

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2019] NZEnvC 206

IN THE MATTER of the Resource Management Act 1991
AND of appeals pursuant to clause 14 of the First
Schedule of the Act
BETWEEN LAKE MCKAY STATION LIMITED
(ENV-2018-CHC-160)
HAWTHENDEN FARM LIMITED
(ENV-2018-CHC-55)
UPPER CLUTHA ENVIRONMENTAL
SOCIETY INCORPORATED
(ENV-2018-CHC-56)
and all other appellants concerning Topic 2
of Stage 1 of the Proposed Queenstown
Lakes District Plan (listed on the attached
Schedule)
Appellants
AND QUEENSTOWN LAKES DISTRICT
COUNCIL
Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner K A Edmonds
Environment Commissioner J T Baines

Hearing: at Queenstown on 8, 9, 10, 11, 12, 15, 16, 17, 18 April 2019
6, 7, 8, 9, 10, 13, 14, 15, 16 May 2019; and
at Christchurch on 24 June 2019
(Site visits undertaken in the week of 6-10 May 2019)

Appearances: S Scott & M Wakefield for the Queenstown Lakes District Council
J Gardner-Hopkins for Kawarau Jet Services Holdings Limited &
Lake McKay Station Ltd
T J Shiels QC and M G Nidd for Hawthenden Ltd
J Haworth for Upper Clutha Environmental Society Inc



M Baker-Galloway for Seven Albert Town Property Owners, Real Journeys Ltd, Real Journeys (t/a Go Orange Ltd), Real Journeys (t/a Canyon Food and Brew Co.), Jacks Point Residential No.2 Ltd, Jacks Point Village Holdings Ltd, Jacks Point Developments Ltd, Jacks Point Land Ltd, Jacks Point Land No. 2 Ltd, Jacks Point Management Ltd, Henley Downs Land Holdings Ltd, Henley Downs Farms Holdings Ltd, Coneburn Preserve Holdings Ltd, Willow Pond Farm Ltd, Glendhu Bay Trustees Ltd, Darby Planning LP, Waterfall Park Developments Ltd, Te Anau Developments Ltd, Bill and Jan Walker Family Trust, Darby Planning LP, Real Journeys Ltd, Allenby Farms Ltd, NZ Tungsten Mining Ltd & others, Mt Christina Ltd, Steve Xin, A B Duncan, Gertrude Saddlery Ltd, Sunnyheights Ltd

G M Todd for James W Cooper & SYZ Investments Ltd

J Leckie for Cardrona Alpine Resort Ltd and Anderson Branch Creek Station, M & C Burgess, Soho Ski Area Limited, Blackmans Creek Holdings No 1 Limited Partnership and Treble Cone Investments Limited

J Macdonald for the Rob Roy Residents

P Page & S Peirce for Longview Environmental Trust

A J Logan for Otago Regional Council

R Ashton for Remarkables Park Ltd and Queenstown Park Ltd

Dr Cossens in person

Date of Decision: 19 December 2019

Date of Issue: 19 December 2019

INTERIM DECISION OF THE ENVIRONMENT COURT
Topic 2: Rural Landscapes
Decision 2.3 – Sub-topic 1 remaining appeals

- A: The sub-topic 1 relief in the appeals by Hawthenden Farm Limited ENV-2018-CHC-55, Upper Clutha Environmental Society Inc ENV-2018-CHC-56, and Lake McKay Station Limited ENV-2018-CHC-160 is declined.
- B: All related mapping of Outstanding Natural Landscape and Rural Character Landscape boundaries shown in the 'proposed district plan' is confirmed unchanged.
- C: Directions are made and related leave granted on matters set out at [279] and following.



REASONS

Introduction

[1] This is one of two companion decisions issued today on appeals in relation to 'Topic 2 – Rural Landscapes' arising from decisions on the review of the Queenstown Lakes District Plan ('ODP').

[2] Queenstown Lakes District Council ('QLDC') is undertaking that ODP review in chapter-related stages ('Plan Review'). This is a partial review, in that it does not encompass the entirety of the ODP.¹ Public notices for the review refer to the collection of notified proposed changes to the ODP as a 'proposed district plan'² ('PDP').

[3] QLDC's decisions on Stage 1 of this review were made in 2018. We refer to the plan provisions updated or made by those decisions as the 'DV'.

[4] Appeals against those decisions are being heard and determined in topic groupings. This and its companion decision ('Decision 2.2') are each concerned with 'Topic 2' appeals. Those appeals concern the 'Rural Landscapes' provisions of Chapters 3 and 6 of the DV (and associated Rural zone planning maps).³ These provisions pertain to mapped Outstanding Natural Features ('ONFs'), Outstanding Natural Landscapes ('ONLs') (together, 'ONF/Ls') and 'Rural Character Landscapes' ('RCLs').

[5] According to procedural directions made for the hearing of the appeals, Topic 2 is itself divided into various sub-topics.

[6] Sub-topic 1 is concerned with appeals seeking changes to the DV's mapping of ONF/Ls and RCLs. There were six such appeals. Our first substantive decision on Topic 2, issued on 20 September 2019 (*Hawthenden*,⁴ 'Decision 2.1'), dealt with three of the sub-topic 1 appeals. This Decision 2.3 deals with the remaining sub-topic 1 appeals.

¹ *Darby Planning Limited Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133 at [6].

² "Proposed District Plan – Stage 1" Queenstown Lakes District Council <<https://www.qldc.govt.nz/planning/district-plan/proposed-district-plan-stage-1/>>

³ Our first substantive decision on Topic 1 'A Resilient Economy' was issued in August 2019 (*Darby Planning Ltd Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133, [2019] NZEnvC 142).

⁴ *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160.



[7] Companion Decision 2.2 deals with the remaining Topic 2 sub-topics (as are listed in the footnote).⁵

[8] We have issued this and Decision 2.2 as separate, companion, decisions for convenience to the parties. In particular, we are mindful that most parties have only confined interests in relation to the several matters that arise in the various sub-topics for consideration. However, both decisions are to be treated as having arisen from the same hearings, and associated deliberations, and that the reasoning in each informs, and applies to both.

Background

[9] Landscape expert, Ms Lucas, aptly describes the Upper Clutha Basin as “ice-sculpted”. That description is particularly apt for the landforms in issue in each of the sub-topic 1 appeals we now address. Specifically, as we explain:

- (a) the Hawthenden appeal concerns the upper terrace of a landform that appears as two pastoral terraces and that is referred to as the Alpha Fan, The ‘Upper Terrace’ of this Fan sits just beneath the steep schist face of Mt Alpha. It owes its form, in part, to the erosive forces of the glaciation period;
- (b) the Upper Clutha Environmental Society Incorporated (‘UCESI’) appeal concerns further parts of this ice-sculpted basin, including a series of *rôche moutonnée* in an ice-scoured trough between the Alpha Range and Lake Wanaka and the Maungawera Valley and Fan;
- (c) the Lake McKay Station Limited (‘LMSL’) appeal concerns some terraces, plateaus and scarps at the northern interface of the Pisa and Criffel Ranges, again sculpted during the glaciation period.

⁵ The court’s 24 August 2018 Minute lists these as sub-topic 2 (SOs 3.2.1.7 – 3.2.1.8, 3.2.5 and 3.2.5.1 – 3.2.5.2), sub-topic 3 (SPs 3.3.20 – 3.3.32, excluding SPs 3.3.27 and 3.3.28), sub-topic 4 (Title, Purpose and Values, 6.1 and 6.2), sub-topic 5 (Rural Landscape Categorisation, P 6.3.1 – 6.3.3), sub-topic 7 (Managing activities in ONLs and on ONFs, P 6.3.12 – 6.3.18), sub-topic 8 (Managing activities on lakes and rivers, P 6.3.30 – 6.3.33), sub-topic 10 (Tourism, Ch 6) and sub-topic 11 (Upper Clutha Basin Land Use Planning Study). Regionally significant infrastructure provisions will be separately determined as these are the subject of a settlement reached between relevant parties.



Landscape assessment methodology including for identifying values

[10] As we explain in Decision 2.1, several landscape experts participated in expert witness conferencing on landscape assessment methodology to produce a joint witness statement ('JWS'), dated 29 January 2019 ('Landscape Methodology JWS'). Those included some of the landscape experts whose evidence we consider in this decision (Ms Mellsop, Ms Smetham and Ms Lucas).⁶ As it did for Decision 2.1, the Landscape Methodology JWS assists our understanding of relevant landscape concepts and assessment methodology.⁷

[11] As we later explain, the mapping of ONF/Ls and RCLs in the DV is not associated with scheduling of values and not backed by associated assessment processes through which QLDC has formally identified such values for those purposes. Necessarily, so as to determine the appeals disputing ONF/L and RCL boundaries, we must make related findings on those values. However, as the map boundary matters in dispute in appeals are in confined locations (rather than on any wider first principles evaluation of ONF/Ls and RCLs as a whole), our related findings are similarly confined. They are not intended as being necessarily definitive for the purposes of later scheduling of those values through Sch 1 plan changes. Nor should they be so treated.

[12] Given the common-denominator of the Alpha Range, we start by considering the Hawthenden appeal and the relief pursued by UCESI in regard to Waterfall Hill/Creek.

The Alpha Range and its values

[13] The Hawthenden appeal and the Waterfall Hill/Creek component of UCESI's appeal are both concerned with the DV's notation of the Alpha Range ONL.

[14] In her evidence-in-chief for the Hawthenden Farm Ltd appeal, Ms Mellsop offers the following helpful characterisation of the landscape attributes of the Alpha Range:⁸

⁶ Ms Steven, who gave landscape evidence for LMSL, is not a signatory to the Landscape Methodology JWS.

⁷ In addition, as we discuss, various landscape experts undertook further conferencing and signed related joint witness statements, on the sub-topic 1 appeals this decision is concerned with.

⁸ Evidence-in-chief of Ms Mellsop for QLDC, dated 2 November 2018, at [7.4] – [7.6]. We note that Ms Mellsop provided two other statements of evidence-in-chief for Topic 2. These are dated 12 October 2018 (one an undated statement).



The Mount Alpha range forms the western enclosure of Wanaka township and Roys Bay (see Photograph 1 in Appendix B). It is a steep uplifted schist landform that has been modified by glacial scouring on its lower slopes, resulting in characteristic horizontal striations and areas of exposed bedrock. The ridgeline of the range rises from the Cardrona Valley in the south to Mount Alpha (1630 masl) and then to Roys Peak (1578 masl) before descending to Damper Bay. On the eastern face of the range Waterfall, Stoney and Centre creeks have carved deep valleys into the mountainside, draining basins on the higher slopes.

Indigenous tussocklands are present at higher elevations of the range and the lower slopes support a mosaic of pasture, bracken and kānuka, with occasional exotic shelter trees and wilding pines. The land use is predominantly extensive pastoral farming (Hillend Station to the south and Alpha Burn to the north), but Roys Peak and the southern slopes of the range are part of the conservation estate. Public access to the range is possible via the Roys Peak Track.

The formative processes of the Mount Alpha range are legible and the landscape has a high level of perceived naturalness, despite management of vegetation for pastoral farming. Very few built structures are present and there are only limited farm tracks on the lower eastern slopes. The eastern face is highly visible from most of urban Wanaka and forms an important part of the scenic quality of the area, as a result of its massive scale, rugged peaks, coherent appearance and strong contrast with the lake waters and flats. Transient attributes include changing snow levels, light and shadow patterns on the rugged slopes and the changing colours of pasture areas, which are green in some seasons and tawny brown in others.

[15] Ms Mellsop offers the following opinion on the landscape values that warrant the Mt Alpha Range being identified as an ONL:⁹

In my view the key values that lead to the identification of the Mount Alpha range as part of an ONL are:

- (a) **High biophysical values** as a consequence of the largely unmodified mountainous landform and the presence of indigenous tussocklands and regenerating shrublands;
- (b) **Very high legibility/expressiveness values** as a result of the open character and legible uplift, glacial and fluvial formative processes;
- (c) **High naturalness values** as a consequence of the legible and largely unmodified landform and the limited extent of built structures;
- (d) **Very high aesthetic values** as a consequence of the proximity to urban Wanaka and the scale, highly attractive character, dominance, and visual coherence of the landscape;
- (e) **High memorability values** resulting from the importance of the mountain range, along with the lake, in peoples' remembered images of Wanaka;
- (f) **Moderate transient values** as consequence of changing snow levels and pasture colours, and the play of light on the landforms at different times of the day;

⁹

Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [7.7].



- (g) **High experiential values** as a consequence of the ability to access the landscape on public walking tracks and to experience a sense of remoteness and wildness on some parts of those tracks; and
- (h) **High shared and recognised values**, as part of the sense of place and aesthetic quality experienced by residents of and visitors to Wanaka.

[16] That represents Ms Mellisop's opinion as an independent expert of what those values are, in the absence of any expression of them in the DV. We return to that theme later in this decision. In the meantime, we record that Ms Mellisop's description of values was not materially challenged by other landscape experts and is a helpful framework for our consideration of the issues in the Hawthenden and UCESI appeals.

[17] The Alpha Range ONL is not distinguished in the DV's mapping from other areas mapped ONL, including Lake Wanaka itself. However, we understand the relevant ONL mapping to extend from the edge of Wanaka Township and Mt Alpha (Harris and Cardrona mountains) around to Glendhu Bay, Roys Peninsula and west up the Matukituki Valley as well as to the northern tip of the Lake at Makarora.¹⁰

Hawthenden appeal

Background¹¹

[18] The Alpha Fan is an active alluvial fan formation. It runs some 3km along the Mt Alpha Face and down to Lake Wanaka. The Alpha Fan and Alpha Face are separate geological units. This is explained by Mr Stephen Leary, a recognised expert in geology and geomorphology called by Hawthenden, as follows:¹²

Geological mapping of the Hawthenden farm area has delineated two geological units – the Mount Alpha mountain side is composed of Permian aged schist (and associated landslide debris) while the valley floor immediately to the north is a sequence of Quaternary alluvial sediments, terminal moraine and lake sediments.

¹⁰ As indicated in Ms Lucas' Upper Clutha Attachments, November 2018, Sheet 6.

¹¹ The court undertook its site visit of Hawthenden Farm unaccompanied. We familiarised ourselves with the land form and land use patterns in the area under appeal. We drove the length of the farm, stopping at intervals to get out and view the lower and upper terraces of the Alpha Fan with the Mt Alpha slopes in the background.

¹² Evidence-in-chief of Mr Leary, for Hawthenden, dated 1 November 2018, at [3].



[19] In answer to questions from the court, Mr Leary confirmed that erosion and deposition result in different geomorphological surfaces “but they are linked definitely”.¹³

[20] Mr Leary gave the following explanation of an alluvial fan such as the Alpha Fan:¹⁴

Alluvial fans are a fan-shaped ‘apron’ of alluvial sediments that has been deposited along the margin of a valley. They occur where a stream or river discharges from a steep mountainside onto a flatter valley floor – the change in gradient decreases the velocity (energy) of the water resulting in the stream changing from erosional (on the mountainside) to depositional (on the valley floor). Lateral migration (avulsion) of stream channels across the fans during flood events creates the characteristic fan shape of the alluvial deposits.

[21] He explained the geological origins of the Alpha Fan, as follows:¹⁵

... the steep mountain sides carved by glaciers were subjected to heavy erosion when the ice retreated, from landslides and by streams and rivers... [; the latter] transporting large volumes of material from the mountain slopes to the valley floor, depositing it as alluvial outwash gravels and fans.

[22] The Fan appears as two terraces, divided by a lateral gully (‘Lateral Gully’) that Mr Leary explained is understood to be a remnant of a river system of the Wanaka glacial event, some 15 – 18,000 years ago.¹⁶ As the landform now reads, that seems counter-intuitive in that Lake Wanaka is at a significantly lower elevation than Hawthenden Farm. However, one must put on glacial-era reading glasses to understand that the relevant flows would have been north-south at that time.

[23] There are also a number of vertical divisions in the Fan. These include the gullies for Centre Creek and Stoney Creek, which take ephemeral flows from the schist face down to Lake Wanaka. As Mr Leary explained, there is also evident erosion from the Alpha Face.¹⁷ We observe that a large landslide tongue and other scree slides are particularly evident on the Upper Terrace.

¹³ Transcript at p 33, l 1 – 2.

¹⁴ Evidence-in-chief of Mr Leary, for Hawthenden, dated 1 November 2018 at [5.1].

¹⁵ Evidence-in-chief of Mr Leary, for Hawthenden, dated 1 November 2018, at [4.3].

¹⁶ Evidence-in-chief of Mr Leary, for Hawthenden, dated 1 November 2018, at 3; also un-numbered graphic labelled “Location of the Glacial Outwash Rivers that Cut the Alpha Fan Terraces (15,000-18,000 years ago)”; Transcript, p 39, l 25 – 33 and p 40, l 7 – 14.

¹⁷ Evidence-in-chief of Mr Leary, for Hawthenden, dated 1 November 2018, at [5.1]; Transcript p 34 l 29 – 30.



[24] Although the Fan is most evident on the pastures of Hawthenden Farm, the Lower Terrace of it extends well beyond the Farm boundaries to the edge of Lake Wanaka. Its lower reaches are part of the area that has been developed as Large Lot Residential and Low Density Residential housing estates towards the north-western fringes of Wanaka township.

[25] Hawthenden Farm is a 229ha sheep and deer farm occupying much of the Alpha Fan.¹⁸ The Farm is accessed via Studholme Road from Wanaka-Mt Aspiring Road approximately 2km southwest of the town centre.

[26] The Upper Terrace of the Alpha Fan is visible from most urban areas of Wanaka and from public recreation reserves including the lake edge and Mt Iron.

[27] Under the DV, the eastern-most boundary of the Alpha Range ONL across Hawthenden Farm is generally in the vicinity of Lateral Gully, where it was positioned in 2002 (in the decision which we refer to as *Wakatipu Environmental Society Incorporated (2) v Queenstown Lakes District Council* or '*WESI (2)*').¹⁹ In that location, it would encompass the Upper Terrace.²⁰ Hawthenden submits that is an inappropriate location, seeking that the boundary be repositioned upslope so that it is in essence in the position where the bedrock schist of Mt Alpha meets the deposition material that makes up the Alpha Fan along the base of Mt Alpha itself.

