and values, we do not agree with Ms Gilbert that it is necessary to include the word “*important*” in the topic headings of the schedules. There is also a current anomaly in the schedules where the mana whenua values are not predicated on such a title, which we understand followed a request from Auhaka prior to notification of the Variation.
134. As such, we recommend that each schedule be amended to remove the “*important*” references from each of the value headings. We have also suggested additional text within the preambles which highlights the fact that there could well be additional values beyond those stated, with these comprising the “*key*” attributes and values of each identified PA.

“Summary of landscape values” or “key landscape values”?

135. Messrs Espie and Vivien and Ms Smetham prefer the use of the term “*key*” landscape values rather than the term “*summary*” within each schedule in the provision of an overview synopsis of all identified attributes and values. During expert conferencing an ‘exemplar’ alternative for one of the schedules (21.22.12 PA ONL Western Whakatipu Basin) was prepared by Mr Espie and Ms Smetham to test their thinking. In addition, under the “*key landscape values*” section of the schedules, the ‘exemplar’ alternative provided a greater description of physical values than was outlined in the notified version of the schedule being tested.

⁹⁴ Evidence of Ms Lucas dated 6 November 2023 at 7.

⁹⁵ Reply evidence of Ms Gilbert at 3.6 to 3.8.

136. Mr Brown, Ms Gilbert and Mr Head disagreed with this approach, recommending that “summary” is a more appropriate term than “key”.

137. Ms Gilbert prefers to keep the structure of the schedules as proposed,⁹⁶ noting that all physical values recorded in the schedules are important (i.e. these can’t be summarised because they are the foundation of the landscape values recorded under each schedule). Ms Gilbert clearly set out her reasoning for this preference in evidence stating:⁹⁷

“The PA Schedules also deliberately state in the ‘start’ of the Summary of Landscape Values that the summary draws from the “combined physical, associative and perceptual attributes and values” described in the preceding part of the PA Schedules (i.e. the more detailed explanation of Physical, Associative and Perceptual attributes and values in the main body of each PA Schedule).

In my opinion, these two aspects are critical to the correct interpretation of the PA Schedules by plan users. They signal the interrelationship between attributes and values and the importance of reading the PA Schedules as a whole, rather than simply focussing on the relatively brief Summary of Landscape Values which have been distilled down from the more complex description of landscape attributes and landscape values in the main body of the schedule.”

The above position is reiterated in Ms Gilbert’s Reply evidence.

Findings

138. While we understand and can appreciate the suggestions and evidence provided to us by Messrs Espie and Vivien and Ms Smetham, we have concluded that the current use of the word “summary” in this section of the schedules is preferable to the word “key”. We observe that the main body of the schedules contains the most relevant account of each PA’s important, or ‘key’, landscape attributes and values and that the summary is somewhat of a repeat of some of those ‘key’ attributes and values, albeit possibly an incomplete account. In relation to physical attributes and values, for example, this component of the landscape is unlikely to change over time and does not need to be summarised; rather, the main body of the schedule will provide the most assistance to plan users when considering the physical attributes and values of a landscape within the extent of a particular PA. We observe that, in many instances, it is the physical geographic attributes and values of a landscape that provide an important base from which to derive perceptual and associative values.

139. For completeness, we also deliberated as to whether the provision of a summary was necessary at all. On balance, we consider that the summaries, as proposed in each of the PA schedules, is helpful to plan users, noting also that there was no expert evidence that called for it to be excluded from the PA schedules entirely.

140. We therefore do not envisage any issues adopting the structure of the schedules proposed by the Council, and as has been agreed by most landscape experts during conferencing.

⁹⁶ Gilbert 13 October 2023 summary of evidence, paragraph 14.

⁹⁷ Gilbert EIC, 11 August 2023, paragraphs 6.17-6.18.

Is the content of the proposed preambles helpful and appropriate?

Application - reference to Exception Zones

141. The version of the proposed preambles text that accompanied the Council's Reply submissions and evidence included the following explanatory text as to how the schedules will apply:

2. Application

2.1 *The PA schedules have been prepared to reflect that the PA mapping extends beyond the Rural Zone. The application of the PA Schedules to resource consents is as follows:*

2.1.1 *The PA Schedules apply to any proposal requiring resource consent for a restricted discretionary, discretionary or non-complying activity [Refer to Strategic Policy 3.3.46] in the Rural Zone, including the Rural Industrial Sub Zone, but not the Ski Area Sub Zone (see 2.1.2 below).*

2.1.2 *The PA Schedules do not apply to proposals requiring resource consent in any other zone, including Exception Zones [Refer to Chapter 3 part 3.1B.5(a)]. They may inform landscape assessments for proposals involving any land within a PA but are not required to be considered.*

2.2 *The PA Schedules will be used where relevant for any plan development proposal.*

142. We note that there was some disagreement in the Joint Witness Statements (by Messrs Devlin and Espie) over the applicability of the schedules to land within a PA that is not zoned Rural. Ms Gilbert and Mr Head responded to these issues in their evidence as part of the Council's Reply, as did Ms Evans. For example, we note that with regard to land within a PA that is zoned 'Open Space', Ms Evans confirmed that while this land is not an Exception Zone, as it is not listed in 3.1B.5 a. of the PDP, it nonetheless follows:⁹⁸

"... that the PA Schedules are not directly relevant to proposals in the Open Space Zone (see section 2 of the Preamble), but like other non-Rural Zones, the PA Schedules may be referred to for proposals within the Open Space Zone (however this is not mandatory)."