Evidence

[28] We have already referred to Mr Leary's evidence. He was the only such expert called and he was not cross-examined. We find him a reliable and well-informed expert and we accept his evidence.

[29] In addition to Mr Leary, Hawthenden called its director and authorised officer Mr Eric Hoggood and a landscape expert, Ms Nicola Smetham. QLDC called landscape evidence from Ms Mellsop.

¹⁸ Evidence-in-chief of Ms Smetham, Att A at section 2.2, p.4.

¹⁹ *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council* [2003] NZRMA 289 (C73/2002).

²⁰ DV Maps 8, 18 and 22.



[30] Ms Smetham and Ms Mellsop undertook facilitated expert witness conferencing that produced two relevant JWS – the aforementioned Landscape Methodology JWS and a further JWS, dated 30 January 2019, pertaining specifically to the Hawthenden appeal ('Hawthenden JWS').

Ms Lucas' evidence

[31] Ms Di Lucas, a landscape expert called by UCESI, also participated in landscape expert conferencing for those JWS. However, UCESI is not a s274 party to the Hawthenden's sub-topic appeal (although its relief pertains to ONL and ONF mapping generally under the DV, as Decision 2.1 addresses). Furthermore, while the Hawthenden JWS records Ms Lucas as having some materially different opinions on matters of the most appropriate boundary for the Mt Alpha ONL, that is on the basis of her reliance on a geomorphological assessment that is not before the court. Although UCESI made brief closing submissions in support of QLDC's position concerning the location of the ONL boundary across Hawthenden Farm, it did not call Ms Lucas during the Hawthenden appeal hearing. On that basis, we do not give significant weight to the opinions Ms Lucas expresses in the Hawthenden JWS.

The Farm's history and operations

[32] Mr Hopgood was not cross-examined.

[33] He explained that the Farm was established in approximately 1878 by Robert Studholme and remained in the Studholme family's ownership until Hawthenden purchased it in 1994. The Studholme family installed an irrigation system, planted shelter belts, established dairy sheds and ploughed the Upper and Lower Terraces for cropping and pasture.²¹ There are a number of remnant historic buildings on the Farm that stand as reminders of the Studholme's farming operations.

[34] Mr Hopgood also explained that Hawthenden's farming operations have included grazing (deer, sheep and cattle), cropping, forestry and some horticulture (walnuts). He described the various farm improvements, including two residential dwellings, several farm buildings, shelter structures, fencing, extensive irrigation pipes, and gravelled

²¹ Evidence-in-chief of Eric Hopgood, for Hawthenden, undated at 2 – 3.



access roads. He said extensive earthworks have been undertaken, including for the formation of access roads and the levelling of land for farming purposes including “in the days when appropriate consents were not required”. Mr Hopgood also referred to periodic incidences of fire and flooding (associated with Stoney Creek).²²

[35] Mr Hopgood characterised the ONL line on the Farm as an anomaly giving rise to significant uncertainty and an unjustified imposition on restrictions on new building development on the Farm, including for farming purposes or rural residential or lifestyle developments. He explained the unfortunate set of circumstances that resulted in Hawthenden not having representation, as they had intended, during the Environment Court appeal hearing in 2002. He characterised QLDC’s approach to the current plan review as lacking consultation, or any proper on-site investigation. He noted that QLDC has approved residential and rural residential subdivisions of land, and approved building platforms, at a higher elevation than where the ONL boundary is positioned under the DV.²³

[36] In answer to questions from the court, Mr Hopgood indicated he would like to have the option of putting a few houses on the Farm or developing it for another purpose such as a golf course.²⁴

The Hawthenden JWS

[37] The Hawthenden JWS neatly crystallises key points of agreement and disagreement between the landscape experts (and on which they elaborate in the evidence we discuss shortly).

[38] The Hawthenden JWS records that they agree that:

- (a) a landscape typically includes a variety of landform components (and the Upper Terrace is too small to be considered a landscape in its own right);²⁵
- (b) the “Alpha Range Mountainside” has significant values that qualify it as an ONL;²⁶

²² Evidence-in-chief of Eric Hopgood, for Hawthenden, undated, at [1] – [10].

²³ Evidence-in-chief of Eric Hopgood, for Hawthenden, undated, at [13] – [27].

²⁴ Transcript, p 30, l 21 – p 31, l 4.

²⁵ Hawthenden JWS, p 5, 3rd box.

²⁶ Hawthenden JWS, p 5, 4th box.



- (c) the landslide tongue we have noted as flowing from the Alpha Range slope onto the Alpha Fan is legibly associated with that slope, even though it is part of Hawthenden Farm;²⁷
- (d) legible geomorphology is the appropriate determinative criterion for an ONL boundary and each of the boundaries in issue here (i.e. the 'DV boundary' and the repositioned boundary sought by Hawthenden ('Hawthenden boundary')) is so legible.²⁸

[39] In terms of the most appropriate ONL boundary on Hawthenden Farm, the JWS records that Ms Smetham recommends the Hawthenden boundary, whereas Ms Mellsop recommends retaining the DV boundary. The JWS explains that those different positions are informed by the experts' divergent opinions on two matters:²⁹

- (a) whether the Upper Terrace is more properly read, or perceived, together with the Lower Terrace of the same Alpha Fan and, hence as part of a lower Rural Character Landscape (Ms Smetham) or as part of the Mt Alpha ONL (Ms Mellsop);
- (b) what degree of 'naturalness' should be ascribed to the Upper Terrace.

[40] On these matters, the Hawthenden JWS records that Ms Smetham considers that the Upper Terrace "has better visual coherence" with the RCL that encompasses other parts of the Alpha Fan (than with the Mt Alpha Range). She expresses the view that the Upper Terrace "does not stand out as being particularly memorable in itself in a visual sense". She says views enjoyed from Mt Iron are "dominated by" the mountain slopes and the skyline of Mt Alpha, the "dramatic interface" between the lake and the mountainous setting, the presence of snow and craggy mountain tops. In that context, she characterises the Upper Terrace as being a "very small, easily missed, minor component of the view". She describes the relative naturalness of the Upper Terrace as only "Moderate". That is in view of its modified land cover and what she describes as its "highly managed" state. That includes its built forms, partial cropping, and lack of any particularly evident "natural processes of colonisation". Referring to Mr Leary's evidence, she says there are better examples of fans in the District.

²⁷ Hawthenden JWS, p 6.

²⁸ Hawthenden JWS, p 4, 2nd box, p 5 – 7, 5th box.

²⁹ Hawthenden JWS, pp 5 – 7.



[41] The Hawthenden JWS records that Ms Mellsop considers that the Upper Fan is more appropriately treated as part of the Mt Alpha ONL than as part of the inhabited domesticated rural land below it. One reason for that opinion is that she considers the Upper Terrace's formative processes of alluvial deposition remain highly legible and expressive. Further, she characterises its "wedge-shaped form" to be prominent and distinctive when viewed from public and private places in and around Wanaka township (a matter on which Ms Smetham does not agree). She also considers the Upper Terrace to display a strong visual and spatial connection with the slopes of Mt Alpha. She reads the relative naturalness of the Upper Terrace differently from Ms Smetham. In particular she refers to its "lack of built form" and evidence of "ongoing natural processes of indigenous vegetation spread, erosion of the truncated escarpment and continuing alluvial deposition" as contributing to her overall rating of its naturalness as Moderate to High. In her opinion, the Upper Terrace makes an important contribution to "the very high scenic values and high memorability values" of the Mt Alpha face as a whole. That includes its contribution to "its visual coherence and perceived naturalness".

Mr Smetham's evidence

[42] Ms Smetham relies on an underpinning landscape assessment undertaken by her Wanaka-based colleague, Ms Hannah Ayres³⁰ (a copy of which she appended to her evidence ('Report')).³¹ In its submission on the plan review, Hawthenden sought both to challenge the notified version ('NV') of the plan's placement of the ONL boundary through Hawthenden Farm and to pursue different zoning treatment of the Farm from the NV's Rural zoning. The Report was prepared for both such purposes.

[43] A central aspect of the Report's landscape assessment methodology, supported by Ms Smetham, is that it defines five 'Landscape Character Areas' ('LCAs') for that part of the Upper Clutha Basin in proximity to, and including, Hawthenden Farm. Two of these are for the rural and urbanised parts of the Wanaka valley floor ('LCA4', 'LCA5'). Two further LCAs encompass the Alpha Fan. LCA3 is termed the 'Developed Alluvial Fans and Terraces'. It encompasses the urbanised portion of the Lower Terrace just north-west of Wanaka township through to close to the Lakeside. LCA2 is termed the 'Hawthenden Farm Alluvial Fans and Terraces LCA'. It encompasses the Hawthenden Farm portion of the Alpha Fan (i.e. both the Upper and Lower Terrace land). LCA1 is

³⁰ Ms Ayres was unavoidably unavailable to give evidence.

³¹ Evidence-in-chief of Ms Smetham, dated 2 November 2018, Graphic Supplement A, Ms Ayres, 2015.



termed the 'Alpha Range Mountainside' and its name speaks for what it encompasses.

[44] Hence, the Report treats the Alpha Range Mountainside (LCA1) as conceptually distinct, in landscape character terms, from the Terraces of the Alpha Fan (LCA2). In terms of naturalness, it characterises LCA1 as being 'High' (hence qualifying as ONL) and LCA2 as having Moderate-Low (hence not qualifying as ONL).

[45] Consistent with the Hawthenden JWS, Ms Smetham identifies as a determinative question:³²

... does the upper terrace of the Alpha Fan 'read' as part of the Mt Alpha mountainside, or as part of the lower terraces of the alluvial fan below the mountainside?

[46] Related to that, she largely approaches her landscape assessment on the basis that the Terrace is in a separate LCA from the Mt Alpha mountainside (LCA1), describing the role of LCAs as follows (Ms Smetham's emphasis):³³

Ideally, ONL boundaries should follow clearly discernible lines in the landscape. Defining ... LCAs ... is a common practice and involves dividing the landscape spatially into areas of consistent landscape and visual character. While a LCA may overlay several different landforms, its boundaries are often determined by landform edges. Within those boundaries the visual character must be consistent in its geomorphology, vegetation or land cover, and its pattern of land use. This approach of defining areas of the landscape into character areas enables varying levels of naturalness to be determined for each area as a whole and greatly assists in identifying the clear lines that exist between ONLs and other landscapes.

[47] Ms Smetham refers to the recent Wakatipu Basin Landscape Study and the Banks Peninsula Landscape Study as examples of this LCA-based approach of describing "distinctive areas of the landscape".³⁴

[48] In those terms, she characterises the DV boundary as less definable and defendable than the Hawthenden boundary. In particular, she refers to the toe of the "river-formed" Upper Terrace of the Alpha Fan as having "blended with the surrounding landscape in parts where subsequent alluvial processes have eroded the terrace face". As a result of those processes, she observes that the Upper Terrace "... is not continuous,



³² Evidence-in-chief of Ms Smetham, for Hawthenden, dated 2 November 2018, at [7.9].

³³ Evidence-in-chief of Ms Smetham, for Hawthenden, dated 2 November 2018, at [7.10].

³⁴ Evidence-in-chief of Ms Smetham, for Hawthenden, dated 2 November 2018, at [7.11].

nor is it the only river terrace that exists on the Alpha Fan". She adds that the landscape above and below the river terrace "displays the same landscape characteristics and is farmed in exactly the same way". In contrast, she describes the Hawthenden boundary as an "obvious" boundary. That is particularly in the sense that "there is significant change in landform and a change in gradient, a change in land cover, a change in texture, a change in underlying geology and geomorphology, a change in soil types and as a result, a change in farming practice / land use".³⁵

[49] Ms Smetham describes as a weakness of *WESI (2)*'s choice of the lower boundary as being that the court did not then have the benefit of reliable geomorphological evidence (the only such evidence having been from Ms Lucas, who is not relevantly qualified). Adding to that point, she explains that, prior to recommending in favour of essentially retaining the boundary as determined in *WESI (2)*, Dr Read (on whom Ms Mellsop relies) did not undertake a fresh ground truthing appraisal (but rather, undertook her work on a desk-top basis only). By contrast, she maintains that Ms Ayres (on whose Report she relies) based her opinion on her site visit and evaluation.³⁶

[50] Ms Smetham acknowledges that the Upper Terrace contributes to the level of naturalness of the Mt Alpha Face and is a "coherent landform" that "is visible and appreciated from public places within the township of Wanaka".³⁷ However, as a contributor in those terms, she explains that the significant extent of modification that has occurred in farming the Upper Terrace lead her to her conclusion that it is of only Moderate naturalness.³⁸ Relevant to that rating, Ms Smetham points out that there are consented residential building platforms on the southern end of the Upper Terrace (at Hillend Station) that will further increase the presence of visible human modification on the Upper Terrace in future.³⁹

[51] Ms Smetham was tested, in cross-examination, on the fact that the Report uses a 'Rough + Milne' or 'R+M' scale of naturalness, whereas the Landscape Methodology JWS (to which she is a signatory) uses a different 'Boffa Miskell' scale.⁴⁰ In the final

³⁵ Evidence-in-chief of Ms Smetham, for Hawthenden, dated 2 November 2018, at [7.13].

³⁶ Evidence-in-chief of Ms Smetham, for Hawthenden, dated 2 November 2018, at [5.7] – [5.14] and [5.20].

³⁷ Evidence-in-chief of Ms Smetham, for Hawthenden, dated 2 November 2018, at [7.25].

³⁸ Evidence-in-chief of Ms Smetham, for Hawthenden, dated 2 November 2018, at [7.26].

³⁹ Evidence-in-chief of Ms Smetham, for Hawthenden, dated 2 November 2018 at [3.1(b), 5th bullet point].

⁴⁰ Transcript, p 42, l 29 – p 44, l 15.



analysis, however, we do not find anything material in that. Rather, as the Hawthenden JWS records, the essential underpinnings to Ms Smetham's overall opinion are that she considers that, in perception terms, the Upper Terrace is properly to be read together with the Lower Terrace as in a different landscape from the Mt Alpha mountainside and as having insufficient naturalness, such as to be properly treated as RCL (rather than as part of the Alpha Range ONL). In particular, she observes that:⁴¹

...

The Alpha Fan, in its entire landform, is more closely associated with the rural, pastoral landscape of the lower terraces of Hawthenden Farm and the valley floor fringes of the wider Upper Clutha Basin, than the ONL of the Alpha Range Mountainside.

...

The farming practices on the Alpha Fan ... [differ] from that of the Mt Alpha Face and is more closely related (in type of farming and resulting appearance of the landscape) to the farming practices found on the valley floor. This is due to the gentler gradient of the topography that lends itself well to cultivation and development.

Ms Mellsop's evidence

[52] In response to criticism that she relied unduly on Dr Read's 'Landscape Boundaries Report',⁴² Ms Mellsop points out that Dr Read's work was peer reviewed by two other landscape experts. Moreover, she emphasises that her evidence on the matters in issue in the appeal draw from her own assessment.⁴³ It is her own assessment that leads her to recommend in favour of the DV boundary.⁴⁴ She explains that her methodology involved a staged analysis. Her first stage was to consider the landscape attributes. She explains that she relies on the evidence of Mr Leary on these matters.⁴⁵ Her next stage involved identifying landscape values and evaluating these in terms of a qualitative scale (very low, low, moderate, high and very high). She noted that this is materially similar to the 'biophysical, sensory and associative landscape attributes' approach of Sch 3 of the pRPS' and accords with the New Zealand Institute of Landscape

⁴¹ Evidence-in-chief of Ms Smetham, for Hawthenden, dated 2 November 2018, at [7.30] – [7.31].

⁴² In giving evidence in regard to aspects of UCESI's other ONL boundary relief, Ms Mellsop provided us an electronic link to Dr Read's two reports: *Report to Queenstown Lakes District Council on appropriate landscape classification boundaries within the District, with particular reference to Outstanding Natural Landscapes and Features*, Dr Marion Read, 1 April 2014; and *Report to Queenstown Lakes District Council on appropriate landscape classification boundaries within the District: Post review amendments* Dr Read, 16 October 2014. "Peer Review of Landscape Assessment, Outstanding Natural Landscape of the Upper Clutha Part of the Queenstown Lakes District" Anne Steven, June 2014.

⁴³ Transcript for 9 May 2019 at p 970, l 1 – 7.

⁴⁴ Evidence-in-chief of Ms Mellsop, for QLDC, dated, 2 November 2018, at [4.5] and [4.6].

⁴⁵ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [7.9] – [7.13].



Architects ('NZILA') guidelines.⁴⁶ At [15], we set out Ms Mellsop's opinions on the values she associates with the Alpha Range ONL. She considers the appeal land to be sufficiently natural and properly treated as part of that ONL.⁴⁷

[53] Ms Mellsop refers to the reasons she records in the Hawthenden JWS for why she considers the Upper Terrace is properly to be considered part of the Mt Alpha ONL (which reasons we summarise at [41]).⁴⁸ She explains why she perceives the Upper Terrace as bearing a relationship to the Mt Alpha Face and some distinction from the Lower Terrace of the Alpha Fan, relevantly as follows:⁴⁹

- 7.12 The gradient of the upper fan is substantially gentler and smoother than that of the rugged mountain slopes above but it is also noticeably steeper than the terrace and lower fan below (1: 5 to 1: 7 compared with 1: 13 to 1: 25). This distinction is reinforced by the eroded scarp landform between the fan and terrace. Compared with the schist mountain slopes, the gentler gradient of the fan and the deeper soils have allowed more intensive farming with improved pasture, fenced paddocks and more frequent trees and linear shelter belts. Vegetation on the scarp that divides the upper fan from the terrace and fan formations below is similar to that on the upper mountain slopes, consisting of scattered natural patterns of regenerating shrubland. At some times of the year, the pasture colour of the fan is considerably 'greener' than that of mountain slopes above and of smoother texture, and there is a clear visual distinction between the landform types. At other times the pasture colours are similarly green or tawny and the fan reads as a continuous whole with the mountain slope, with little differentiation.
- 7.13 The upper Alpha fan has a moderate to high level of naturalness, with little obvious modification other than shelter trees and pastoral management (which are both natural if not indigenous elements) and farm tracks (which are also present on the mountain slopes above). It is distinctive in its roughly triangular wedge shape and recognisable as an alluvial fan landform. The legible truncation of the fan is a relatively rare feature in the populated and/or well frequented parts of the District.
- 7.14 The elevation and distinctive landform character of the upper fan makes it clearly legible and prominent in views from urban Wanaka and from the public walkways on Mount Iron. The strong spatial and visual connection between the fan and the more mountainous backdrop means that it plays an important role in the scenic values, expressiveness and memorability of the wider Mount Alpha range. From many viewpoints within Wanaka and on Mount Iron the fan appears steeper than it actually is and reads as part of the mountain slopes. I consider that from these vantage points it would appear somewhat illogical to exclude the upper fan from the Mount Alpha

⁴⁶ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [6.7], [7.4] – [7.6].