143. Ms Evans's approach above, which is consistent with the relevant strategic objectives and policies of Chapter 3 of the PDP that direct the preparation of landscape schedules for land within the Rural Zone only, also logically extends to other non-Rural zoned land that falls within a PA (but is not listed as an Exception Zone in 3.1B.5 a), including other PDP Special Zones (Chapter 45, Gibbston Valley Resort Zone and Chapter 46, Rural Visitor Zone) and Operative Plan Special Zones, including Mount Cardrona Station and Northlake.

144. In response to questions that we raised regarding the Rural Visitor Zone (RVZ) (which includes land that is part of the rural environment and part of the same landscape within the relevant PA) around how the schedules would apply to development proposals in that zone, on Day 2 of the hearing Mr Wakefield provided us with a very helpful explanation of how the RVZ provisions have been developed. Essentially, as we understand it, the RVZ Chapter 46 provisions, which

⁹⁸ Reply evidence of Ms Evans at 3.29.

apply to very small parcels of land, are quite different by design to those of the Rural Zone, in that they provide for a closely defined set of activities and the requirement to identify landscape sensitivity areas with limits on the bulk and scale of buildings. As such, the RVZ provisions ‘self-regulate’ and capture and give effect to the strategic direction of Chapter 3, including fundamental protection of landscape values, such that the RVZ does not need to be listed as an Exception Zone in in 3.1B.5 a). Having said this, Mr Wakefield acknowledged that the schedules could still helpfully be referenced to assist with the preparation of assessments of landscape effects for proposals requiring resource consent.

145. In our view the wording in the preambles, and in particular 2.1.1 and 2.1.2, is now sufficiently clear. We agree with Ms Evans that attempting to list all of the zones that the PA schedules *do not* apply to is neither efficient nor necessary, and may lead to unintended consequences.
146. We note that Ms Lucas challenged the inclusion of the wording of 2.1.2 of the preambles and suggested the deletion of the words “*but are not required to be considered*”. While we agree that these words are prima facie superfluous, we do not accept that they are confusing. We are mindful that this wording was agreed by those experts that attended the expert conferencing, as recorded in the Planning Joint Witness Statement and, accordingly, are comfortable with the weight of evidence in this respect.
147. Mr Giddens considered it desirable to make it absolutely clear in the preamble text as to how the Exception Zones are to be administered. Mr Ferguson also suggested further changes to strengthen an understanding for plan users as to how the “*landscape capacity*” ratings within each schedule were to be administered,⁹⁹ having a clear reference back to strategic policy 3.3.46,¹⁰⁰ and with reference to the Exception Zones listed in 3.1B.5 a.¹⁰¹
148. Mr Gardner-Hopkins suggested to us that the Exception Zones should be removed from the PA mapped areas in their entirety; however, for the reasons set out earlier in this decision around scope, we do not consider this to be a course of action that is open to us, instead preferring to utilise the preamble text to explain how the schedules are to be administered for Exception Zones.
149. In her Reply evidence, Ms Evans provided a well-considered response to the remaining matters raised by submitters,¹⁰² and suggested further changes to the preambles (as reflected in the above extract), to assist in making it clear as to how the schedules are to be applied to the Exception Zones. We are grateful for the time and effort by the Council team in reviewing and, where appropriate, adjusting the wording of the preambles in response to submitter concerns, which has improved the clarity of the preambles and PA schedules.¹⁰³
150. Having had regard to the issues raised by submitters and the Council’s subsequent detailed and considered responses, we record that we are generally comfortable with the wording of the

⁹⁹ Ferguson summary evidence, para 20.

¹⁰⁰ Ferguson summary evidence, para 15.

¹⁰¹ Ferguson summary evidence, paras 17-20.

¹⁰² Evans reply evidence from para 3.2.

¹⁰³ As set out in Ms Evans’s Reply evidence at 3.30 to 3.31.

preambles included within the Council’s Reply submissions and evidence (subject to our further discussion below). Our recommendation, therefore, is that the content of the preambles is now very clear, noting that the wording has been considerably strengthened through various inputs during expert conferencing and through changes that have been made throughout the hearing process in response to evidence and submissions.

Landscape capacity descriptions

151. At the hearing, Mr Ferguson expressed a view that the landscape capacity descriptions may be straying into policy, for example by touching on landscape outcomes, or requirements for enhancement.¹⁰⁴ He cited the landscape capacity description for rural living in the West Wānaka schedule as an example.
152. Ms Evans addressed this issue in her reply evidence.¹⁰⁵ She explained her understanding that the qualifying comments in the landscape capacity descriptions are intended to provide the *context* in which each activity may be appropriate, at a PA scale, to provide helpful guidance to plan users. The descriptions are based on a review of the characteristics of the existing environment, including consents for development within each PA. Were these comments to be removed, in her opinion the landscape capacity ratings would lose this context, and the PA schedules would effectively provide a rating only. Ms Evans considered that the latter approach could lead to potential risks, including that of being more determinative, which is inconsistent with the role of the PA schedules and the landscape capacity descriptions to provide high level guidance. Further, if the qualifying comments were not included, the landscape capacity ratings may need to become more restrictive to reduce the risk of inappropriate activities being established.
153. Having considered the evidence, we agree with Ms Evans that it is important to find a balance between providing useful context for the landscape capacity ratings, so that the schedules guide the type of activity that may be appropriate, and providing a more “*blunt*” rating. We accept her advice that assessing landscape capacity naturally includes consideration of the context in which an activity may be appropriate.
154. We are cognisant that there is no express direction in Chapter 3 to provide qualifying comments when providing “*the record of the related landscape capacity*” required by strategic policies 3.3.38 and 3.3.41. We accept Ms Evans’s evidence that when considered against the definition of landscape capacity in 3.1B.5 b., a record of landscape capacity should provide some guidance as to when the ‘threshold’ is reached such that identified landscape values could be compromised. We note that the recommended qualifying comments are intended to work in a similar way, although they describe potentially appropriate activities that would not compromise landscape values.

¹⁰⁴ Summary Statement of Mr Ferguson presented at the hearing, at 21 to 28.

¹⁰⁵ Reply evidence of Ms Evans at 4.1 to 4.6.

155. For the reasons set out above, we are comfortable that the landscape capacity ratings in the Reply version of the preambles, subject to our further amendments below, strike an appropriate balance without straying into policy.
156. The majority of issues concerning the structure of the proposed landscape capacity terms and associated descriptions was agreed during expert conferencing, including the significant change to amend an earlier “no capacity” rating, which we note Mr Gardner-Hopkins likened to an “avoid type directive”, to “extremely limited to no capacity”. There were, however, a few continuing concerns expressed by submitters over the wording of the rating scale descriptions, primarily associated with the “extremely limited to no capacity” rating.
157. In their legal submissions, Anderson Lloyd (representing a number of submitters),¹⁰⁶ as well as Messrs Bentley and Farrell who provided similar sentiments in their respective evidence, suggested to us that:
- “... 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” and that changes since expert conferencing may have “the effect of undermining or unravelling other agreements reached through schedule-specific joint witness statements, in particular where those were agreed to...”*
158. Having considered the evidence in relation to the proposed wording of the preambles, we prefer the Reply evidence of Ms Gilbert,¹⁰⁷ as set out at paragraphs 4.8 to 4.11, supported by the submissions and evidence on behalf of the Upper Clutha Environmental Society, which we respectfully adopt. That said, and without taking away the thrust of the descriptions or making any wholesale amendments,¹⁰⁸ which we are generally comfortable with, we recommend making the following ‘wordsmithing’ changes in relation to how landscape capacity is described at paragraphs 4.5 of each of Schedule 21.22 and 21.23:

4.5 For the purposes of the PA Schedules, landscape capacity is described using the following five terms:

Some landscape capacity: typically this corresponds to a situation in which a careful or measured amount of some sensitively located and designed development of this type is unlikely to materially compromise the identified landscape values.

Limited landscape capacity: typically this corresponds to a situation in which the landscape is near its capacity to accommodate development of this type without material compromise of its identified landscape values and where only a small-limited amount of sensitively located and designed development is unlikely to materially compromise the identified landscape values.

Very limited landscape capacity: typically this corresponds to a situation in which the landscape is very close to its capacity to accommodate

¹⁰⁶ Anderson Lloyd legal submissions, dated 7 November 2023, at para 4(c)-(d).

¹⁰⁷ Reply evidence of Ms Gilbert dated 15 December 2023 at 4.4 – 4.11.

¹⁰⁸ Mr Wakefield for the Council cautioned us against this temptation primarily because there might be unintended consequences that could run counter to the agreements reached during expert conferencing.

development of this type without material compromise of its identified landscape values, and where only a very ~~small~~limited amount of sensitively located and designed development is likely to be appropriate.

Extremely limited landscape capacity: typically this corresponds to a situation in which the landscape is extremely close to its capacity to accommodate development of this type without material compromise of its identified landscape values, and where only an extremely ~~small~~limited amount of very sensitively located and designed development is likely to be appropriate.

Extremely limited or no capacity: typically this corresponds to a situation in which the landscape is extremely close to, or already at, capacity to accommodate development of this type without material compromise of its identified landscape values, and where ~~only either no, or~~ an extremely ~~small~~limited amount of ~~extremely~~very sensitively located and designed development is likely to be appropriate.

159. In our view, these suggested minor changes are more consistent with the structure of the rating scale, and will aid in providing clarity to the users of the PA schedules, particularly as between the very slight differences of scale in the capacity ratings.

Other Areas of Disagreement between the Experts with regard to the wording of the Preambles

“Estimates an Unknown Future”

160. The Upper Clutha Environmental Society disagreed with inclusion of the phrase “*estimates and unknown future*” in the preambles (which followed expert conferencing), noting that the Council landscape experts also view these words as superfluous, as outlined at paragraph 17 of the planning and landscape experts joint witness statement. Ms Lucas considered that inclusion of the wording may potentially weaken the landscape schedules, and that it should be excluded. Ms Gilbert referenced *Te Tangi a te Manu*, which highlights landscape assessment as being an inexact science. Her preference was to rely on the definition of landscape capacity under Chapter 3 of the PDP, which she considered to be sufficient without the addition of the wording. Mr Bentley also discussed this matter at paragraphs 47 to 50 of his evidence, quoting *Te Tangi a te Manu* (at paragraph 5.49) that an evaluation of (landscape) capacity is ‘*necessarily imprecise because they estimate a future.*’
161. We acknowledge that the majority of planning and landscape witnesses were in agreement that the wording should remain, and that the Council landscape experts noted in the joint witness statement that the inclusion of the wording does not detract from their overall level of comfort with the preambles. However, we have determined that the wording is superfluous and unnecessary, particularly given the monitoring requirements of the Plan in relation to cumulative effects of development over time on the landscape and the specific definition of ‘Landscape Capacity’ at 3.1B.5 of the PDP, which is very clear and could potentially be weakened by the inclusion of these words in the preambles. We have therefore recommended that these words be deleted from paragraphs 4.4 of each schedule.