⁴⁷ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [3.1(c)].

⁴⁸ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [7.15].

⁴⁹ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [7.12] – [7.14].



range ONL.

7.15 In my view, the upper fan is too small to be considered as a landscape in its own right. It must be considered as either part of the ONL of the Mount Alpha range or as part of the inhabited and domesticated rural land below. ...

[54] Ms Mellsop gives the following reasons for that conclusion (her **emphasis**):⁵⁰

- (a) the **high legibility and expressiveness** of the upper fan – the way it clearly demonstrates the formative processes of alluvial deposition;
- (b) the prominence and distinctive wedge-shaped form of the upper fan when viewed from public and private places in and around Wanaka township, and its strong visual and spatial connection to the wider mountain slopes;
- (c) the **moderate to high** naturalness of the upper fan, evidenced by the lack of built form and the ongoing natural processes of indigenous vegetation spread, erosion of the truncated escarpment and continuing alluvial deposition; and
- (d) the importance of the upper fan to the **very high scenic values and high memorability values** of the Mount Alpha face as a whole, including its visual coherence and perceived naturalness.

[55] Ms Mellsop acknowledges that the Upper Terrace has “a different character and visual appearance from” the mountain slopes above it. However, she considers this difference does not “tip the balance such that the fan fails to be perceived as part of the wider Mount Alpha range ONL”. She reiterated this opinion in cross-examination. While she acknowledged geomorphological differences between the mountain slopes and the Upper Terrace, she answered that the latter “is perceived as a coherent part” of the slopes including the Mt Alpha Face. In that sense, while it is “distinctive”, she perceives it as “part of the coherent whole”.⁵¹ As such, she reaches the ultimate opinion that the Upper Terrace is “sufficiently natural” to be included as part of the Mt Alpha ONL and “has attributes and values that contribute to the outstandingness of” the Mt Alpha range ONL as a whole.⁵² In cross-examination, she disagreed that the Upper Terrace is a highly modified part of a “valley geomorphology”, commenting on its relationship to the mountain range as follows:⁵³

It is an alluvial fan that is sourced from the material of the mountains and lies on the lower slopes of that mountain and in my assessment, the landform of the upper fan would not be described as highly modified.

⁵⁰ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [7.15].

⁵¹ Transcript, p 9, l 15 – 30.

⁵² Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [7.16] – [7.17].

⁵³ Transcript, p 9, l 31 – p 10, l 6.



[56] She also reiterated her opinion that the truncating scarp of the Upper Terrace, in which vicinity the DV boundary is positioned, is “very obvious” from Mt Iron and also “visible from parts of downtown ... Wanaka”.⁵⁴ She commented that observers from such locations would also observe where the Alpha Fan “emerges from the mountainside”, including observing “watercourses that come down the mountainside and then the [deposition] material that spreads below from those watercourses”.⁵⁵

[57] On the other hand, Ms Mellsop confirmed that she accepted the Hawthenden boundary would correspond to a geomorphological boundary, namely “between the steeper schist slopes and the gentler fan slope” and that it would also reflect a “corresponding difference in vegetation cover” and mostly corresponds to “a change in landcover and land use patterns”.⁵⁶ She agreed that her relevant difference of opinion with Ms Smetham “is whether the area of land between those two legible boundaries was appropriately included within the ONL”.⁵⁷

[58] Ms Mellsop was also tested, in cross-examination, on whether the exclusion from the ONL of two existing dwellings at the southern end of the Upper Terrace is contrary to the principle that carve outs from an ONL of developed areas is to be avoided.⁵⁸ She did not agree, because the dwellings were on the edge of the ONL rather than being surrounded by an ONL.⁵⁹

[59] Nor did she agree with the proposition that “if an area has different biophysical attributes and different sensory attributes and different associative attributes, it's not going to be part of the same landscape”. She commented that a landscape can have a number of different landforms and, while landscape characterisation assists in determining where the boundaries of a landscape should be positioned, a landscape is not necessarily limited to a single landscape character area.⁶⁰

[60] As a point of precision, Ms Mellsop pointed out that the positioning of the boundary in *WESI (2)* in essence, using her description, by “marker pen lines”, was

⁵⁴ Transcript, p 12, l 32 – p 13, l 3.

⁵⁵ Transcript, p 11, l 20 – p 12, l 2.

⁵⁶ Transcript, p 16, l 2 – 7, p 21, l 30 – p 22, l 2.

⁵⁷ Transcript, p 20, l 25 – 29.

⁵⁸ Transcript, p 46, l 21 – 22.

⁵⁹ Transcript, p 6, l 23 – 26, p 22, l 10 – 22.

⁶⁰ Transcript, p 7, l 20 – 25.



inadequate for its want of precision. In particular, she explained that it would mean the boundary line itself would be at least 30m in width on the ground and vary between the crest and toe of the truncating scarp.⁶¹ Ms Mellsop also explained that, at the eastern end of the Upper Terrace, the DV's ONL boundary "moves up onto" the Fan "to exclude the existing dwellings at 63 and 115 Studholme Road". She explains that her recommendation to the independent commissioners' hearing was that this should be tidied up so that there is a "detailed and accurate boundary that more closely followed the toe of the upper fan escarpment". However, the commissioners concluded that there was no scope to extend the ONL boundary outside the notified boundary (as no submission had sought such a change).⁶² Our directions at [286] are confined to the Hawthenden land.

Submissions

Hawthenden

[61] In his closing submissions for Hawthenden, Mr Shiels QC made a number of framing points on why there should be schedules of values included in the ODP in relation to the relevant mapped ONFs and ONLs. Those matters are discussed in Decision 2.1 (at [25]–[34]).

[62] In any case, Mr Shiels submits that the court is in a position to determine Hawthenden's ONL boundary relief and should prefer Ms Smetham's opinion on these matters.⁶³

[63] Mr Shiels characterises Ms Mellsop's opinion as unreliable for "cognitive bias". In essence, that is on the basis that QLDC was "unquestioning" in adopting the boundary line as set by *WESI (2)*, as recommended by Dr Read's report on which Ms Mellsop heavily relied.⁶⁴

[64] On the key issue being the choice of the most appropriate geomorphological boundary, Mr Shiels notes that Mr Leary's evidence supports Ms Smetham's choice. Referring to this boundary as the more significant, Mr Shiels also argues that both the 29

⁶¹ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [7.10].

⁶² Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [7.18].

⁶³ Closing submissions for Hawthenden, dated 26 July 2019, at [38] and following.

⁶⁴ Closing submissions for Hawthenden, dated 26 July 2019, at [43].



January JWS and the Hawthenden JWS favour it over the DV boundary. In particular, he submits that the DV boundary is not supported by expert opinion on geomorphology. He argues that, while Ms Mellsop said that she took account of Mr Leary's evidence, her analysis largely ignored it. He also submits that Ms Mellsop's defence of the DV's ONL boundary demonstrates inconsistency in her approach and her undue reliance on Dr Read. In particular, he refers to Dr Read's characterisation of the Upper Clutha landscape as a "big sky landscape, with mountains surrounding the basin, which are high and wild in appearance" as largely irrelevant to Hawthenden Farm. Similarly, he says the landscape values Ms Mellsop identifies for the Alpha Range ONL are largely irrelevant to the Hawthenden Farm.⁶⁵

[65] Mr Shiels characterises Ms Mellsop's choice of boundary as being largely reliant on her view of the naturalness of the land in question. He notes that Ms Mellsop agreed with Ms Smetham that the threshold for naturalness is a "Moderate to High" level but that Ms Smetham does not agree that the appeal land reaches that threshold.⁶⁶ Rather than this being simply a matter of different expert's judgements, Mr Shiels submits that Ms Mellsop derives her view from a methodology that is unsound and materially departs from what the Landscape Methodology JWS and Hawthenden JWS recommend.

[66] He submits that Ms Mellsop's approach suffers from a logical fallacy. That is in the sense that she concludes that the appeal land is part of an adjoining ONL in essence because she concludes that land is "sufficiently natural". He submits that her leap of logic is in a failure to also soundly determine that the appeal land is in fact part of the adjoining ONL.

[67] Mr Shiels submits that part of Ms Mellsop's flawed approach is in the fact that she does not treat the Alpha Fan as a whole. He submits that, by separating out the Upper Alpha Fan from the remainder of the Fan, Ms Mellsop departs from soundly-based geomorphological boundaries and essentially runs counter to the generally preferred approach of avoiding cut outs. Were she to have treated the Alpha Fan as a whole, on Mr Leary's evidence that the Alpha Fan extends to the Lake, the Alpha Fan (and hence the appeal land) could not be soundly regarded as sufficiently natural. In particular, that is because it would include significant residentially developed areas.

⁶⁵ Closing submissions for Hawthenden, dated 26 July 2019, at [51], referring to Ms Mellsop's evidence, dated 2 November 2018, at [5.1] and [5.2].

⁶⁶ Closing submissions for Hawthenden, dated 26 July 2019, at [57], referring to Hawthenden JWS, at Table 2, Item 1.



[68] Mr Shiels submits that, even if it is sound to treat the toe of the Upper Alpha Fan as a geomorphological boundary as Ms Mellsop has done, her approach still involves cut outs contrary to the generally preferred methodology. He refers in particular to the fact that the DV's ONL boundary would exclude the existing dwellings at 63 and 115 Studholme Road and the homestead on the Upper Fan part of Hawthenden Farm.⁶⁷

QLDC

[69] Counsel takes issue with Mr Shiels' characterisation of the Hawthenden JWS as favouring the Hawthenden boundary over the DV boundary, submitting that this argument relies on an invalid premise that the correct boundary is the stronger geomorphological one. Counsel adds:⁶⁸

... the correct approach is to first assess the landscape character and values of the land in question, to determine whether it should appropriately be included within an ONL/F. Following that, the second question is where the ONL/F boundary should be located, whether it is geomorphological, representative of land use, or a vegetative boundary.

It follows that the primary question is whether the appeal area should be included within the Mount Alpha ONL or not, with the boundary used to define the extent of land appropriately categorised as ONL. As a result the boundary is clearly a relevant matter, but it does not start and end there.

[70] In further support of those submissions, counsel refers to Ms Mellsop's following answer in cross-examination to questions about whether the appeal land is appropriately included in the ONL.⁶⁹

I consider that both are legible geomorphological boundaries and I think we all agreed that in our conferencing that both were legible geomorphological boundaries. The difference of opinion is whether the area of land between those two legible boundaries was appropriately included within the ONL.

[71] Counsel also refers to acknowledgements by Ms Smetham, in cross-examination, that the geomorphological boundary preferred by QLDC and Ms Mellsop is legible

⁶⁷ Closing submissions for Hawthenden, dated 26 July 2019, at [62], referring to Ms Mellsop's evidence, dated 2 November 2018, at [7.18].

⁶⁸ Closing submissions for QLDC, dated 6 August 2019, at [3.13], [3.14].

⁶⁹ Closing submissions for QLDC, dated 6 August 2019, at [3.15], referring to Transcript, p 20, l 25 – 29.



(although noting she qualified her answer by pointing out that the Upper Terrace is still part of one Alpha Fan extending down to Lake Wanaka).⁷⁰ Counsel also disputes Hawthenden's suggestion that Ms Mellsop ignored Mr Leary's evidence, submitting that, the proper position is that she considered it but did not treat it as determinative.⁷¹ That is in the sense that the identification of the most appropriate ONL boundary involves a broader 'landscape' assessment.

[72] QLDC submits that we should prefer Ms Mellsop's landscape assessment as having been soundly undertaken in accordance with the Landscape Methodology JWS. Counsel refutes Hawthenden's proposition that Ms Mellsop was subject to cognitive bias or was unduly influenced by Dr Read's recommendations. Rather, it says Ms Mellsop presents her independent opinion as an expert in accordance with the Code.

[73] Conversely, counsel submits that Ms Smetham demonstrated cognitive bias. In particular, counsel refers to her heavy reliance on the landscape assessment undertaken by Ms Ayres and the fact that she did not undertake a separate evaluation of the Upper Alpha Fan (instead treating it as part of a wider landscape character area).⁷² As to this lack of a "fine grained" assessment of the Upper Terrace, counsel refers to Ms Smetham's concession in cross-examination that she did not split her assessment out "into biophysical, associative ... et cetera" (which we understand to refer to what the Landscape Methodology JWS specifies as elements of a landscape assessment). Rather, as she acknowledged, she focussed her assessment largely on "the geomorphological and biophysical attributes".⁷³

UCESI

[74] We accept UCESI's point that, insofar as their relief seeks that the existing ODP ONL lines be rolled over in their exact current form, they have an associated general interest in the ONL boundaries in regard to the Hawthenden appeal. However, by contrast to the specific boundary line cases they run in regard to Waterfall Hill/Waterfall Creek and Mt Brown/Maungawera Valley, UCESI did not call evidence in regard to the

⁷⁰ Closing submissions for QLDC, dated 6 August 2019, at [3.19] referring to Transcript, p 55, and 3.20 referring to Transcript, p 10, l 23 – 28.

⁷¹ Closing submissions for QLDC, dated 6 August 2019, at [3.16] – [3.18].

⁷² Closing submissions for QLDC, dated 6 August 2019, at [3.25], referring to Transcript, p 47, l 32 – 35, p 48, l 1 – 6.

⁷³ Closing submissions for QLDC, dated 6 August 2019, at [3.21] – [3.25], referring to Transcript, p 47, l 15 – 16, 26, 31 – 35, p 48, l 1 – 6, 11, 29.



Hawthenden appeal. Nor did they cross-examine any of Hawthenden's and QLDC's witnesses. Insofar as the relief in their appeal is expressed, it is in support of the status quo as substantially advanced by QLDC.

Discussion

[75] While both Ms Smetham and Ms Mellsop draw significantly from work undertaken by other landscape experts not giving evidence, we are satisfied that they are properly informed and gave evidence according to their duties under the Code of Conduct for Expert Witnesses.

[76] Whilst not a matter of contention, the evidence supports the PDP's classification of the Alpha Range as an ONL, subject to the boundary matters we now determine. We accept Ms Mellsop's characterisation of the landscape attributes of the Alpha Range. We also find her associated description of the landscape values of the Mt Alpha ONL as properly descriptive of the evidence we have heard, subject to one important qualifier. That is that her description of values does not sufficiently identify the values of the Upper Terrace as part of a productive farm. We return to that matter at [100].

[77] For a number of reasons, we find the DV boundary more appropriate than the Hawthenden boundary.

[78] As an initial observation, we accept Ms Mellsop's opinion that a landscape can encompass a number of landforms, including in this case part of an alluvial fan that is geomorphologically related to the mountainside of the Alpha Range. Characteristics that help knit these landforms together, in terms of how the land is perceived from relevant public viewing points, include the vertical gullies of Centre Creek and Stoney Creek, the landslide tongue and other scree slides.

[79] We agree with Ms Smetham that "ideally, ONL boundaries should follow clearly discernible lines in the landscape". We note that we find it is not inherently necessary for a landscape boundary to coincide with boundaries as identified in any particular LCA. Rather, as the Landscape Methodology JWS and Hawthenden JWS explain, the key relevant question is whether the choice of boundary (accepting both are geomorphological) is properly legible.



[80] On all the evidence including the uncontested opinion of Mr Leary, we accept Ms Mellsop's opinion that the DV boundary is properly legible from relevant viewpoints. Rather than being inferior to the Hawthenden boundary in those terms, we find it more appropriate.

[81] In reaching that view, we acknowledge that, on Mr Leary's evidence, the Hawthenden boundary has a strong and direct geomorphological relationship to the mountainside. In essence, the Alpha Fan is a result of two distinct geomorphological processes. One is the erosive force on the mountainside above, resulting in the deposition of the original Fan. The second subsequent force is the ice-sculpting of the Fan associated with a north-south glaciation.

[82] As for differences in vegetative cover between the mountainside and the Upper Terrace, we find these are not such as to result in exclusion of the Upper Terrace from the ONL. Rather, guided by Exhibit HM4 and our site visit, we find the Upper Terrace sufficiently natural in those terms. In a relative sense, we find a greater difference in vegetative cover between the Upper Terrace and the more intensively developed Lower Terrace.

[83] We acknowledge that the Upper Terrace differs from the Mt Alpha Face in that it is not a schistose mountainside. It is also not possessing of the same level of naturalness. Rather, it is visibly part of a long-established productive farm. That is evidenced in its extensive exotic pasture and grazing, irrigation, forestry, shelter belts, roading and farm-related buildings.

[84] The conclusion reached in *WESI (2)* was that the choice of boundary is finely balanced. Our findings reveal that, ultimately, this choice comes back to judgment as to which of two potential choices is the more appropriate. We find on the evidence that the more appropriate boundary is where the DV has placed it.

[85] We do not agree with the criticisms made of the reliability of Ms Mellsop's landscape assessment. Noting that Dr Read's work was itself peer reviewed, we are in any case satisfied that Ms Mellsop properly informed herself of all relevant matters, and soundly applied landscape assessment methodology, in reaching her view that the DV boundary is the most appropriate one. In particular, she took due account of Mr Leary's opinion and applied a methodology endorsed in the Landscape Methodology JWS, and properly consistent with NZILA methodology and the pRPS Sch 3.



[86] Conversely, we find that Ms Smetham's assessment was somewhat impeded by her choice of assessing the Upper and Lower Terraces as a single LCA. This led her to unduly focus, in her written evidence, on the relative naturalness of this unit, rather than of the appeal area namely the Upper Terrace. Having said that, we note that cross-examination revealed that the material differences between Ms Smetham and Ms Mellsop are relatively confined.

[87] In particular, Ms Smetham properly acknowledged that the Upper Terrace contributes to the level of naturalness of the Mt Alpha Face and is a "coherent landform" that "is visible and appreciated from public places within the township of Wanaka". We find accordingly. Where Ms Smetham materially differs from Ms Mellsop is in her opinion that the Upper Terrace:

- (a) is properly read and perceived to belong with the Lower Terrace (rather than as part of the Alpha Range landscape); and
- (b) lacks sufficient naturalness to be treated as part of the Alpha Range ONL (rather more appropriately being treated as part of the lower RCL landscape).

[88] On those matters of judgment, we prefer Ms Mellsop's evidence and, on that basis, find the DV boundary the more appropriate.

[89] On the first matter of whether the Upper Terrace is perceived as part of the Alpha Range ONL or the Lower Terrace, informed by our site visit, we prefer Ms Mellsop's opinion.

[90] A significant factor there is how the Upper Terrace, including the scarp where the DV boundary has been positioned, is viewed from relevant public viewpoints.

[91] An aspect of this is visibility. Ms Smetham also properly acknowledges that the Upper Terrace is clearly visible from public viewing points around Wanaka. In light of our site visit, we concur with Ms Mellsop's view that the Upper Terrace, including the escarpment, is particularly visible from viewpoints in and around Wanaka town centre, including from streets and the Lakefront Reserve.



[92] We accept Ms Mellsop's opinion in finding that the formative processes of alluvial deposition and glacial sculpting are comparatively highly legible and expressive on the Upper Terrace, from those public viewpoints. What is particularly evident from those viewpoints are the vertical gullies of Centre Creek and Stoney Creek, the landslide tongue and other scree slides. Each of these elements gives a strong visual and spatial connection to the mountainside. We also accept Ms Mellsop's opinion that, notwithstanding its lesser relative naturalness, the Upper Terrace contributes to the Alpha Range ONL's very high scenic values and high memorability values.

[93] Coupled with those matters is the perception viewers would have of the level of naturalness of the Upper Terrace as a whole. We find the different labels offered by the experts for this attribute are not particularly illuminating. Whether the descriptor is more properly 'Moderate' or 'Moderate – High', on the basis of Ms Mellsop's opinion and our site visit, we find there is sufficient naturalness in how it is perceived as to treat the Upper Terrace as a contrasting but appropriate part of the Alpha Range ONL.

[94] We acknowledge the existing dwellings above the line of the DV boundary associated with the rural subdivision previously consented for Hillend Station. However, these are at the edges, rather than being more central to popular views from in and around Wanaka township. Therefore, we find they do not materially detract from that perception of relative naturalness associated with the Upper Terrace. We do not rule out the potential that incremental visible human modification at higher levels could start to degrade present perceptions of the Upper Terrace in time.

[95] Overall, whilst the Upper Terrace is discernibly different from the balance of the Alpha Range ONL, we find it has sufficient naturalness to remain as part of the ONL.

[96] The scarp at the toe of the Upper Terrace legibly reads as a boundary below which there is a transition to a greater degree of farm-related modification. That modification includes the presence of buildings and other elements of productive farming. That more cultured appearance is reinforced by the gentler profile of the Lower Terrace. The greater degree of modification is more in keeping with an RCL landscape providing transition to the rural-residential and more urbanised residential developments that are well established on the remainder of the Fan below the Farm.

[97] We have tested our evaluation against that for the Maungawera Fan (which we determined should remain as part of an RCL, not be reclassified ONF). On these matters,



we have considered the consensus opinion of Ms Mellsop and Ms Lucas, in a joint witness statement dated 30 January 2019 (also pertaining to another area where UCESI seeks ONL boundary changes, hence “Waterfall/Maungawera JWS”), that the Maungawera Fan has high biophysical values.⁷⁴ We have also weighed answers Mr Leary gave to the court when questioned on how he would compare the Alpha Fan to the Maungawera Fan. He explained that, by contrast to the scarp that bisects the Alpha Fan, there is no obvious geomorphological change from the lower reaches of the Maungawera Fan to its apex.⁷⁵ We acknowledge that is the case. However, as we discuss at [180] and following, our decision that the Maungawera Fan should remain RCL is primarily on the basis of a preference for Ms Mellsop’s landscape opinion, including as to the significance of pastoral farming. In addition, in a comparative sense, the Maungawera Fan is more visibly occupied by farm buildings as compared to the Upper Terrace of the Alpha Fan.

[98] Having found the DV boundary more appropriate than the Hawthenden boundary, there are two further matters of detail to address.

[99] One concerns the precise positioning of the ONL line in proximity to the scarp. In perception terms, we find the eroded face of the scarp is properly part of the ONL. Hence, the boundary is properly to be positioned at the foot of the scarp. At [286] we direct QLDC to produce a suitable planning map to be included in the ODP subject to our final approval.

[100] The other matter concerns the proper enunciation of ONL values. Although Hawthenden’s relief is in regard to repositioning of boundaries, the evidence reveals that this is partly related to the uncertainty that arises from the PDP’s approach whereby ONL values are not enunciated. We acknowledge that the Hawthenden appeal concerns only a small extent of the entire Mt Alpha ONL. On the other hand, we find the evidence to demonstrate the Upper Terrace is both highly visible from public areas around Wanaka and distinctive in landscape character. That distinctive aspect of the landscape character is not acknowledged in the description of landscape values for the Alpha Range ONL offered by Ms Mellsop (as we set out at [15]). On the matter of land use and development uncertainty, there would seem to be a realistic opportunity to offer greater clarity by scheduling values such that there would be a clearer connection between the relevant

⁷⁴ Waterfall/Maungawera, JWS, p 4.

⁷⁵ Transcript, pp 34 – 37.



ONL overlays on the planning maps and associated objectives, policies and assessment matters.

[101] In this particular context, we find it would be appropriate to explicitly acknowledge (in any ONF values schedule included in the ODP) that productive pastoral farming is compatible with those identified ONL values.

[102] Associated leave is granted and directions made at [279] and following.

UCESI – Waterfall Hill/Creek⁷⁶

Introduction

[103] On the recommendation of the Independent Hearings' Commissioners, the DV identifies the boundary between the Alpha Range ONL and the RCL as being just beyond the north-western Urban Growth Boundary ('UGB') of Wanaka Township.⁷⁷ Just beyond the UGB boundary, Ruby Island Road runs more or less at right angles to the Wanaka–Mt Aspiring Road towards a picnic area on the Lakeshore. Waterfall Creek runs more or less down its northern flank. Ruby Island Road is where the Alpha Range ONL boundary in issue has been placed.

[104] UCESI seeks that the Alpha Range ONL be extended (in place of RCL notation) to an area of land between the Wanaka-Mt Aspiring Road and Lake Wanaka just beyond Wanaka township in the vicinity of Ruby Island Road and Waterfall Creek ('Waterfall Hill/Creek').

[105] In its appeal, it expresses its related relief as follows:

⁷⁶ Our site visit included driving along the Wanaka-Mt Aspiring Road well beyond Ruby Island Road and also down Ruby Island Road to the carpark area near the lake shore. We also walked a little way along the track on the western side of Ruby Island Road. In undertaking the Hawthenden Farm site visit, we also obtained views of the Alpha Fan feature.

⁷⁷ We note that in their Report 16.1 regarding recommendations on the Upper Clutha Planning Maps, the Commissioners stated that UCESI did not actually seek amendment of the ONL line at this location in its submission on the notified PDP. The relief sought by UCESI at that time was either that the landscape lines on the PDP maps be excluded altogether or that they are included as dotted lines that are described as guidelines that are "*purely indicative*". Report 16.1: Report and Recommendations of Independent Commissioners Regarding Upper Clutha Planning Maps, 27 March 2018 at 50.



That in the two areas where the Society will give landscape evidence in the Court (Dublin Bay/Mount Brown, Waterfall Hill/Waterfall Creek) the Court holds where the Landscape Lines should be situated, and that these lines then appear as solid lines in the PDP.

[106] We understand that relief would, in essence, be to adjust the boundaries of the Alpha Range ONL (and consequential change to the RCL boundaries) according to the evidence of UCESI's landscape expert, Ms Lucas. In essence, Ms Lucas recommends that the Alpha Range ONL boundary be adjusted north-west of Wanaka township. Rather than following the line of Ruby Island Road, in that locality, she recommends that the ONL extend to include:

... the bedrock composite formations of Larch Hill and Waterfall Hill that abut the town.

[107] In summary, we understand UCESI seeks a boundary change to the effect that the following areas of land currently notated as RCL be included within the Alpha Range ONL instead:

- (a) the area of RCL to the east of the Wanaka-Mt Aspiring Road (i.e. on the lake side of the road) between Ruby Island Road and the UGB;
- (b) the area of RCL to the west of the Wanaka-Mt Aspiring Road that is a Rural Lifestyle Zone; and
- (c) a thin strip of land – of variable width – between the DV's ONL/RCL boundary and the straight-line western boundary of the Rural Lifestyle Zone and the Large Lot Residential Zone west and south-west of the Wanaka-Mt Aspiring Road.

[108] Given the nature of the relief pursued by UCESI involves a significant extension of the Alpha Range ONL south from Ruby Island Road, it is helpful that we start with a general overview of the appeal land. In doing so, we draw from the evidence of the two landscape architects, Ms Lucas and Ms Mellsop and the Waterfall/Maungawera JWS. Our comments here are also informed by our site visits.

[109] The Waterfall/Maungawera JWS record an agreement that the biophysical and geomorphological attributes of the Upper Clutha Basin are appropriately described in Ms Lucas' evidence. Ms Lucas describes Wanaka's "intensively ice-sculpted landscape", referencing Mt Alpha, Mt Maude, Mt Brown and Mt Iron, and the Clutha River outlet to



the Lake. That description helps identify that this wider Upper Clutha landscape has a unifying geomorphological narrative. However, in evaluating UCESI's Waterfall Hill/Creek relief, we focus on the more immediate landscape context of Mt Alpha, Roys Peak and the moraine and fluvial outwash area between Roys Peak and Lake Wanaka, including the ice-scoured trough and the sequence of 'rôche moutonnée' that stretch along the edge of the Lake between Damper Bay and Wanaka township.⁷⁸ That sequence includes Larch Hill and Waterfall Hill, although the Waterfall/Maungawera JWS records that Waterfall Hill and Larch Hill are "less dramatic and distinct" than others in this 'rôche moutonnée' sequence.⁷⁹

[110] The Wanaka-Mt Aspiring Road passes through the appeal area. It is the main highway route between Wanaka and Mt Aspiring National Park and also for the many tourists and others travelling to attractions such as the Roys Peak walking track, Glendhu Bay, the Motatapu Track and other popular visitor attractions. Edging the Lake is the popular Waterfall Creek Track that links with the Glendhu Bay (Millennium) Track, providing public access to this area for cyclists and walkers. Particularly Waterfall Hill and Larch Hill are visible from many parts of Wanaka township and the Lake.

[111] In the north-western corner of Wanaka township, land-use zoning to the west and south of the Wanaka-Mt Aspiring Road progresses from Lower Density Suburban Residential to Large Lot Residential A to Rural Lifestyle.⁸⁰ This final transition occurs directly opposite the Larch Hill feature which lies to the east of the Wanaka-Mt Aspiring Road. In that vicinity, a Lower Density Suburban Residential zone extends around the south-eastern and eastern edges of Larch Hill and beside the Lake. The Waterfall/Maungawera JWS includes the following relevant description of this area of landscape:⁸¹

There are increasing levels of domestication on the [rôche moutonnée] moving down the lake towards Wanaka, both before and after Waterfall Creek.

⁷⁸ As shown in Ms Lucas' Upper Clutha Attachments, November 2018, Sheets 11 or 31.

⁷⁹ Waterfall/Maungawera JWS, p 4, 1st box.

⁸⁰ PDP Decisions Version Map 22 – Wanaka.

⁸¹ Waterfall/Maungawera JWS, p 4, 1st box.



The evidence

[112] Ms Lucas raises several issues regarding the appropriateness of the landscape assessment that informed the DV's choice of Alpha Range ONL boundary location in this vicinity. She characterises as arbitrary the choice of Ruby Island Road as a boundary "as there are similar landforms and vegetation either side".⁸²

[113] Ms Lucas explains that she favours including Larch Hill and Waterfall Hill as part of the Alpha Range ONL because these are part of the noted sequence of *rôche moutonnée* and "as promontories ... provide an important introduction to" that sequence. She acknowledged that, in a comparative sense, these are less distinct than the other *rôche moutonnée* but noted they were part of an enclosed and important gateway to Wanaka for the highway. She considers that, functionally, they are properly addressed as part of the wider "grand Lake landscape" and that the DV's choice of boundary renders Larch Hill and Waterfall Hill "orphaned".⁸³

[114] Ms Lucas appended to her written evidence a copy of the evidence she presented to the Environment Court in relation to 2002 appeals in the plan review that resulted in the ODP. We do not accord that material significant weight. Rather, in terms of opinion expressed at that time, it is overtaken by the findings of the court in *Wakatipu Environmental Society*.⁸⁴ Furthermore, her evidence of that time and the court's findings, were in relation to the area described in that decision between Damper Bay and Waterfall Creek. While nearby, it is not the same locality as the appeal land. Accepting the court relied in part on Ms Lucas' opinion to determine that the relevant area in that case was part of the ONL, does not imply we should make the same finding for the land in issue here on the evidence before us.

[115] Comparatively speaking, Ms Mellsop offers a more detailed description of the landscape attributes. We refer to the description we record at [14]. Ms Mellsop also sets out her opinion on the Alpha Range's related landscape values (which we set out at [15]). For the relevant locality for consideration of the appeal land, she adds the following (our emphasis).⁸⁵

⁸² Evidence in chief of Ms Lucas, for UCESI, dated 30 November 2018, at [22] and [52].

⁸³ Evidence-in-chief of Ms Lucas, for UCESI, dated 30 November 2018, at [54]–[56].

⁸⁴ *Wakatipu Environmental Society v Queenstown Lakes District Council* EnvC Christchurch, C73/2002, 26 June 2002, at [23]–[42].

⁸⁵ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [8.4]–[8.10].



- 8.4 ... In the Waterfall Creek to Damper Bay valley, the key elements/attributes that contribute to the ONL values are the prominent and highly expressive row of *r*ôche moutonée features (see Photograph 6 in Appendix B) and the **moderate to high level of naturalness**, evidenced by the presence of wetlands and natural patterns of vegetation spread on the hummocky landforms. The contrast between these features and the lake surface and the transient play of light on the hummocky topography, where it is open in character, leads to **dramatic aesthetic effects**. The flatter alluvial land within the valley has a number of dwellings, grazed paddocks, exotic trees and a small area of vineyard (see Photographs 7 and 8 in Appendix B). There are also more unkempt wild areas with little obvious human modification other than the road and powerlines (see Photograph 9 in Appendix B). Public access is available along the foreshore and eastern sides of the *r*ôche moutonée via the Glendhu Bay (Millennium) track. Apart from consent approval for one or two more buildings, I am not aware of any significant landscape changes in the Waterfall Creek to Damper Bay valley since the C73/2002 decision.
- 8.5 East of Ruby Island Road, in the area subject to appeal, **the landscape character is more domesticated** with a developed Rural Lifestyle Zone on the Waterfall Creek fan and on glacial outwash material at the toe of the mountainside. North of the Wanaka – Mt Aspiring Road are two eroded schist landforms (refer Figure 4 in Appendix B), one the site of the Blennerhassett dwelling and associated mature exotic planting and the other the site of the Rippon vineyard dwelling, cellar door and vines (refer Photographs 10 and 11 in Appendix B). On the smoother fan and alluvial land around the *r*ôches moutonée are vineyards, large scale exotic planting and a horse arena. Apart from the steep north-eastern face, **the Rippon vineyard schist landform is not very legible from public places and is separated from the lake by urban development. The Blennerhassett *r*ôche moutonée is more legible from surrounding roads and viewpoints to the east and contributes to the legibility and expressiveness of the ice-sculpted landscape and to its aesthetic values when viewed from the north-east. However, the crest and the western and southern slopes are obscured by exotic planting.**
- 8.6 **The fans and paleo channels of Waterfall Creek to the east of Ruby Island Road (refer Figure 4 in Appendix B) are modified by horticultural and rural living activities and are not particularly legible or expressive** (refer Photograph 12 in Appendix B). In my view the extent and density of rural living, vineyard and recreational development above and below the road mean that **this area as a whole is not sufficiently natural to be included within the ONL**. In this location the open rural land around Wanaka – Mt Aspiring Road is also separated from the steep mountain slopes by rural living development within the Rural Lifestyle Zone.
- 8.7 While there are dwellings, groups of exotic trees, intensively grazed pasture and small areas of vineyard in the valley to the west (within the ONL), these elements of domestication and human modification are balanced by intervening expanses of



rough pasture, regenerating indigenous vegetation and wetland areas. **To the east of Ruby Island Road vegetated rural living properties, vineyard and intensively grazed pasture predominate.** This is clearly evident in the aerial photograph in Figure 5 in Appendix B. In my view there is an observable difference in landscape character west and east of Ruby Island Road and the western Rural Lifestyle Zone boundary. The land to the east of these points as far as urban Wanaka reads as quite separate from the wider Mount Alpha range ONL as a consequence of:

- (a) its contrasting land cover and land use/management; and
- (b) the patterning of smaller scale rural living properties along the south-western side of Wanaka – Mt Aspiring Road that physically severs the majority of the appeal area from the wider ONL.