“Reasonably difficult to see”

162. In her Reply submissions,¹⁰⁹ Ms Gilbert advised that having reflected on the issue, she considered the proposed terminology in Schedule 21.22.21 West Wānaka PA ONL of *“barely discernible”* could lead to some confusion for Plan users and that it should be amended to *“reasonably difficult to see”*. She noted that the *“reasonably difficult to see”* terminology is used in the PDP in policy 6.3.3.1(b) for ONFs and ONLs, and it also appears in the ODP District wide issues 3(a)(iii) and 5(a)(iii). As such, the long-established use of this terminology means that it is generally well understood by plan users. Mr Head also supported amending the wording contained in Schedule 21.22.21 to *“reasonably difficult to see”*.
163. Mr Krüger expressed a preference for the term *“extremely difficult to see”*, which he considered to be the established test. However, we can find no supporting evidence for this opinion. Accordingly, we prefer Ms Gilbert’s evidence and accept her proposed amendment to Schedule 21.22.21.

Activities and Definitions

164. The Joint Witness Statement records the acknowledgement of the experts in attendance that the list of activities in the Preambles is as specified in strategic policies 3.3.38 and 3.3.41, that this list is not exclusive, and that there may be other activities proposed within the PAs that fall outside the listed activities. It was noted that: *“We understand that such proposals will be assessed within the context of the relevant PA, and that a landscape capacity assessment will need to be undertaken against the site-specific landscape that the proposal may sit in.”*
165. Ms Evans comprehensively discussed the listed activities and definitions that remained in issue in her Reply evidence.
166. With regard to the list of activities, we accept Ms Evans’s advice,¹¹⁰ and do not propose to add any further activities to the list of activities specified in the relevant policies. We agree that it is not efficient to list every similarly consented activity with the PAs, such as distilleries, and that a landscape capacity assessment is not necessary for all potential activities, particularly as non-listed activities will almost certainly require a site-specific assessment during the consenting stage.
167. We comment on specific matters as follows:

Earthworks

168. In response to suggestions in evidence from Mr Greaves, the *“earthworks”* activity descriptions in various schedules have been amended in the Council’s Reply version to be more explicit when differentiating between different types of earthworks activities, including in relation to tracks and trails for mountain biking (as discussed further below). We note that Ms Evans acknowledged that earthworks for tracks and trails would be a consenting trigger that highlights

¹⁰⁹ Reply evidence of Ms Gilbert dated 15 December 2023 at 3.14 to 3.17.

¹¹⁰ Reply evidence of Ms Evans at 5.19 and 5.20.

the need for landscape consideration. We also acknowledge that the submissions from the Queenstown Mountain Bike Club, Bike Wānaka and the Upper Clutha Tracks Trust highlighted this issue as potentially lacking the necessary clarity without further refinement. We recommend a slight further change to these references (as suggested by Mr Greaves) by amending any references to “downhill” mountain bike trails, to “downhill/gravity” mountain bike trails.

Tracks and Trails

169. The Council acknowledged in their Reply legal submissions that there was a degree of inconsistency with the approach to tracks and trails the schedules.¹¹¹ To provide clarity, Ms Gilbert and Mr Head recommended amendments to the PA schedules so that:¹¹²

- (a) Tracks and trails are referenced under the ‘earthworks’ capacity subheading only, and not under ‘transport infrastructure’; and
- (b) the terminology used refers to tracks and trails for recreational use throughout all PA schedules.

Ms Gilbert and Mr Head suggested that these changes would assist to provide greater clarity for plan users and avoid confusion.

170. We agree with Council that including tracks and trails under the “earthworks” subheading is appropriate, given that resource consent for tracks and trails will more often be required in the Rural Zone where earthworks standards are infringed. We also accept Council’s advice that the creation of a new definition for recreational tracks and trails was not necessary, given that the PA schedules are intended to provide high level guidance. We also accept the updated wording of the schedules in relation the landscape capacity of ‘earthworks’ for tracks and trails, as suggested by Ms Gilbert (at paragraph 3.22 of her evidence in reply).

Rural living, Farm dwellings and Workers Accommodation

171. We note that “*Rural Living*” has the same meaning as ‘Rural Living’ in Chapter 3 section 3.1B.5 d, which is cross-referenced in the preambles. Importantly, the definition *excludes* residential development for farming or other rural production activities, which correspondingly falls to be assessed on a case-by case basis in order to determine the relevant values/character of the landscape, and the related landscape capacity.

172. Mr Devlin raised concern with what he termed a potential gap, in that the PA schedules do not list capacity for farmhouses. In Ms Evans’s view, farm dwellings were not included in the list of activities in strategic policy 3.3.38 as they were not known to be creating particular development pressure at the time the list of PAs was developed. She further noted that there is no change to the consenting pathway for farmhouses (or any other non-listed activity) and that landscape capacity for this type of activity will continue to be assessed on a case-by-case basis, which she considered to be an appropriate pathway.

¹¹¹ Reply Legal Submissions of Council at 11.2.

¹¹² Reply Legal Submissions of Council at 11.2 – 11.5.

173. While we acknowledge Ms Evans’s evidence in this respect,¹¹³ we consider the exclusion of farm dwellings (which are often difficult to practically distinguish from residential development in the rural zones generally) from both the definition of Rural Living and/or the landscape capacity analysis to be problematic. We are mindful that at the hearing, Mr Haworth considered rural living, which he described as “*the real problem*”, to be the main contributor to inappropriate development pressure in ONFs, ONLs and RCLs. His views were indirectly supported by several submitters concerned that no provision had been made in the schedules for farm dwellings associated with family succession.¹¹⁴ It seems plain to us that this will continue to be an area of ongoing tension (and development pressure) that should be addressed comprehensively in the PDP and in the schedules. Accordingly, we suggest that the exclusion of residential development for farming or other rural production activities from the definition of Rural Living in Chapter 3, and potentially from the PA schedule of listed activities, be subject to review at the first available opportunity under the Chapter 3 monitoring provisions.
174. The challenge of providing accommodation for farm workers was also raised as an issue by several submitters. Ms Evans advised that workers’ accommodation is not defined in the PDP and is generally treated as a residential activity in the PDP for consenting purposes. She was of the view that a proposal specific assessment will be required regardless of whether or not the activity is listed (as it triggers a discretionary activity consent status), and that including landscape capacity for this type of activity is therefore not required. In her view, a proposal specific assessment is appropriate, as the form and scale of this type of accommodation could vary from a standard dwelling to a scale of building that houses a number of individual workers, with potential landscape effects varying accordingly. We accept Ms Evans’s evidence on this point.¹¹⁵

Tourism related activities

175. As recorded in the planning and landscape joint witness statement that was produced following expert conferencing, Ms Shepherd and Mr Farrell retained a degree of uncomfortableness with the term “*tourism related activities*” being listed in the schedules (as part of the wider description of “*visitor accommodation and tourism related activities*”) as an activity for which landscape capacity was to be determined. Both these planning witnesses were of the opinion that the term “*resort*” would be more appropriate because this term is defined within Chapter 2 of the PDP whereas “*tourism related activities*” is not. We were informed by the Council planning and landscape witnesses that, in preparing the schedules when considering this matter, they had in their minds that this activity was indeed akin to the “*resort*” definition. However, strategic policies 3.3.38 and 3.3.41 specifically refer to “*visitor accommodation and tourism related activities*” and the Council has chosen not to amend this reference. Mr Farrell suggested that this option would be open to the Council and that there was no reason, in his mind, as to why this change could not occur.

¹¹³ Reply evidence of Ms Evans at 5.7 – 5.12.

¹¹⁴ In particular, various landowners in the 21.23.5 Maungawera Valley RCL PA.

¹¹⁵ Ibid.

176. In response to this issue, the Council have included a clarification within the preambles of the schedules, under the heading “*Meaning of activities for the purpose of the PA Schedules*”, to specify that “*tourism related activities: has the same meaning as Resort in Chapter 2.*” We understand that Ms Shepherd and Mr Farrell were comfortable with this pragmatic approach and that no areas of disagreement remain for us to make any determination over. As such, we confirm our agreement with the way in which the preambles and schedules address this issue.

Intensive agriculture

177. An issue arose in response to a matter highlighted in the planning and landscape Joint Witness Statement following expert conferencing (at paragraph 18 of that statement), which recorded a discussion around the definition of activities listed in the preambles where there is an indirect definition elsewhere in the PDP (for example, within Chapter 2).

178. The Panel questioned whether the term “*Intensive agriculture*” in the schedules, which has the same meaning as Factory Farming in Chapter 2 of the PDP, required further clarification. This definition did not appear to correlate comfortably with our understanding of an intensive agricultural activity, which may, for example, utilise pivot irrigators (being a permitted activity in the Rural Zone). We were not assisted greatly in resolving this issue by the Council’s Reply evidence, which suggested that the term “*factory farming*” could be added to the landscape capacity descriptions under the “*intensive agriculture*” heading.¹¹⁶ The Joint Witness Statement did not assist us either, recording that “*we accept that, while not ideal, these are the best available [definitions], given the activities prescribed in Policy 3.3.38 and Policy 3.3.41.*”

179. We are therefore unable to resolve this issue, as we have no submissions or evidence before us that gives us scope to do so, and we simply record in this recommendation our remaining discomfort with this definition. We suggest that the definition of “*intensive agriculture*” be reviewed in conjunction with the monitoring review required by strategic policies 3.3.47 and 3.3.48.

Renewable energy

180. The issue of how renewable energy as an activity was to be addressed in the schedules was highlighted during the hearing with representatives of Submitter #96 (Treespace No.1 Limited), as we were told that they may have plans for a small scale renewable energy (solar) generation activity on their property, which is within the Central Wakatipu Basin PA. Messrs Freeman (planning) and Skelton (landscape) suggested that the description of “*renewable energy generation*” within the preambles to the schedules should include reference to “*small-scale community scale*” schemes, which they considered to comprise a scheme that supplies 100 or less residential dwellings.