ONL boundary at the toe of Mount Alpha

- 8.8 South of Waterfall Creek, the PDP ONL boundary roughly follows the 380 masl contour at the toe of the Mount Alpha slopes. In some places the landscape boundary coincides with the Rural Lifestyle or Large Lot Residential zone boundary, but in others it is up-slope from the zone boundary or within the zone. UCESI has sought that the landscape line follow the zone boundaries in this area south of Waterfall Creek (refer Figure 3 in Appendix B). I have not walked the length of this area to determine exactly where the legible toe of the mountain slope lies.
- 8.9 However detailed 0.5m contour data for this area shows that the toe of the mountain face, where the steep slopes change to a slightly easier gradient or to gently sloping land, does not follow either the Decisions Version ONL boundary or the zone boundaries (refer turquoise line in Figure 6 in Appendix B). In my opinion the topographical change in gradient is an appropriate ONL boundary in this location, as it also generally corresponds with a transition from the more rough and unkempt mountain slopes to the more manicured and developed areas of the Rural Lifestyle and Large Lot Residential Zones below. In my view the straight edge of the rural living and urban zones, which is the boundary sought by UCESI, does not accurately correspond to the toe of the mountain slope.
- 8.10 In my opinion the ONL boundary in the vicinity of Waterfall Creek and Ruby Island Road is appropriately located on the Decisions Version maps. The boundary south of Waterfall Creek would be more appropriately located at the actual toe of the mountain slopes, as shown on Figure 6. However, I understand there is no scope to relocate the boundary further east than either the Decisions Version boundary or the boundary sought by UCESI.



Submissions

UCESI

[116] UCESI's opening submissions do not address the relief the Society seeks for Waterfall Hill/Creek to any significant extent. Mr Haworth quotes a finding in a 1998 Environment Court decision concerning the "outstanding significance" of the landscape in the vicinity and submits that this would seem to support Ms Lucas' opinion that the appeal area should be classified as ONL rather than RCL.⁸⁶ However, as we have noted, our findings must be afresh and on the evidence before us. In his closing submissions for UCESI, Mr Haworth emphasises that Ms Mellsop did not do the primary analysis that informed the choice of ONL boundary in the NV. He speculates that, if Ms. Mellsop had addressed this vicinity herself from first principles, she may well have come up with a more robust and credible ONL/RCL boundary. Mr Haworth also offers various opinions on how he, personally, considers the landscape attributes should be valued.⁸⁷ Meaning no disrespect to Mr Haworth, who is a well-informed local resident, he is not qualified to assist us in those matters of expert opinion.

Blennerhasset Family Trust

[117] Blennerhasset Family Trust, the owners of land that UCESI seek be given ONL notation, support QLDC's position. Mr Todd submits that we should prefer Ms Mellsop's evidence over that of Ms Lucas. In particular, he refers to inconsistencies in Ms Lucas' methodology, including with reference to the Landscape Methodology JWS. He also refers to various concessions made by Ms Lucas in cross-examination, including as to the landscape of Waterfall Creek being "less natural" than land to the west that are given ONL notation.⁸⁸

QLDC

[118] QLDC's closing submissions describe the substance of UCESI's closing as "conjecture". It submits that, as Ms Mellsop has undertaken her evaluation according to the agreed methodology, and Ms Lucas conceded she had not done so, Ms Mellsop's

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Opening submissions for UCESI, dated 7 May 2019, at [191].

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Closing submissions for UCESI, dated 24 July 2019, at [41] – [44].

⁸⁸

Closing submissions for Blennerhasset Family Trust, dated 2 August 2019.



evidence should be preferred.⁸⁹

Discussion

[119] Whilst decisions about the location of landscape boundaries often come down to a matter of judgment, we do not agree with the suggestion that the choice of Ruby Island Road is an arbitrary or inappropriate one.

[120] We find Ms Mellsop's identification of landscape attributes applies sound landscape assessment methodology, and is reliably informed. Similarly, in the absence of any identification of values in the PDP, we prefer Ms Mellsop's opinions on related landscape values.

[121] We are not persuaded that excluding Larch Hill and Waterfall Hill from the Alpha Range ONL would leave them 'orphaned' in any relevant landscape sense. Whilst they can be viewed as part of a sequence of other *r*oches moutonnées that are included in the ONL, the evidence also reveals them to be related to other geological features further south and east of Wanaka Township. We refer, for example, to Sheet 4 of Ms Lucas' Upper Clutha attachments, entitled 'the ice-sculpted landscape', which shows lines representing elements of the Wanaka Terminal Moraine Ridge (coloured in purple).

[122] In any case, as the experts agree in their relevant joint witness statement⁹⁰ ('Waterfall/Maungawera JWS'), there are increasing levels of domestication on the *r*oches moutonnées moving down the lake towards Wanaka, both before and after Waterfall Creek". We accept Ms Mellsop's opinion in finding that both these features and the remaining appeal land are materially more domesticated than other *r*oches moutonnées within the Alpha Range ONL and not sufficiently natural to be included in the ONL.

[123] While Ruby Island Road, as a man-made structure, is not the same as the natural boundary of Waterfall Creek, we accept that they are close to each other and effectively almost indistinguishable as an ONL boundary.

⁸⁹ Closing submissions for QLDC, dated 2 August 2019, at [4.12] – [4.14], referring to Transcript p 901, l 30.

⁹⁰ Joint witness statement, as between Ms Mellsop and Ms Lucas, dated 30 January 2019.



[124] The soundness of Ms Mellsop's opinions on these matters, supported by observations on our site visit, leads us also to be satisfied that the DV's ONL boundary is the most appropriate in this locality. Therefore, we decline this aspect of UCESI's relief.

Other matters

[125] Finally, we return to the matters noted by Ms Mellsop (at her [8.9] and [8.10]) concerning a minor discrepancy in the DV's mapping. A matter arising from this is whether the court has scope under s293 and should make directions to rectify the mapping issue she describes (namely, to reposition the Mt Alpha ONL boundary south of Waterfall Creek to the actual toe of the mountain slopes). We make related directions for supplementary submissions on this at [279] and following.

Maungawera Valley and Dublin Bay/Mt Brown⁹¹

Background

[126] UCESI seeks an ONL classification for the Maungawera Valley (including the Maungawera Fan, the northern slopes of Mt Brown and Maungawera Hill) and for Camp Hill from its current RCL status.

[127] We draw on the evidence of Ms Mellsop, and our site visits, in describing the area.

[128] Maungawera Valley lies about 6km north of urban Wanaka and is aligned roughly west-east between the Stevenson Arm of Lake Wanaka and the Hāwea Flats. It is enclosed by the steep high country of Mt Gold, Mt Burke and Mt Maude (collectively, an ONL) to the north and by the elongated form of Mt Brown to the south (its southern side being in an ONL).

[129] The area the UCESI seeks to be categorised as ONL has been formed by glacial scouring, with overlays of glacial till and outwash gravels and more recent alluvial fan

⁹¹ The court undertook a familiarisation visit of the Valley and its surroundings, driving from Wanaka and turning from Sh6 and travelling along Maungawera Valley Road as far as the entrance to Mount Burke Station and then Dublin Bay Road to the lake edge, returning along the same roads. In addition, the court looked at the area from Camp Hill Road and adjoining roads. The court also took in views of the area on the walk to and from the summit of Mt Iron.



materials.

[130] The main water courses in the Valley are Quartz Creek, which flows across the Maungawera Fan to join Lake Wanaka, and a smaller ephemeral watercourse (Speargrass Creek) that flows south-east down the valley to join the Hāwea River.

[131] Streams flowing westwards from the mountains have formed the Maungawera Fan, a large alluvial fan that protrudes into the Stevenson Arm of Lake Wanaka towards The Peninsula, at the western end of the valley. On Mount Burke Station at the western end of the Valley, the Maungawera Fan is visible from the summit of Mt Iron. It is a large and distinctive feature that has been identified as one of the best preserved and most geologically significant fans in the District.⁹² There is a cluster of buildings, associated with Mount Burke Station, located on the Fan along with stands of mature Lombardy poplars and other mature exotic trees.

[132] At its eastern end, the Valley is largely enclosed by an elevated area of moraine known as Maungawera Hill. To the south, the Valley is bounded by Mt Brown. This is an elongated ice-smoothed landform that falls steeply towards Lake Wanaka to the south-west but otherwise has a rolling moderate to gentle contour. The landform extends south-east to near SH6, where it has been truncated by fluvial action, forming a distinct escarpment. The eastern part of the landform is overlain with glacial till and moraine. While the ice-eroded mountain has a smooth 'upstream' surface typical of *rôche moutonnée*, it does not have the classical steep ice-plucked 'down-stream' surface.

[133] There are areas of regenerating *kānuka* woodland on the northern slopes of Mt Brown, on terrace escarpments, and around Quartz Creek as it flows across the valley and fan, but the valley is otherwise largely in pastoral and cropping land uses. Mature exotic shelterbelts divide paddocks on the Valley floor and Maungawera Fan and there are forestry blocks on Maungawera Hill.

[134] The Valley is accessed by road via Maungawera Valley Road (which intersects with SH6 about 8km northwest of Albert Town). Particularly at its eastern end, the Valley is a short commute from the townships of Wanaka, Albert Town and Hāwea. Rural living development is present on both this hill and the lower northern slopes of Mt Brown, with



⁹² Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [8.13] citing evidence of Mr O'Leary for Hawthenden Ltd (Submitter 776) at Hearing 12 Stage 1 PDP.

more frequent dwellings, driveways and exotic planting than elsewhere within the Valley.

[135] Following the exchange of evidence and expert conferencing between the landscape experts, Ms Lucas and Ms Mellsop, Ms Lucas changed her opinion such that she recommended a smaller expansion of the ONL than she had originally supported. As UCESI framed its appeal and case on the basis of Ms Lucas' opinion, we understand (in the absence of submissions to the contrary), that Ms Lucas' modified opinion also represents UCESI's modified relief. As shown in Exhibit DL1,⁹³ this is to extend the ONL by some 1400ha⁹⁴ ('appeal land'):

- (a) west to Maungawera Hill;
- (b) south across the Maungawera Valley to join up with the Dublin Bay ONL to the west (containing that part of Mt Brown visible from Lake Wanaka) and the Clutha River ONF (and ONL) to the south; and
- (c) east across SH6 towards the Hāwea River in a roughly triangular shape slightly to the north of Camp Hill Road.

[136] Under the DV's relevant planning maps, the appeal area has a RCL notation.

The evidence

Landscape analysis that informed the NV and the DV ONL and RCL notations

[137] Ms Mellsop provided us with electronic links to the two reports prepared by Dr Read to inform the NV of the PDP. The two reports came to different conclusions about the extent of the ONL in the Maungawera Valley. Ms Steven peer reviewed the reports, recommending to the independent commissioners that the boundary of the ONL follow a higher elevation recommended by Dr Read. The NV was prepared on the basis of Dr Read's recommendation.

[138] In her evidence to the QLDC's independent commissioners' hearing, Ms Mellsop recommended a modified approach that we loosely describe as an "intermediate boundary" in the sense that it fell somewhat between the two boundaries recommended by Dr Read and Ms Steven. In particular, Ms Mellsop recommended that the ONL

⁹³ Exhibit DL 1 updated sheet 28.

⁹⁴ As estimated by Ms Mellsop in evidence-in-chief for QLDC, dated 2 November 2018 at [8.23].



encompass several steep foothills and ridges that are clearly legible as part of the mountain range rather than the valley (and which Ms Steven had excluded) and that the ONL exclude portions of flatter rolling down lands and the lower part of Quartz Creek that are not part of the mountain landscape forming the ONL (that Dr Read had recommended be included in the ONL).

[139] In their Report to QLDC for the purposes of its decision, the independent commissioners recommended in favour of Ms Mellsop's intermediate boundary.⁹⁵ The commissioners also concluded that Mt Brown is not sufficiently distinctive to be classified as an ONF. QLDC accepted that recommendation, now reflected in the DV.

Methodology of landscape assessment

[140] In Decision 2.1, we set out our findings on the methodology for landscape assessment.⁹⁶ As we explain in that decision, that methodology draws from the Landscape Methodology JWS (of which Ms Lucas and Ms Mellsop are signatories), Sch 3 of the pRPS and relevant case law. We are satisfied that both Ms Lucas and Ms Mellsop applied sound assessment methodologies in their evidence.

Key evidential issues

[141] In their Waterfall and Mt Brown JWS, Ms Lucas and Ms Mellsop helpfully identify the following as the key evidential issues in regard to the Maungawera Valley and Dublin Bay/Mt Brown:⁹⁷

- (a) should the glacial deposition lands in the Upper Clutha be classified as ONL?
- (b) is the Maungawera Valley, including the northern part of Mt Brown, part of an ONL?
- (c) is Mt Brown an Outstanding Natural Feature ('ONF')?
- (d) is the land south of Mt Brown as far as the Clutha River and east to Camp Hill also part of an ONL?

⁹⁵ Report 16.1 Report and Recommendations of Independent Commissioners Regarding Upper Clutha Planning Maps [66].

⁹⁶ *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160 at [35] – [65] and [80].

⁹⁷ Waterfall/Maungawera JWS, pp 4 – 6.



[142] We find those questions largely capture the essence of what we need to decide, on the evidence, to inform our ultimate conclusions.

[143] An additional issue arising from the testing of evidence, and which we address, is whether the Maungawera Fan might be considered to be an ONF.

Relevant points of agreement in the Waterfall/Maungawera JWS

[144] Before we discuss the differences between the experts on those evidential issues, we note the following points of agreement between them (as recorded in the Waterfall/Maungawera JWS):

- (a) the biophysical and geomorphological attributes of the Upper Clutha basin are appropriately described in the evidence of Ms Lucas;⁹⁸
- (b) the southern part of Mt Brown is appropriately classified as part of the Lake Wanaka ONL. Mt Brown is a *rôche moutonnée* and has high biophysical values;
- (c) the Maungawera Valley, between the mountain slopes to the north and Mt Brown, has biophysical value as a glacial deposition landscape. The Valley floor in the eastern part is flat in contrast with the moraine belt to the west with the undulating character;
- (d) the ONL line in the DV along the moraine to Dublin Bay excludes other glacial deposition lands eastwards;
- (e) the Maungawera Fan has high biophysical values as a result of its size, geomorphological significance and legibility, including in relation to Lake Wanaka. The Fan is a separate component from the glaciated valley eastwards.

Should the glacial deposition lands in the Upper Clutha be classified as ONL?

[145] Ms Lucas raises an overall concern that the landscape analysis underpinning the NV and DV did not include a “first principles” assessment that takes proper account of the “geomorphological story” of the landscapes of Upper Clutha. She describes the analysis as having been primarily to determine landform lines where the continuity of character extended to. She says those lines have typically been drawn in bedrock

⁹⁸ Referring to the evidence-in-chief of Ms Lucas, for UCESI, dated 30 November 2018, at [8] – [15].



country so as not to encompass another important element of the ‘ice-sculpted’ Upper Clutha, namely the depositional lowlands. In addition to the Waterfall Hill/Creek area, she describes the Maungawera Valley as illustrating this. That is particularly in the fact that the DV classifies Lake Wanaka to the shore and the mountain slopes above the Valley as ONL, but the Valley floor (“depositional lowlands overridden bedrock elements protruding”) as RCL.⁹⁹

[146] Ms Mellsop notes that most of the glacial deposition lands in the Upper Clutha have been relatively intensively farmed, developed for plantation forestry, or subdivided for rural living. While she accepts that these deposition lands are legible and expressive of the landscape's formative processes, she does not consider that they reach the threshold for outstandingness at a District level. In addition, in some cases, she was of the view that they are not sufficiently natural to be included in an ONL.¹⁰⁰ In cross-examination, Ms Mellsop agreed that little of the outwash plain landscape was identified as ONL because it has been farmed and domesticated intensively for quite a long period of time.¹⁰¹

[147] We note those observations as part of the context for understanding the respective experts' opinions on the Maungawera Valley's relative landscape quality. UCESI did not seek ONL classification for all the Upper Clutha glaciation deposit land. It would be plainly inappropriate to go that far.

Is the Maungawera Valley, including the northern part of Mt Brown, part of an ONL?

[148] Ms Lucas considers that, analysed in light of its geomorphology, the glacial deposition lands associated with Maungawera and the Mt Brown *r*oches moutonnées are associated parts of a single ONL and should not be treated as separate landscapes. In her opinion, the more cultivated terrain of the Valley does not make it inappropriate to be included in this larger ONL. Rather, while the Valley lands are predominantly farmed, they remain largely uncluttered by built development and, in her opinion, are adequately natural to have legibility in the landscape. She considers the landform, and spatial diversity, provide valued landscape experience.¹⁰²

⁹⁹ Evidence-in-chief of Ms Lucas, for UCESI, dated 30 November 2018, at [8] – [23].

¹⁰⁰ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [7.12], [8.6], [8.16] – [8.24].

¹⁰¹ Transcript at p 877, l 19 – 21.

¹⁰² Evidence-in-chief of Ms Lucas, for UCESI, dated 30 November 2018, at [8] – [27] and [31].



[149] In her evidence-in-chief, Ms Lucas offers the following opinion on the landscape values of this area.¹⁰³

...

The geological, topographical and geomorphological values of the location are widely recognised as having natural science importance, high legibility value, and the composite to have resulted in a high aesthetic. Enclosed by The Peninsula, the rather tucked away character of Stephensons Arm and the giant fan forming the frontage to the Maungawera valley make this a memorable and valued area of the lake landscape. It is a special retreat place tucked away from mainstream Wanaka. [Its] remoteness and naturalness are important. The locale has high shared and recognised values.

The Maungawera has high heritage and tangata whenua value. The area has been a place of settlement for centuries. Te Rapuwai were the original settlers, then Waitaha, followed by Kati Mamoe and Kai Tahu. By the time of Pakeha settlement Kati Mamoe and Kai Tahu enjoyed regular encampments at this important lake settlement. Waiariki (Stevensons Arm) and Parakārehu (The Peninsula) were used extensively, including by earlier iwi and by Kai Tahu. Artefacts include evidence of a number of umu, and finds right on the valley floor.

Mount Burke Station was established in 1860 as Run 829, with an early homestead established around in Stevensons Arm. The station, which includes The Peninsula, remains a Pastoral Lease.

[150] In particular, Ms Lucas places a high biophysical value on the geomorphological sequence from Lake Wanaka through the Valley and around Mt Brown. She also considers that, given the legibility and other experiential value, the valley in total is of sufficient naturalness for the landscape to meet the thresholds for naturalness and outstandingness.¹⁰⁴

[151] In cross-examination Ms Lucas explained her opinion that the glacial processes are not only relevant as a natural science value, but also in contributing to landscape character in terms of associative values. She explained that the latter is in terms of the different experiences of the landscape including its steepness, ruggedness and gentleness. She said it was a complex landscape with different components. She said these also include associative values in its heritage, referring in particular to its settlement and pastoral heritage, and tangata whenua values.¹⁰⁵

¹⁰³ Evidence-in-chief of Ms Lucas, for UCESI, dated 30 November 2018, at [40] – [42].