181. In reply, Ms Gilbert¹¹⁷ cautioned against including such specificity in the schedules because that would suggest a level of certainty around a defined scale of renewable energy activity (which

¹¹⁶ Evans Reply evidence, para 3.35.

¹¹⁷ Gilbert Reply evidence at para 3.19.

may include wind turbines, hydro, or solar panel installation). Ms Gilbert also noted that there is a tension between such infrastructure and landscape values, such that the Council would be unwise to signal a comfort with renewable energy generation activity at a particular scale, when the appropriateness of such an activity would need to be assessed on a case-by-case basis through the resource consenting process.

182. In short, we share Ms Gilbert’s concerns and do not accept the submitter’s evidence that the schedules should be amended as suggested by Mr Freeman. We note that the schedules appropriately reference the definition of Renewable Energy Generation under Chapter 2 of the PDP. The National Policy Statement for Renewable Electricity Generation 2011 includes direction (at Policy F) for provision for small and community-scale renewable electricity generation activities to be incorporated into regional policy statements and regional and district plans. Were we to agree with the suggestion of Mr Freeman, that would be akin to ‘*putting the cart before the horse*’ when the PDP has not comprehensively addressed this issue at this point in time. If the Council were to do so, that would be the time to debate the appropriateness of such activities for inclusion within the Plan, including whether specific provisions were required to mitigate adverse effects on identified landscape values, for example.

Forestry

183. The term “*Forestry*” in the list of activities for the purpose of the PA schedules has the same definition as “*Forestry Activity*” in Chapter 2 of the PDP:

“Means the use of land primarily for the purpose of planting, tending, managing and harvesting of trees for timber or wood production in excess of 0.5ha in area.

Plantation Forestry is as defined by the Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017.”

184. Several submitters, and the Panel members, expressed concern that the definition adopted in schedules may inadvertently constrain other forms of ‘forestry’, such as indigenous forest cover for carbon farming. This matter was comprehensively addressed by Ms Evans in her Reply evidence.¹¹⁸ She noted that the schedules do not seek to change the PDP approach, including the activity status for forestry or indigenous forest cover, or carbon farming. While the presence of existing production forestry is acknowledged as an attribute in several schedules (such as 21.22.22 Dublin Bay ONL), in general the capacity descriptions focus on exotic forestry and remain silent on other forestry activities, including carbon farming. While she did not consider the PA schedules to be constraining on indigenous forestry, Ms Evans noted that the PDP does not seek to specifically manage carbon/native forests in Chapter 21 or Chapter 23. As a result, this activity could potentially default to non-complying status in the Rural zone.

185. Miss Evans also reviewed the implications for the Variation arising from the new National Environmental Standard for Commercial Forestry, which replaces the previous National Environmental Standard for Plantation Forestry. She noted that the key difference is that the NES-CF also manages effects from carbon forestry, whether the NES-PF did not. In her opinion,

¹¹⁸ Reply evidence of Ms Evans at 5.15 to 5.18.

there is nothing in the NES-CF that presents any inconsistency issues for the PA schedules, noting that the schedules are a “descriptive” tool rather than a management regime.

186. Although we are prepared to accept Ms Evans's advice in relation to the definition of forestry for the purposes of the schedules at this juncture, we suggest that this definition be reviewed at the first available monitoring opportunity, in order that emerging forms of ‘forestry’ land use, such as both exotic and indigenous carbon farming (as addressed in the NES-CF), are accommodated within the PA schedules, and indeed the PDP, as appropriate.
187. Within the above context we have considered the submission of Te Arawhiti in relation to Schedule 21.22.22 Dublin Bay ONL. Te Arawhiti sought to amend the capacity rating for forestry to add the words “*establishing new*” in relation to exotic forestry. We consider this amendment to be appropriate within the context of the existing land use pattern and as an aid to clarity, and have amended the landscape capacity rating accordingly.

Are the contents of each specific schedule appropriate or are further changes required?

188. We note that the content of each specific schedule was mostly resolved through expert conferencing. However, as noted above, not all experts attended conferencing and, as such, any remaining matters of disagreement over the content of the schedules was addressed via evidence and summary statements.
189. As signalled in the above discussions, we recommend making the following amendments to each of the schedules:
 - (a) Amending the titles of each schedule to remove the ONL, ONF or RCL terms and including, where relevant, reference to these terms within the introductory “*General Description of the Area*” text for each schedule and throughout each schedule generally.
 - (b) Deleting the word “important” from the titles for each attribute and value under each schedule and various consequential amendments, including deletion of the footnote explaining why the word “important” was not included for mana whenua related attributes and values.
 - (c) Amending the spelling of “discrete” to “discreet” where this term was used.
 - (d) Amending references to “downhill”, to “downhill / gravity” mountain bike trails within the Central Whakatipu Basin PA (21.22.15).
 - (e) Updating the schedules to correct minor errors noted in the Council’s memorandum dated 15 February 2024, accompanying receipt of Council’s Reply version of the accept/reject recommendations spreadsheet, which stated:
“...upon updating spreadsheet, we came across several errors in the s42A version ... and additionally please note the below formatting clarifications:

- *In the tracked reply version of 21.23.2 Haliday Road / Corbridge, there should be underline at Landscape Capacity section i. to show the amendment made in response to OS77.5.*
- *In the clean reply version of 21.22.1 Peninsula Hill, there is a residual struck through 'or' at Landscape Capacity section ix. that should have been removed."*

190. In addition, for specific schedules, we suggest the following recommended changes:

- (a) Removal of the reference to *"a distillery"* from the Victoria Flats PA (21.22.17) schedule because we understand that the relevant consent for that activity has now lapsed (as agreed in the joint witness statement discussion in relation to this schedule); and adding in reference to the *"Queenstown Trail"* at paragraph 28 of this schedule.
- (b) Addition of the words *"...establishing new..."* before the words *"...exotic forestry"* under the *"Forestry"* landscape capacity activity for the Dublin Bay PA (21.22.22), at the suggestion of Ms Pull for Ngāi Tahu and for the reasons set out earlier in our Report under the Forestry heading.
- (c) Amendments to the descriptions (paragraphs 11, 31, 33, 34 and 44) and capacity rating for rural industrial activity (from very limited to extremely limited) for the Church Road – Shortcut Road PA (21.23.4), alongside the addition of the words *"...and includes appropriately scaled buildings"* to the landscape capacity description for rural industrial activity. We have recommended these changes as a result of our review of the resource consent decisions for the existing building developments on the eastern side of Church Road, which appear not to have addressed landscape values to the degree or with a level of rigor that might be expected in a RCL.

191. We have not made changes to the Kawarau River PA (21.22.9) schedule or the Northern Remarkables PA (21.22.14) landscape capacity descriptions and ratings, as recommended by Mr Brown for Queenstown Park Limited. While we received no evidence in reply from the Council on these suggested amendments, we have determined that these relatively wholesale changes would bring a degree of unnecessary specificity to the schedules. The detailed descriptions may well be helpful; however, these are likely better suited for inclusion within an assessment of landscape effects that might accompany an application for resource consent.

192. We have also not made changes to the Cardrona Valley PA (21.22.18) schedule to include specific reference to the Cardrona Distillery as a rural industrial activity (at the suggestion of Mr Espie) because we agree with the evidence in reply by Mr Head and Ms Evans that should a specific assessment of any future expansion of the distillery activity be sought, the appropriate avenue to address potential effects on landscape values is through the resource consent process.

193. We record that we have also considered the submissions of several other parties in relation to changes requested to the landscape capacity ratings for particular schedules;¹¹⁹ however, in all

¹¹⁹ Including the Morven Hill PA and the Ferry Hill PA.

such instances we have concluded that there is insufficient expert evidence on which to base a very fine-grained finding that goes against the recommendations of the Council's experts.

Will the schedules be 'fit for purpose' and meet the PDP and Court's intended purpose?

194. As discussed in detail above, and set out in the preambles at 1.2, the purpose of the PA schedules is to assist with the identification of the landscape values and related landscape capacity to provide guidance with respect to landscape-related policy outcomes in the PDP.¹²⁰ The schedules contain both factual information and evaluative content designed to inform plan development and plan implementation processes, and to assist with technical landscape assessment.
195. One of the most significant areas of contention, addressed in evidence and during the hearing, was whether the PA schedules, which have been prepared at a 'high level', will achieve the purpose envisaged by the Court as subsequently codified in the relevant Chapter 3 strategic objectives and policies. The majority of landscape architects agreed at expert conferencing, as recorded in the Landscape Joint Witness Statement, that as the schedules have been prepared at a broad scale PA level, they represent a high-level description and assessment and that any proposed project will be "set at a smaller scale" within the PA. Accordingly, each proposed project will require a specific landscape assessment that identifies how the project sits within the PA, which attributes and values of the PA are relevant to the project, and an assessment against those values. While this approach to preparation of the schedules has been criticised by some submitters and a minority of landscape architects and planners, we are satisfied for the reasons given previously that it is both a reasonable and pragmatic approach to fulfilling the directions contained in strategic policy 3.3.42, and that the resulting content will achieve the intended purpose.
196. Although the *primary* users of the PA schedules are anticipated to be landscape architects and planners assisting applicants and decision makers in relation to plan implementation, as discussed previously the schedules will be read and used by a much wider range of plan users, including lawyers, landowners and the public more generally, including developers and community organisations such as the Upper Clutha Environmental Society.
197. We note that the two preambles, which describe the role, purpose in general approach of the PA schedules, are instrumental in assisting plan users to apply the schedules. As the preambles are intended to provide guidance, the key concern has been to ensure that they are as certain and as easily understandable (by all users) as possible. In terms of process, the preambles were subject to expert conferencing, as a result of which they were generally agreed to be appropriate. However, throughout the course of the evidence exchange and hearing, amendments have been made by Council to assist with clarity as follows:
- (a) Due to the PA scale of the landscape assessment underpinning the schedules, acknowledgement that a finer-grain, location-specific assessment of landscape attributes

¹²⁰ Reply evidence of Ms Gilbert at 3.1.

and values will typically be required for plan development or plan implementation purposes, including resource consent applications.