¹⁰⁴ Evidence-in-chief of Ms Lucas, for UCESI, dated 30 November 2018, at [17], [27] and [46].

¹⁰⁵ Transcript, p 899, l 11 – 28.



[152] Ms Mellsop had a different starting point. On the matter of the potential relationship of valley floors to their edges, she gives the examples of the Cardrona, Matukituki and Motatapu valleys. She characterises these as examples of landscapes that display a continuum with the lower parts of the valley very difficult to separate from the valley side. She considers the Maungawera Valley different in character to those examples, being neither completely enclosed nor dominated by steep surrounding mountains. Whilst acknowledging Mts Maude, Gold and Burke to the north of the Valley, she observes that there is not the same level of enclosure to the south, east or west.¹⁰⁶

[153] Ms Mellsop considers the Maungawera Valley (excluding those areas identified as ONL) to be sufficiently large to form a landscape in its own right (over 1400 ha). In her view, it is not so dominated and enclosed by the mountainous ONL to the north that it would be considered a smaller part of that landscape.¹⁰⁷

[154] In her opinion, the positioning of the ONL boundary in the DV at the ridgeline so as to just cover the south-western face of the Mt Burke Range reflects a geomorphological transition between the steeper mountain foothills and ridges and the alluvial fans and hummocky glacial till or moraine. She considers that this ONL boundary is also appropriate in the sense that it is within the visual catchment of Lake Wanaka. By contrast she considers that, on the northern face of Mt Brown, there is no clear topographical, land use or vegetative change that would provide a logical landscape character boundary between the hill slopes and the Maungawera Valley flats.¹⁰⁸

[155] Ms Mellsop acknowledges that the Valley has scenic attributes and memorability when driving through it. She considers the area to have amenity values similar to those present elsewhere in the Upper Clutha RCL. She assesses Maungawera Valley (along with Maungawera Hill and the Fan) to have the following landscape values that, in her opinion, qualify them as part of a RCL (but not as an ONL):¹⁰⁹

- (a) **high biophysical values** as a consequence of the large geologically significant Maungawera Fan, the elevated ice-smoothed northern slopes of Mt Brown and the presence of regenerating kānuka woodland, particularly around Quartz Creek;

¹⁰⁶ Transcript, p 871, l 25 – 31.

¹⁰⁷ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [8.23].

¹⁰⁸ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [8.20] – [8.22].

¹⁰⁹ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [8.17] – [8.18].



- (b) **moderate legibility/expressiveness values** as a result of the open character and the legible alluvial fan protruding into Lake Wanaka, and the elongated form of Mt Brown;
- (c) **high aesthetic values** as a consequence of the scenic quality of the working rural landscape and Mt Brown, the views available to the Mt Burke range, The Peninsula and Lake Wanaka and the generally appropriate or well screened nature of rural living development.

[156] Ms Mellsop considers other landscape values of the landscape include:¹¹⁰

- (a) moderate naturalness values (as a result of the predominance of natural elements and the natural processes of indigenous regeneration in some areas);
- (b) moderate transient values (similar to those of the Hāwea Flats to the east);
- (c) low experiential values (as a consequence of the limited number of people accessing the valley);
- (d) moderate memorability values (as a typical Upper Clutha working rural landscape); and
- (e) moderate values relating to tranquillity and remoteness (as a consequence of the lack of through traffic, except on Maungawera Hill, and the low population density).

[157] Ms Mellsop offers the following overall opinion on why she does not consider the Valley part of an ONL:¹¹¹

I do not consider that the valley, including the fan, the northern face of Mount Brown, and Maungawera Hill, has outstanding values that would warrant categorisation as an ONL or as part of a wider ONL. The domesticated farmed, forestry or rural living character of the hill, valley and fan contrasts with the character of the (ONL) mountains to the north, which consist of dramatic kānuka-covered or bare eroding peaks – a classic South Island central divide landscape. The elements that render this mountainous landscape outstanding are primarily related to the dramatic and sublime soaring landform and the contrast between the steep topography and the surrounding lakes, valleys and outwash plains. The naturalness and ecological values of the vegetation cover, transient values of snow cover and light patterns, and the wild and remote values are secondary elements contributing to its classification as ONL.



¹¹⁰ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [8.18].

¹¹¹ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [8.19].

[158] In Ms Mellsop's opinion, the Valley is "not a significant component of the shared and recognised landscape values of the Upper Clutha".¹¹²

Is Mt Brown an ONF?

[159] Mt Brown is a *rôche moutonnée*. Its steep vegetated south-western face is part of the Lake Wanaka ONL. Ms Mellsop informed us that the Environment Court decision in the '*Crosshill Farms*' case determined that ONL classification was appropriate.¹¹³ The witnesses agree that the ONL line on Mt Brown appropriately defines the top of the Lake Wanaka landscape as addressed from Dublin Bay and, as such, is appropriately classified as part of the Lake Wanaka ONL.¹¹⁴

[160] Ms Lucas and Ms Mellsop agree that Mt Brown has high biophysical values and is legible as a single hill landform. There is a scattering of native shrub land, particularly *kānuka*, on its western and south-western slopes (which parts are within the Lake Wanaka ONL) and on its upper slopes north of this ONL overlay.

[161] Ms Lucas considers that the DV's placement of the ONL line along the top of Mt Brown is arbitrary. In particular, she points out that it does not address the Lake landscape as experienced from Stevensons Arm nor as experienced from the Maungawera Valley. She considers that, in terms of its bedrock landform and naturalness, all flanks of Mt Brown have a similar management character. She considers this would make an ONF classification of the Mt Brown *rôche moutonnée* appropriate, although she considers a more appropriate approach would be to treat it as part of an ONL that also encompasses the surrounding glacial depositional landforms.¹¹⁵

[162] Ms Mellsop does not consider Mt Brown sufficiently distinctive within the District to be classified as an ONF. In reaching that view, she acknowledges that Mt Brown supports areas of indigenous vegetation, is highly visible from public places, and encloses Maungawera Valley and Dublin Bay. She explained her opinion that Mt Brown does not display the classical *rôche moutonnée* form, is not as visually prominent as other

¹¹² Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [8.18].

¹¹³ *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* EnvC Christchurch C114/2007, 22 August 2007 at [43].

¹¹⁴ Waterfall/Maungawera JWS, p 5, 3rd box.

¹¹⁵ Waterfall/Maungawera JWS, p 5, 3rd box.



rôches moutonnées within the Upper Clutha (e.g. Mt Iron and Mt Barker) and is less expressive than some other ice-eroded ridges that are not classified as ONF (e.g. the schist ridge that encloses Malaghans Valley in the Wakatipu Basin). She also notes the rural living development on the lower northern slopes of the mountain, including a number of established dwellings, driveways and domestic amenity planting.¹¹⁶

[163] Ms Mellsop acknowledges that Mt Brown has high biophysical values and geological significance, but observes that these geomorphological values are only one consideration when deciding whether a landscape is outstanding.

[164] Ms Mellsop was cross-examined by Mr Haworth, for UCESI, about the extent of development that has occurred in the Valley. With reference to a plan of the Maungawera Valley produced in evidence,¹¹⁷ she commented on her understanding that there had been some subdivision and establishment of building platforms in the Valley and perhaps some 21 dwellings were established now. She explained that most of these are clustered along the lower northern slopes of Mt Brown and in that confined area there is a rural living character with structures evident in the landscape. She acknowledged that the remainder of the Valley is predominantly working farmland. Turning to the south-western slopes of Mt Brown, she was also asked about the property that was the subject of the *Crosshill Farms* case and noted her understanding that it had not been actively farmed for some time. She said she understands there are currently only two houses to the south of Dublin Bay Road.¹¹⁸

[165] In cross-examination, Ms Mellsop was not swayed by height comparisons between Mt Brown (561m) and the ONFs of Mt Iron (548m), Mt Barker (596m) and Roys Peninsula (436m). She said she had assessed Mt Brown from publicly accessible places, including the shores of Lake Wanaka and Dublin Bay and Maungawera Valley and looking back at it from Quartz Creek.¹¹⁹

[166] Ms Mellsop did suggest that some refinement to the ONL boundary at Mt Brown might be justified but she did not indicate what that might mean or the reasons why she favours such refinement.¹²⁰

¹¹⁶ Waterfall/Maungawera JWS, p 5, 3rd box.

¹¹⁷ Exhibit DL1– A3 map of Maungawera Valley.

¹¹⁸ Transcript, p 869, l 3 – 22; p 875, l 23 – p 877, l 9.

¹¹⁹ Transcript, p 862, l 22 – 32.

¹²⁰ Transcript, p 858, l 11 – 17.



Is the land south of Mt Brown as far as the Clutha River and east to Camp Hill also part of an ONL?

[167] Ms Lucas considers that “minimally improved drylands of the moraine and outwash from the Maungawera south to the Clutha provide important naturalness in this landscape”.¹²¹ She considers this area to be adequately natural and to contribute importantly to the glaciated complex.¹²²

[168] Ms Mellsop considers that this area of land behind Dublin Bay does not have sufficiently high biophysical, sensory or associative values to be classified as an ONL. She considers it to be similar in character to other parts of the Clutha Basin floor that is not classified as ONL e.g. Hāwea Flat and areas surrounding Kane Road.

Is the Maungawera Fan an ONF?

[169] Ms Lucas did not address the question of whether the Maungawera Fan is an ONF. However, she described how she regards the Fan as part of a geomorphological post-glacial narrative. That is particularly in the sense that it is highly legible and of very high natural science value as an intact geomorphic feature. She characterises the Fan as part of the mountain to lake system. She considers that the full Quartz Creek and Fan complex should be included as integral components of the ONL.¹²³

[170] Ms Mellsop gave a qualified opinion on this question. She suggested that there may be a geological rarity or representativeness basis for such a classification, but pointed out that this was a matter outside her area of expertise. She did, however, point out that the Fan is not included in the New Zealand Geopreservation Inventory for Otago (NZ Geological Society), which identifies the most important and most threatened sites and landforms in the region. She considers the land use and vegetation patterns of the Fan, and the level of its human modification and domestication, to be very similar to those in the remainder of the Valley to the east. The Waterfall/Maungawera JWS records Ms Mellsop and Ms Lucas agreeing that the Maungawera Fan has high biophysical values. However, Ms Mellsop’s overall opinion is that the sensory/perceptual and associative

¹²¹ Evidence-in-chief of Ms Lucas, for UCESI, dated 30 November 2018, at [46] – [50].

¹²² Evidence-in-chief of Ms Lucas, for UCESI, dated 30 November 2018, at [49] – [50].

¹²³ Evidence-in-chief of Ms Lucas, for UCESI, dated 30 November 2018, at [37] – [39]; Waterfall/Maungawera JWS, p 6.



values of the Fan (including its expressiveness, memorability and shared and recognised values) are not sufficiently high for it to be classed as an ONF.¹²⁴

Submissions

[171] In closing submissions for UCESI, Mr Haworth deals primarily with the proper landscape classification of the Valley, Mt Iron and the “outwash lands between Mt Brown and the Clutha River”.¹²⁵

[172] Mr Haworth submits that Ms Mellsop gives undue emphasis to the significance of working farm areas on the Valley floor in reaching her opinion that the DV’s RCL classification is the most appropriate. He refers to Ms Lucas’ characterisation of “outstandingness” prevailing given the scale and nature of the ONL context.¹²⁶ He adds that Ms Lucas’ evidence on that can be taken to reflect “how a visitor would perceive the valley when travelling along it”, adding that Ms Lucas’ evidence “is supported here; any person visiting the Maungawera Valley could not fail to be aware of and experience the ONL that is visible and largely surrounds the valley; they would experience the valley as part of an ONL context rather than as a working farm context”.¹²⁷

[173] Regarding Mt Brown, Mr Haworth characterises Ms Mellsop’s approach in supporting ONL classification of only one face of Mt Brown as arbitrary and showing a lack of appreciation of the distinctive standalone nature of this feature. He points out that, in the *Crosshill Farms* decision, the Environment Court stated that it was “not necessary” for it to determine the ONL boundary to the north of Mt Brown. On that basis, he submits that the ONL line determined in that decision was never intended to be representing “the final ONLF/RCL boundary”.¹²⁸ He adds:¹²⁹

16. In the context of the above it is not surprising Ms. Mellsop has difficulty with the line. It is relevant here that Ms. Mellsop inherited this LL from the PDP landscape reports prepared by Dr. Read and Ms. Steven. It is submitted that if Ms. Mellsop had

¹²⁴ Waterfall/Maungawera JWS, p 6; evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [8.24].

¹²⁵ Closing submissions for UCESI, dated 24 July 2019, at [11] – [33].

¹²⁶ Closing submissions for UCESI, dated 24 July 2019, at [23] – [30].

¹²⁷ Closing submissions for UCESI, dated 24 July 2019, at [23] – [30].

¹²⁸ Closing submissions for UCESI, dated 24 July 2019, at [11] – [17], referring to *Upper Clutha Environmental Society Inc v Queenstown lakes District Council* EnvC Christchurch C114/2007, 22 August 2007 at footnote 14.

¹²⁹ Closing submissions for UCESI, dated 24 July 2019, at [16] – [17].



addressed this vicinity herself from first principles she may well have come up with a more credible and robust landscape line.

17. In my submission the drawing of the Mt. Brown LL along the summit (per Crosshill) cutting a roche moutonnee in half, is another indication of the unreliable nature of the LL that have been delineated in the PDP. This can be compared with the robust process the Court undertakes in categorising landscapes, an example being the *Bald Developments* Environment Court decision

[174] Mr Haworth submits that a further flaw in Ms Mellsop’s approach is that she did not assess Mt Brown from locations along Stevensons Arm and The Peninsula or other “commonly frequented public places ... including all of the lake beaches, Stevensons Island and the surface of the lake”.¹³⁰

[175] Mr Haworth refers to Ms Lucas’ opinion that, as a feature, Mt Brown compares to Mt Iron as a “similar stark hill landform rising abruptly in the Dublin Bay and Maungawera landscape”. He notes that Ms Mellsop did not appear to understand the relative differences in heights between Mt Brown and various other features (including Mt Iron) when cross-examined on this. He submits that Ms Lucas’ opinion on Mt Brown is to be preferred in credibility terms.¹³¹

[176] Regarding the “outwash lands”, Mr Haworth focuses on the evidence from Ms Lucas (and in cross-examination of Ms Mellsop) as to the lack of adequate controls on vegetation clearance. He submits that it would be “inappropriate to exclude an area from being categorised as ONLF due to recent cultivation, for example, when the ONLF provisions are silent on addressing cultivation activity”.¹³²

[177] Counsel for QLDC, Ms Scott, submits that Ms Mellsop’s evidence should be preferred as having properly and thoroughly followed the appropriate landscape assessment methodology. In particular, it refers to the Landscape Methodology JWS as establishing that “the proper approach to evaluating landscapes is to consider all of the attributes collectively, rather than favouring certain attributes or values over others” and submits that Ms Mellsop followed that approach. Conversely, the QLDC submits that Ms Lucas did not do so, even though she agreed during cross examination that the assessment of amended landscape lines should be supported by an approach that follows the “agreed methodology”. Counsel characterises Ms Lucas’ approach as being

¹³⁰ Closing submissions for UCESI, dated 24 July 2019, at [18] – [19].

¹³¹ Closing submissions for UCESI, dated 24 July 2019, at [20] – [22].

¹³² Closing submissions for UCESI, dated 24 July 2019, at [32] – [33].



“brief” and giving undue emphasis to geomorphology. Ms Scott submits that, applying Ms Lucas’ approach would see “large areas of the Upper Clutha Basin” categorised as ONL due to their relatively unmodified geomorphology.¹³³

[178] In regard to Mt Brown, Ms Scott points out that Ms Mellsop was clear in her view that, as a feature, Mt Brown does not have outstandingness within the District such as to qualify as an ONF. It notes the predominance of pasture to the east of the ONL line and on its northern flank. Ms Scott also refers to the significant extent of rural living activity on the flanks and evidence that there is no clear demarcation between the landscape character of those flanks and the Valley floor. Ms Scott submits that Ms Mellsop’s evidence was undertaken according to the agreed methodology and that the criticism from Mr Haworth of arbitrariness was misplaced. Ms Scott notes that the photographs put to Ms Mellsop in cross-examination were from unknown locations and of unknown focal length. As for criticisms that Ms Mellsop had not assessed Mt Brown from publicly accessible locations, counsel for QLDC refers to her confirmation in cross-examination that she had:¹³⁴

...assessed Mount Brown from publicly accessible places, including the shores of the Lake and Dublin Bay and Maungarewa Valley, and looking back at it from Quartz Creek, Maungarewa Fan

[179] QLDC further submits that UCESI’s comparison of the heights of Mt Iron with those of other features that are ONFs in the District is irrelevant in this context, as overall height may have no bearing on their outstandingness as a feature.¹³⁵

Discussion

[180] As we have discussed in Decision 2.1, the PDP does not presently include any identification of the values that are recognised as being associated with identified ONLs or ONFs. Similarly, the PDP does not offer any identification of the values that inform the choices made in the DV of different RCLs.

[181] We accept that the appeal area has high geomorphological values, as described

¹³³ Closing submissions for QLDC, dated 2 August 2019, at [4.4] and following.

¹³⁴ Closing submissions for QLDC, dated 2 August 2019, at [4.5] – [4.10], referring to Transcript, p 862, 15 – 9.

¹³⁵ Closing submissions for QLDC, dated 2 August 2019, at [4.11].



and advanced by both landscape witnesses. We also recognise that the Valley as a whole, with the surrounding mountains, exhibits a glacial landscape sequence. That glacial landscape sequence is visible in a landscape that, in large measure, has pastoral and cropping land uses and land cover and associated farm buildings and farm residences.

[182] However, those common geomorphological origins do not, of themselves, dictate that the area at large, including the appeal area, must be treated as one landscape. Rather, in terms of the approach outlined in the Landscape Methodology JWS, it is valid to consider the area through a lens that identifies three separate but related landscapes:

- (a) an ONL to the north;
- (b) an ONL for Lake Wanaka extending to include the southern side of Mt Brown within the visual catchment of Lake Wanaka; and
- (c) the intervening appeal area between and outside those ONLs, containing the Maungawera Fan, the northern part of Mt Brown and the lower slopes of the mountains to the north, and the Crosshill area.

[183] If we were to prefer Ms Lucas' opinion on the values of the appeal area, that would support treating those landscapes either as one ONL unit of related ONLs (or two ONLs) and Mt Brown and/or Maungarewa Fan as ONFs. However, for a number of reasons we find Ms Mellsop's opinion more reliable on these matters and we accept her overall opinion that the appeal area should remain RCL.

[184] We agree with the submissions for QLDC that Ms Mellsop soundly applied the Landscape Methodology JWS. By contrast, we find Ms Lucas gave undue and imbalanced emphasis to geomorphological history. As a consequence, we find that Ms Lucas has unsoundly discounted the significance of the predominantly pastoral farming nature of much of the Valley (including the farm buildings on the Fan) and the relatively prominent rural residential colonisation of the northern flanks of Mt Brown. Because of that colonisation, and the topography and nature of vegetative cover of the northern and eastern flanks of the Mt Brown Range, we also agree with QLDC that those flanks essentially merge in a relatively indistinguishable way with the farmed Valley floor. Whilst we accept that Mt Brown can be treated as a 'feature', we find nothing unsound, in terms of landscape methodology, in the DV's approach of classifying only its southwestern flank as ONL. It does that because that flank is perceived as part of the Lake Wanaka ONL. It is not a case of arbitrarily cutting the feature in half, in landscape management terms,



as UCESI has claimed.

[185] We are satisfied that the disputed landscape boundary lines for the ONL and RCL are soundly based and justified on the evidence and we confirm them.

[186] However, there are some matters concerning the design of approach to these ONL and RCL overlays that we find on the evidence warrant further refinement.

[187] The first such issue concerns the lack of any enunciation of landscape values for the Maungawera Valley RCL. As we discuss in Decision 2.1 and the companion Decision 2.2, scheduling of values provides an important interface between landscape mapping and related objectives, policies and assessment matters. Similarly also, the evidence we have heard on this aspect of UCESI's appeal reveals a weakness in this design of the DV insofar as it does not enunciate the landscape character and visual amenity values for the Maungawera Valley RCL.

[188] One matter of concern is that there is already some degree of colonisation of rural living at the eastern end of the Valley, including on the northern flanks of Mt Brown. Bearing in mind the north-easterly aspect and the ONL outlook across the Valley from potential further building sites on that flank, we infer a risk of further significant colonisation of that northern flank through subdivision and development. Even the Valley floor would enjoy spectacular outlooks. Further, these localities are only short commuting times between the Valley and the townships of Wanaka, Albert Town and Hāwea.

[189] Relying on individual resource consent applications, in the absence of clear direction or guidance for future activities in a landscape, has the potential for adverse cumulative landscape degradation. That risk is aggravated, in our view, by the fact that the PDP does not enunciate values that inform its mapping of RCLs, particularly the Maungawera Valley RCL. On the evidence, we find a more appropriate response to s7(c) for the Valley would be for values to be enunciated so that more informed judgments can be made in resource consent application processes about locations for inappropriate and appropriate activities at a spatial level or scale that transcends the limitations of the individual resource consent application. We find Ms Mellsop's enunciation of values (as we set out at [15]) a helpful starting point for what the PDP could include. The fact that UCESI's case has called on us to consider the Valley as a whole reinforces the value of Ms Mellsop's work.



[190] At [279] and following, we make directions with a view to determining in due course, whether and how a suitable improvement to the ODP could be achieved in those terms.

Pisa/Criffel Range ONL: Lake McKay Station

Background¹³⁶

[191] We heard from two landscape experts, Ms Anne Steven for LMSL and Ms Mellsoy for QLDC. Both experts participated in expert conferencing and signed a Joint Witness Statement dated 31 January 2019 ('Lake McKay Station JWS').

[192] The Pisa/Criffel Range frames the western edges of the Upper Clutha Basin, more or less west of the Luggate – Cromwell Highway. Part of the Range is in the Central Otago District and this is marked by a contrast in recent land development patterns either side of the district boundary. In particular, just beyond the boundary is the rural living development on the Queensberry Hills and Queensberry Terraces rural residential development. By contrast, the adjacent land on the QLD side of the boundary remains essentially in farming use, albeit with clear evidence of more intensive farming.¹³⁷

[193] Ms Mellsoy's description of the wider geographic area and the landscape values she identifies with the Pisa/Criffel Range ONL were not materially disputed by the expert called by LMSL, Ms Steven. It provides a helpful basis for consideration of the issues in the appeal.¹³⁸

[194] Starting with the wider geographic area of the Range, Ms Mellsoy offers the following description:

¹³⁶ The court undertook a site visit during the hearing. By arrangement with the parties, we were accompanied during our visit of the Station by its owner, Mr Colin Harvey. We visited several locations on the Station, including Sheepskin Creek Plateau, Tin Hut Creek Plateau and Mid-Run Downs. We also inspected sections of Luggate Creek. We inspected the appeal areas from several public viewing points, including from Mt Iron and the State highway. We drove up to and through the rural lifestyle subdivision on Queensbury Hills. Acknowledging that this is actually in Central Otago District, it provided views into Lake McKay Station from a more southerly perspective.

¹³⁷ Helpfully illustrated in Att A Fig 6 to the evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018 at [75], [77], [79], [81] – [99] and Att A, Fig 6.

¹³⁸ Evidence-in-chief of Ms Mellsoy, dated 2 November 2018, at [12.2] – [12.4].



- 12.2 The Pisa/Criffel range forms the eastern side of the Cardrona Valley and at its northern end abuts the Upper Clutha Basin. The eastern faces of the Pisa Range are within the Central Otago District. ...
- 12.3 Historically the Pisa/Criffel Range has been extensively farmed, resulting in an open character and highly legible landform. Indigenous tussock grasslands remain at higher elevations and natural patterns of bracken, kānuka and grey shrubland regeneration are present on the mid slopes. At the northern end of the range, Luggate Creek, Alice Burn and Dead Horse Creek have created deep gullies and gorges, and these support regenerating kānuka woodland and grey shrubland communities. Some of these have been identified as Significant Natural Areas in the PDP.
- 12.4 Other than clearance and management of vegetation, human modifications of the landscape include farm tracks and fences, the road access and built facilities at Waiorau Snow Farm and the Southern Hemisphere Proving Ground, the Aurora Energy sub-transmission line, and recreational tracks and huts. Remains of historic gold mining are also a feature of the landscape. At the northern end of the range sits a lower ice-eroded shoulder of the mountain. Pockets of remnant moraine and till on this shoulder have improved irrigated pasture and cropping that contrasts with the surrounding vegetation patterns. ...

[195] Focusing more specifically on the northern end of the Pisa/Criffel Range, Ms Mellsoy characterises this as:¹³⁹

... a complex landscape where the schist mountains meet glacial lateral moraine remnants, mounds and terraces of glacial till and outwash plain terraces.

[196] Ms Mellsoy goes further in her opinion on these matters, but as these are matters of contention, we return to them when we discuss the evidence more fully.

[197] However, those introductory remarks about the northern end of the Pisa/Criffel Range are a helpful initial description. In addition to the "ice-eroded shoulder" of the Range, and the scattering of glacial till on the lower Range terraces, other distinctive glaciated landforms towards the northern end of the Range include the Clutha River feature, carved into the Basin floor, and low-lying outwash plain terraces. Above the steep escarpments on the Pisa/Criffel Range are sizeable gently sloping plateaus or terraces at several levels. Several of these plateaus/terraces are deeply incised by valleys and gorges that host distinctive vegetation patterns. Above the plateaus/terraces

¹³⁹ Evidence-in-chief of Ms Mellsoy, for QLDC, dated 2 November 2018, at [12.8].



are the higher, steeper slopes of the Pisa and Criffel Ranges.¹⁴⁰

[198] Despite its considerable size, Lake McKay Station is a relatively small component of the Pisa/Criffel Range ONL, shown in Map 11 of the DV. Accessed off SH6 just south of Wanaka airport, the Station skirts behind the township of Luggate and continues southwest along SH6 to the District boundary. Looking east-west, the Station is roughly divided between lowland terraces and plateaus to the east and steep and rugged highlands of the Pisa Range to its west. The Station extends over that Range to overlook the Cardrona Valley. Lake McKay, from which the Station takes its name, is an alpine lake nestled between the Pisa and Criffel Ranges.¹⁴¹ It supplies water for the Station's irrigation, distributed through a network of pipes to the productive pastures of the lowland plateaus and terraces. The improvements of that lowland are noted in the court's 2009 *Bald Developments* decision (concerning a residential subdivision proposal for adjacent Range land). It records the following observation by a witness giving evidence in that case:¹⁴²

... parts of the terraced area have been smoothed by ploughing and removal of rocks (citing land in the adjoining Lake Mackay [sic] Station) ...

[199] The fact of those improvements is not disputed. Their effect was clearly evident on our site visit. A key point of difference between the landscape experts, Ms Steven and Ms Mellsop, is whether those effects are such as to exclude the appeal areas from the Pisa/Criffel Range ONL.

[200] Not much of the Station is visible from the nearby settlement of Luggate due to the escarpment that forms the immediate backdrop to Luggate and the SH6 corridor. However, from viewpoints further north and east, the intensively developed lower plateau and greener terrace pastures are clearly visible and distinct from the higher slopes of the Range.¹⁴³

¹⁴⁰ The underlying geomorphology characteristic of this location is well represented in the evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at Att B, Fig 14. Fig 14 is an annotated excerpt from Wakatipu 1:250,000 Geological Map, Institute of Geological & Nuclear Sciences Ltd.

¹⁴¹ Evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018, Att A, Fig 1, is a map depicting relevant boundaries of Lake McKay Station.

¹⁴² *Bald Developments Ltd v Queenstown Lakes District Council* EnvC Christchurch C055/09, 11 August 2009, at [40].

¹⁴³ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [12.4] – refer to Photographs 22 and 23 in Appendix B.



[201] In its notice of appeal, LMSL initially sought that the ONL overlay be removed from Station land as shown on Maps 11 and 18 of the DV. That included some land on the flats in the vicinity of the Clutha River and Wanaka Airport. However, by the time of the hearing, LMSL's relief had narrowed to seeking changes to the boundaries of the Pisa/Criffel Range ONL, shown in Map 11 of the DV. In her evidence-in-chief for LMSL, landscape expert Ms Steven recommended that the following areas of the Station, identified in the DV as part of the Pisa/Criffel Range ONL, be re-classed RCL:¹⁴⁴

- (a) Sheepskin Creek Terraces and the small northernmost section of the area labelled Queensbury Hills that lies between the Sheepskin Creek Terraces and the Luggate-Cromwell highway;
- (b) Sheepskin Creek Plateau;
- (c) Tin Hut Creek Plateau;
- (d) the northern half of Mid-Run Downs; and
- (e) the southern portion of Knoll A3KV, including the headwaters of Luggate Creek.

[202] LMSL's closing submissions further narrows matters in issue to the following terraces/plateaus on the Station that it seeks be removed from the ONL (and reclassified as part of the RCL):¹⁴⁵

- (a) Sheepskin Creek Terraces;¹⁴⁶
- (b) Sheepskin Creek Plateau; and
- (c) Part of Tin Hut Creek Plateau.

[203] Each of these areas ('appeal areas') forms part of the productive pasture land of LMSL's primarily sheep farming operations.

[204] There are two remaining points of detail on the matters in issue.

¹⁴⁴ Evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018 at [112] and Att A Fig 2. This is a map that depicts, by a blue-dashed line, the location of the present ONL and, by a green-dashed line, her then recommended repositioned ONL/RCL boundary. We discuss later in this decision Ms Steven's ultimate opinion on these matters.

¹⁴⁵ Closing submissions for LMSL, dated 26 July 2019 at [14].

¹⁴⁶ As a matter of detail, in terms of the cases presented, we understand issues pertaining to the Sheepskin Creek Terraces also encompass a small northernmost section of an area that lies between the Sheepskin Creek Terraces and the Luggate-Cromwell highway. On Ms Steven's plans, this area is labelled 'Queensberry Hills' – see evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018, at Att A Fig 6.



[205] In regard to Sheepskin Creek Terraces, a further issue raised by the court in questioning of Ms Steven is whether it is more appropriately classified as an ONF, rather than as part of an ONL.

[206] Finally, a matter arising on the evidence concerns the appropriate landscape notations for two areas on the Station – part of Mid-Run Downs and Knoll A3KV. These areas are not covered by the relief in LMSL's appeal. Under the DV, they are given an RCL notation, but Ms Steven and Ms Mellsop agree that it would be more appropriate for them to be included within the Pisa/Criffel Range ONL. We return to this issue later in this decision.

The determinative questions

[207] There are two related determinative issues. These are, on proper landscape assessment:

- (a) are the appeal areas sufficiently natural to be included in the Pisa/Criffel Range ONL, despite their significantly more modified state?
- (b) where is the boundary most appropriately located between the Pisa/Criffel Range ONL and the RCL on the Lake McKay Station?

[208] Those questions are related given what is readily observable concerning the appeal lands, namely that they are in long established pastoral farming use that renders them significantly less natural than those higher parts of the Station that are within the Pisa/Criffel Range ONL and not subject to challenge. Furthermore, the appeal lands are towards the DV's RCL boundary, rather than being more centrally located within the ONL. In those respects, the appeal areas can be described as "transitional". Ms Mellsop describes this element of landscapes in the following terms:¹⁴⁷

Landscapes form a continuum and there are often transitional zones between landscape categories. A categorisation of landscape into ONL/F and other types of rural landscape (Rural Character Landscapes in this PDP) must necessarily contain some anomalies and transitional areas. Typically the 'anomalies' evident within an ONL or ONF are of a scale and/or character that does not dominate or undermine the landscape characteristics and values that make the area outstanding.

¹⁴⁷ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018 at [6.8].



[209] Ms Steven also refers to the landscape in the area of Lake McKay Station as being “transitional” in nature.¹⁴⁸ Similar to Ms Mellsop, Ms Steven acknowledges that being “transitional” implies that “it is not so clear where the more obvious Pisa Range ONL should stop as it meets the basin floor.”¹⁴⁹ However, the two experts reach different conclusions on where, on this continuum of transition, the appeal lands most appropriately belong.

[210] By way of background, LMSL’s landscape expert, Ms Steven, was engaged as a peer reviewer of Dr Read’s initial work on the positioning of ONL boundaries for the purposes of QLDC’s plan review process. Her peer review advice to QLDC differed materially from that of Dr Read in regard to the positioning of boundaries between the ONL and RCL areas at the northern end of the Pisa/Criffel Range.

[211] As noted, Dr Read considered this to be where the “toe of the schist rock plateau adjoined the basin floor depositional lands of terraced outwash plain close to SH6” (a positioning with which Ms Mellsop substantially agrees).

[212] By contrast, Ms Steven considered it to be at the junction of the steeper range slopes and the lower plateau area eastward from Alice Burn. As illustrated in Fig 2 of Ms Steven’s evidence, it would see the ONL boundary realigned to follow the 550m contour from the Central Otago District Plan boundary.¹⁵⁰ Dr Read considered Ms Steven’s peer review input but, ultimately, recommended that QLDC maintain her originally recommended line. This is as reflected in the DV (and is supported by Ms Mellsop).

[213] Contributing to their divergent opinions on the ultimate issue, the experts also differ on some material matters concerning landscape assessment methodology. Ms Steven was not a signatory to the Landscape Methodology JWS. As we discuss at [54] of Decision 2.1, Ms Steven differs in some material respects from the methodology endorsed by that JWS. The key differences relate to the following:

- (a) is there a minimum threshold of ‘naturalness’ before land can be validly part of an ONL (and if so, what does that standard require)?

¹⁴⁸ Evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018, at [49], [101] and [102].

¹⁴⁹ Evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018, at [49].

¹⁵⁰ Evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018, at Att A, Fig 2.



- (b) what is the appropriate geographic scale for the assessment of whether land should be included in, or excluded from, an ONL?
- (c) is it appropriate for one of the ONL boundaries to run along the Queenstown/COD's boundary, rather than according to the principles of the Landscape Methodology JWS (i.e. with "timeless natural geomorphological boundaries rating the most favourably, and cadastral boundaries rating least favourably")?¹⁵¹

[214] We deal with those informing questions in our consideration of the evidence.

Is there a minimum threshold of 'naturalness'?

[215] For the assessment of the appeal areas, Ms Steven applied a technique of identifying and assessing eight discrete LCAs. Seven of these are within the District. Another is an area of the Queensberry Hills to the east and within Central Otago District. Related to that, Ms Steven used one explicit criterion to determine whether a LCA should remain in or be excluded from the Pisa/Criffel Range ONL. It is that the LCA must exhibit at least a 'moderately high' degree of natural character.¹⁵² Applying that criterion, Ms Steven assessed three of her LCAs within LMSL as worthy of inclusion within the Pisa Range ONL¹⁵³ and four as not.¹⁵⁴

[216] Ms Mellsop does not agree that there is such a precisely defined threshold, either for classifying a landscape to be an ONL or a LCA as part of an ONL.¹⁵⁵ Rather, she subscribes to the methodology recorded in the Landscape Methodology JWS of which she is a signatory. One aspect of that methodology concerns whether a landscape is "sufficiently natural" to be an ONL. For this the Landscape Methodology JWS refers to a rating of 'Moderate to High' as a "useful guide" and "starting point" in determining whether a landscape is 'natural' enough to qualify in terms of s6(b) RMA. That is subject to a rider that the appropriate level of "naturalness" will be "contingent on the context and/or the scale of the assessment (e.g. district or regional scale)".¹⁵⁶ A further aspect concerns the question of where ONL boundaries are set, including whether land should be included

¹⁵¹ Landscape Methodology JWS, 1.7(b).

¹⁵² Lake McKay Station JWS, p 4, 2nd box.

¹⁵³ Knoll A3KV, Mid-Run Downs, Front Faces.

¹⁵⁴ Basin Floor Outwash Terraces, Tin Hut Creek Plateau, Sheepskin Creek Plateau, Sheepskin Creek Terraces.