- (b) To clarify that as a result of more fine-grained site-specific assessments, other proposal or location-specific landscape values may be identified that do not exist, or have not been identified, at PA scale.
 - (c) An explanation that the capacity ratings and associated descriptions are based on an assessment of each PA as a whole, and are not intended to describe the relevant capacity of specific sites within a PA.
 - (d) As the PA schedules represent a point in time, they are not intended to provide a complete, or fixed description, of values or landscape capacity.
198. For the reasons explained above, we are comfortable that the PA schedules strike an appropriate balance between the necessary technical concepts and content, and ease of readability. The hearing process has assisted enormously with achieving this outcome, and we are very grateful for the participation of all parties in this respect.
199. One final matter related to ‘fitness for purpose’ that came to our attention during hearing was whether there is a risk that the schedules, as drafted, might have the effect of “locking in” present activities (those specified in Chapter 3), based on what is relevant at the present point in time. We questioned how the schedules could be “future-proofed” to provide for activities that are not currently specifically listed or provided for (such as carbon farming; alternative proteins, which may have infrastructure requirements that require consent; and renewable energy generation) but that potentially should, at some future date, be appropriately included. From the evidence and submissions, it appears highly likely that there will be development pressure in some PAs (particularly RCLs) for these kinds of activities in the future, to varying degrees.
200. Miss Evans helpfully addressed this issue in her Reply evidence.¹²¹ She observed that the PA schedules are drafted “at a point in time” and that they are not intended to be “fixed” in any way. This has been made clear in the preambles, and strengthened through an amendment in the Reply version that notes that the references to existing attributes are not intended to lock in existing land uses (section 3.4). She also noted that the plan contains several strategic policies (3.2.1.8 and 3.3.21) that enable existing farming activities and evolving forms of agricultural land use, and which provide for diversification of land use beyond traditional activities, including farming, provided that the policy direction to protect (for ONF/ONLs) or maintain/enhance (RCLs) is met.
201. In Ms Evans’s view, the collective effect of Chapter 3 is that it does anticipate some appropriate change, and sets out policy guidance on how that change should occur in terms of outcomes. Importantly, the monitoring requirements set out in strategic policies 3.3.47 and 3.3.48 also anticipate change, and have been included as a means to assess whether the provisions of

¹²¹ Reply evidence of Ms Evans at 5.3 to 5.6.

Chapters 3, 4, 6 and 21 are being implemented successfully for a non-specific range of activities. Finally, Ms Evans observed that it is not the role of the PA schedules to constrain or regulate development, as they are intended to be a tool to assist with processing applications.

202. In general, we accept Ms Evans’s evidence on this issue. That said, we are of the view that for the schedules to remain an effective and efficient tool in the longer term, the Council will need to implement a regular monitoring programme to ensure that any material changes that might be required, particularly in response to cumulative development, or to include future relevant activities that may create development pressure, are given effect to. Otherwise there is a risk that the schedules, and in particular the landscape capacity assessments, will become irrelevant over time.
203. In terms of s 32AA of the RMA, we accept Ms Evans’s advice that the additional changes recommended in the Council's reply improve effectiveness with respect to implementation of the PA schedules, efficiency in terms of how they apply within the wider PDP context and, overall, ensure the PA schedules better achieve the strategic objectives and policies of Chapter 3 of the PDP.¹²²

Conclusions and recommendations

204. We have reached a similar finding to that of the Council’s reporting officers and legal counsel, which is set out succinctly by Ms Evans’ reply evidence and which states that the Variation, as amended through this hearing process:¹²³
- “... will achieve the relevant strategic objectives and policies of the PDP, and are the most appropriate to achieve the objective of the Variation and purpose of the RMA.”*
205. While we have made additional minor changes to the content of the proposed preambles and schedules, as set out in the above discussion, these changes have not fundamentally altered the scheme and intention of the schedules proposed in the Council’s Reply evidence.
206. We note from Ms Evans’ Reply evidence that an administrative task will still need to be undertaken to amend the labels for the PA mapping to ensure that these match the PA titles listed in strategic policies 3.3.36 and 3.3.39, and to match the schedule titles.¹²⁴
- 207. We recommend that the Council adopt the version of the preambles and schedules attached to this report at Appendix 4, to be included in the PDP as Schedules 21.22 and 21.23.**
- 208. We recommend that Council implements a formal monitoring process as required by strategic policies 3.3.47 and 3.3.48, noting our specific immediate suggestions as set out above, to ensure that Schedules 21.22 and 21.23 remain efficient and effective in future years.** In this respect, it was acknowledged by all expert witnesses that landscape capacity will change over time as a result of the cumulative effects of subdivision, use and development. We have

¹²² Reply evidence of Ms Evans at 9.1.

¹²³ Evans, reply evidence, para 10.4.

¹²⁴ Ibid, para 7.4.

highlighted, in particular, the more immediate issues associated with the exclusion of residential development for farming or other rural production activities from the definition of Rural Living in Chapter 3, and the definitions of “forestry” and “intensive agriculture” for the purposes of the landscape capacity assessment.

209. We further recommend that the submission points on the Variation be accepted or rejected as set out within the spreadsheet attached as **Appendix 5** to this report.
210. Finally, we wish to express our thanks to the Council’s legal counsel and team of experts, and all submitters, their legal counsel and expert witnesses, particularly those that participated in the hearing, for your collaborative and constructive assistance, which has been greatly appreciated.

A handwritten signature in black ink, appearing to be 'Jane Taylor', written in a cursive style.

Jane Taylor
For the Commission

Appendix 1

Minute of Commissioners dated 30 August 2023

Appendix 2

Minute of Commissioners dated 14 September 2023

Appendix 3

Minute of Commissioners dated 11 October 2023

Appendix 4

Landscape Schedules 21.22 and 21.23

Appendix 5

Table of Accept/Reject Submissions