¹⁵⁵ Transcript, p 973, I 11 – p 974, I 31.

¹⁵⁶ Landscape Methodology JWS, 1.3(c).



or excluded. Relevantly, the Landscape Methodology JWS records:¹⁵⁷

... in determining the extent of an ONL it is generally preferred to avoid 'cut outs' i.e. excluding localised areas from the broader ONL as a consequence of the level of development evident in that specific location. Rather an evaluation is required as to whether the level of development (in the localised area) is such that the 'landscape' or 'feature' within which it is located qualifies as 'natural' and /or 'outstanding' anyway, or conversely, is of a scale and /or character such that the overall 'landscape' is outstanding.

[217] In cross-examination, Ms Mellsop explained her position on why she did not treat 'Moderate – High as a threshold for land to be included in an ONL as follows:¹⁵⁸

I think there are situations where a landscape with moderate naturalness can be considered sufficiently natural to be an outstanding natural landscape and that's when that level of naturalness has been balanced against other characteristics including perceived naturalness and other attributes and values of that landscape, and I think that approach has been confirmed in a number of previous Environment Court cases where it's been stated that a landscape that is completely pasture could still possibly be an outstanding natural landscape.

What is the appropriate geographic scale for assessment?

[218] The landscape experts agree that landscape characterisation and evaluation is an essential part of the assessment for ONL status. The issue between them is the scale of landscape at which this process of assessment is undertaken.¹⁵⁹ Ms Mellsop begins with a discussion of the key values of the entire Pisa/Criffel Range ONL and, in that context, considers the values of the north-eastern shoulder where LMSL is situated. As noted, Ms Steven "analyses the landscape of "Lake McKay Station and adjoining areas" and, for those purposes, identifies and assesses eight LCAs.

[219] That point of difference in methodologies is identified in the Lake McKay Station JWS as follows:¹⁶⁰

¹⁵⁷ Landscape Methodology JWS, 1.7(c).

¹⁵⁸ Transcript, p 974, l 5 – 15.

¹⁵⁹ Lake McKay Station JWS, p 5, 3rd box.

¹⁶⁰ Lake McKay Station JWS, p 5.



Helen Mellsop	The LCAs are of too fine a scale for the assessment of whether the landscape as a whole is outstanding. Ms Steven's Tin Hut Creek Plateau, Sheepskin Creek Plateau and Sheepskin Creek terraces LCAs form a single landscape character unit. All these LCAs have a similar character overall.
Anne Steven	Because I am considering the landscape of Lake McKay Station and eastwards to the district boundary only, I consider that the scale at which I have undertaken landscape characterisation is appropriate. I would consider that Sheepskin Creek Plateau and Tin Hut Creek Plateau could be considered as one landscape character area, because these two areas are ice-scoured hard rock plateau under farming use with deeply incised gullies.

The experts' opinions on whether the appeal areas should be in the ONL

[220] We set out Ms Mellsop's relevant description of the Pisa/Criffel Range and its northern end at [190]-[191].

[221] She offers the following opinion on the landscape values she associates with the ONL:¹⁶¹

- 12.5 ... the key values that lead to the classification of the Pisa/Criffel Range as an ONL are:
- (a) **High biophysical values** as a part of the recognised basin and range landform sequence in Central Otago;
 - (b) **High naturalness values** as a result of the low level of human modification and the dominance of natural patterns and processes in the tussocklands and regenerating woodland and shrubland communities;
 - (c) **Very high expressiveness/legibility values** as a consequence of the open character and the resulting legible display of topography;
 - (d) **High transient values** as a consequence of changing snow cover, the play of light on the landforms, the changing colours of vegetation over the seasons and the presence of wildlife;
 - (e) **High experiential values** resulting from the ability for people to access the landscape for walking and cross country skiing;
 - (f) **High values related to wildness and tranquillity** as a consequence of the very low level of domestication and human activity in most parts of the landscape; and
 - (g) **High shared and recognised values** as part of the identity and sense of place.

¹⁶¹ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [12.5].



[222] While Ms Mellsop does not treat 'Moderate – High' as a threshold for inclusion of land in an ONL, she assessed the relative naturalness of the appeal areas as being 'Moderate – High'. When pressed on this in cross-examination, Ms Mellsop treated them as one landscape unit, saying that in her opinion they "have a combination of highly natural areas, the gorges that pass through them are relatively unmodified typography and very little built modification present on them".

[223] However, as we understand Ms Mellsop's approach, the more fundamental questions are firstly as to where the most defensible boundaries of the ONL "on geomorphological and visual integrity grounds" and secondly on whether including the land in question would risk undermining the relevant landscape values of the ONL.¹⁶² Hence, she acknowledges that the Station "shoulder area below 550 masl does have a greater degree of modification than the mountain slopes above" (referring, for example, to farm tracks, forestry and buildings being more frequent and irrigated crops and pastures). However, she also observes that these more modified areas are contained within and dominated by the wider natural context of the mountain range, which extends down to the base of the escarpment near the Wanaka – Cromwell Highway.¹⁶³ Her ultimate relevant conclusions are:¹⁶⁴

As with the northern Pisa Range to the east within Central Otago District, the lower shoulder that is sought to be excluded is a visually coherent part of the mountain landscape, despite the areas of improved irrigated pasture and cropping. It is also an integral part of the ONL from a geomorphological perspective. Given the complex topography of this area and the varying levels of naturalness I consider the most defensible method of determining the ONL boundary is on geomorphological and visual integrity grounds. The edge of the schist mountain runs along the rear of the terraces east of Mount Barker, to the north of Luggate Creek gorge on the southern side of Knob A3KV (refer **Figure 14 in Appendix B**). This geological boundary is reflected in the landform and vegetation, with rougher steeper ground and greater indigenous vegetation cover within the schist areas, and more even contours and less indigenous vegetation on the terraces and lateral moraines to the north.

... The inclusion of this shoulder area of the range within the ONL does not undermine the high biophysical, natural, legibility and transient values of the landscape. The lower shoulder reads as part of the mountain landscape despite the different land use and land cover in places.

¹⁶² Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [12.9] and [12.11].

¹⁶³ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [12.11].

¹⁶⁴ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [12.9] and [12.11].



[224] The following interchange in cross-examination further elucidates Ms Mellisop's opinion on these matters:¹⁶⁵

- Q. I'd like to take you to your paragraph 12.11 and your second to last sentence, "The inclusion of this shoulder area," I think you've said that's the contested areas plus the Mid Run Downs, "Within the ONL does not undermine the higher biophysical natural legibility and transient values of the landscape." Now, I put it to you that's a rather odd way of approaching the assessment, of saying those areas don't undermine the rest of the ONL?
- A. Perhaps I can explain there, what I was expressing there was that the inclusion of the lower shoulder which I have acknowledged has different character and a lower level of naturalness than the upper slopes, does not mean that the landscape as a whole is not outstanding.
- Q. Right, so the inclusion doesn't pull down the naturalness of the landscape as a whole and then it's not an ONL?
- A. Yes, that was what I was expressing there.

[225] As noted, somewhat in tension with her opinion that ONL boundaries are most defensibly determined on "geomorphological and visual integrity grounds", Ms Mellisop considers it appropriate that the Pisa/Criffel Range ONL "within Queenstown Lakes District follow the district boundary to connect with the ONL within" the COD.¹⁶⁶

[226] Finally, in cross-examination, Ms Mellisop accepted that "... the Sheepskin Creek Terraces, the Sheepskin Creek Plateau and at least part of the Tin Hut Creek Plateau... are not surrounded by an ONL or encompassed by the rest of the ONL, to the north and to the east". However, she explained that, in her opinion, those areas are "moderately natural" but have "sufficient attributes and values to be included as part of" the ONL.¹⁶⁷

[227] Ms Steven paid relatively less attention to the wider landscape context, choosing instead to focus her attention more on the landscape attributes of her identified LCAs. Seven of these LCAs cover Lake McKay Station itself,¹⁶⁸ while the eighth, Queensberry Hills, lies well to the east of LMSL, on the eastern side of the inter-district boundary.

¹⁶⁵ Transcript, p 982, l 2 – 15.

¹⁶⁶ Evidence-in-chief of Ms Mellisop, for QLDC, dated 2 November 2018, at [12.15].

¹⁶⁷ Transcript, p 982 l 26 – p 983, l 5.

¹⁶⁸ In fact, three of the LCAs extend well beyond the boundaries of Lake McKay Station – Basin Floor Outwash Plain Terraces extends beyond the northern boundary, while Sheepskin Creek Plateau and Sheepskin Creek Terraces extend beyond the eastern boundary.



[228] Ms Steven's conclusions to her natural character assessment of her LCAs are as follows:¹⁶⁹

LCA	Degree of Natural Character
Basin Floor Outwash Terraces	Low
Knoll A3KV	Moderate High
Mid-Run Downs	Moderate High
Front Faces	Moderate High
Tin Hut Creek Plateau	Moderate
Sheepskin Creek Plateau	Moderate
Queensberry Hills	Moderate
Sheepskin Creek Terraces	Moderate
Pisa Range ¹⁷⁰	High to Very High

[229] When Ms Steven was questioned by counsel for LMSL in regard to whether her LCAs were fairly criticised for being too small in scale for assessment purposes, she explained that, on her calculation, the total area of the LCAs is about 10km, being 5km across and 2-3km south-north. She added that her LCAs are "a very appropriate scale to be assessing" "being the bulk of the lower part of Lake McKay Station, the [Bald] Developments area and down to the highway" (as well as including the Station homestead area).¹⁷¹

[230] Ms Steven was cross-examined on whether her so-termed "zoomed in approach" of focusing on LCAs failed to take a "long, open view approach" (as across the plateaus and terraces) or to consider the appeal areas as "part of the wider continuous landscape".¹⁷² She relevantly responded:¹⁷³

Now if you go into that expansive view from State Highway 8, you can see the broad expanse of the total Plateau area and the front of the terraces which are outwash, with the highway just running underneath them. You can see the river flats of the Clutha River and the slopes of the Pisa Range behind. So I certainly did stand back and look at the landscape to confirm my thinking about whether as a whole that plateau was distinctive enough from the Pisa Range to actually form a logical boundary, which is another question, but also just to compare the broad landscape character of the total plateau as an entity including the Queensberry Hills, to confirm my analysis at a finer grain level that all those landscape

¹⁶⁹ Evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018, at [91].

¹⁷⁰ Evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018 at [90] and [93], we understand this to refer to the steep range slopes of the Pisa Range.

¹⁷¹ Transcript, p 1007, l 16 – p 1008, l 15.

¹⁷² Transcript, p 1033, l 1 – 15.

¹⁷³ Transcript, p 1034, l 22 – p 1035, l 12.



character areas have the same natural character rating, and I'm quite happy to accept that I could have put Tin Hut Creek Plateau and Sheepskin Creek Plateau together as one landscape character unit at a cruder scale if you like, but I still would have had the same natural character assessment conclusion that it was moderate, in fact, probably slightly less than moderate because there's more development included and that would apply if you then threw in Queensberry Hills as well. The more landscape character areas you lump together the more diluted your assessment might become. So in some ways it's actually better to be a finer grained assessment and separate out those areas where there are some fine gradations of natural character if you really want to be careful about where that boundary should be which is for the approach that I took.

Should Sheepskin Creek Terraces be reclassified as an ONF?

[231] During questioning of Ms Steven, the court asked her whether Sheepskin Creek Terraces could be an ONF. Ms Steven confirmed that she had given some thought to this and would support "the scarps themselves and the rocky shoulders that they lie in between as ONFs" (but excluding the terrace tread). Ms Steven illustrated the extent of the potential ONF on Exhibit AS4. She indicated in answers to further questions that she considered this feature sufficiently discrete and of a small scale such as to be eligible for consideration as an ONF.¹⁷⁴

[232] In light of that questioning, the court invited QLDC to recall Ms Mellsop to address the same issue but it elected not to do so.

Submissions

LMSL

[233] In his closing submissions for LMSL, Mr Gardner-Hopkins reiterated that the key issue is whether three LCAs identified by Ms Steven (Sheepskin Creek Terraces, Sheepskin Creek Plateau, and part of Tin Hut Creek Plateau) are part of the Pisa/Criffel Range ONL or not. Subject to noting Ms Steven agreed to some adjustments to some ONL boundaries in the LMSL JWS and in questioning,¹⁷⁵ Mr Gardner-Hopkins confirmed LMSL's

¹⁷⁴ Transcript, p 1040, l 5 – 1; p 1045, l 9 – 12.

¹⁷⁵ As LMSL's closing submissions note, the experts agreed in the Lake McKay JWS that, in the location of Knoll A3KV, the ONL line should follow Ms Steven's orange line and extend to the east (towards Luggate) also following Ms Steven's orange ONL line. Counsel also notes that Ms Steven accepted, under questions from the court, that the ONL line might be realigned along the main gully of the Tin Hut Creek Plateau LCA, as shown in the pink highlighting in Exhibit AS4 (an annotated version of Exhibit AS1) with the consequence that the ONL line should shift to the eastern edge of the larger gully in the Tin Hut Creek Plateau LCA, (as shown by the dashed line in the plan at para 6 of LMSL's closing submissions) (referring to Transcript, p 1047, l 25, p 1049, l 1).



position that those LCAs should be excluded from the ONL. That is on the basis that they are not sufficiently natural according to Ms Steven's evidence.¹⁷⁶

[234] On the question of whether there is a minimum threshold of 'naturalness', counsel submits that Ms Mellsop is somewhat on her own in treating the 'Moderate – High' (or M-H) rating on the seven point scale used by most experts as a "guideline" such that "other characteristics could lift a landscape of "M" or Moderate naturalness into contention for being an ONL". Mr Gardner-Hopkins maintains that, in contrast, most landscape experts concur with Ms Steven that 'Moderate – High' is "a firm threshold". He qualified that somewhat by observing that "in any particular circumstances judgment may be required and professionals might reasonably hold different opinions as to whether a particular landscape reaches the M-H threshold, is just of "M" or Moderate naturalness".¹⁷⁷

[235] Mr Gardner-Hopkins refers to Ms Steven as the only landscape expert who attempted to identify what landscapes fell into the various categories in the 7-point scale. Counsel notes that this was part of her approach in the peer review work she did in 2014 on the determination of ONL boundaries for the plan review. Noting that QLDC "took no issue" with her application of the scale for that process, counsel refers to the extensive cross-examination of Ms Steven by QLDC on why she had updated her descriptors of landscapes for the different categories from those she applied in her 2014 review and Ms Steven's explanation for why that updating is not significant (in essence, by agreement with Ms Mellsop in conferencing adding 'townscape' at the very low end of the scale, which is in her view equivalent in any case to Wanaka Airport as an example of 'very low' in the Rural zone).¹⁷⁸

[236] Mr Gardner-Hopkins submits that, rather than being a basis for criticism as QLDC's cross-examination approached the matter, Ms Steven's methodology is clear and transparent. That is in the sense that it identifies "in context, what an expert has in mind for the relevant categories in the 7-point scale; as part of the process of identifying which category a particular landscape falls into". Counsel refers to this approach as being supported by the NZILA Best Practice Guide, particularly the following passage:¹⁷⁹

¹⁷⁶ Closing submissions for LMSL, dated 26 July 2019, at [1] – [11].

¹⁷⁷ Closing submissions for LMSL, dated 26 July 2019, at [19] – [21].

¹⁷⁸ Closing submissions for LMSL, dated 26 July 2019, at [22] – [30], referring to the Transcript at p 967, 17, 21, p 1007 – 1008, 1018, 121 – 33.

¹⁷⁹ Closing submissions for LMSL, dated 26 July 2019, at [26] – [27], referring to New Zealand Institute of Landscape Architects *Best Practice Guide – Landscape Assessment and Sustainable Management*, p 7.



Biophysical, sensory and associative attributes of landscapes and projects should all be described in a systematic way that others can understand, review and critique. This will help ensure the account is both valid and reliable. Validity indicates that the description actually relates to the phenomena it claims to describe. Reliability indicates consistency of approach to description. Appropriate collaboration and peer review by those with specific expertise and/or mana whenua and mana moana, are important in achieving a credible account.

[237] Counsel further submits that Ms Steven was unfairly criticised by Ms Mellsop and in QLDC's submissions for her use of LCAs, submitting that "slicing and dicing" of LCAs was not the proper basis for the difference in opinion between the experts. In particular, he points to Ms Steven's explanation in questioning that the total area of the LCAs, (5km X 2-3km) is "considerable". By comparison he points out that Ms Mellsop explained that the "landscape as a whole" for her assessment was "... the northern faces of the Pisa and Criffel ranges. So from the top of those mountains, down to the valley floor" (as depicted inside the blue-dotted lines in Exhibit AS4).¹⁸⁰

[238] Counsel notes that when Ms Steven was pressed in cross-examination on whether there was risk in "zooming in" on the LCAs, she explained that "she had considered the remaining contested areas from afar and that an amalgamation approach has risks as areas of lesser naturalness can 'bring down a wider landscape (referring to the passage from the Transcript we quote at [229]).¹⁸¹

[239] Mr Gardner-Hopkins submits that the proper basis by which Ms Steven's evidence should be preferred concerns her rigour and reliability in contrast to Ms Mellsop. In support of that submission, Mr Gardner Hopkins notes as "surprising" that, in cross-examination, Ms Mellsop only went so far as to accept that "reviewing and critiquing an assessment ... to understand what differentiates one category from another" "can be helpful" and to add to that her view that it is not "necessary" to do so. He characterises her approach as simply "giving reasons" for any particular categorisation, as opposed to any particularly systematic approach. Related to that, he points to the fact that Ms Mellsop originally used a five-point scale, and then changed that to a seven-point scale in her evidence. He submits that "having found 'high' naturalness using the 5-point scale" Ms Mellsop "too readily sought to maintain that position (or the M-H fallback), including for parts of the landscape under the 7-point scale".¹⁸²

¹⁸⁰ Closing submissions for LMSL, dated 26 July 2019, at [35].

¹⁸¹ Closing submissions for LMSL, dated 26 July 2019, at [36].

¹⁸² Closing submissions for LMSL, dated 26 July 2019, at [25] – [30], referring to Transcript, p 967, l 4 – 7.



[240] Mr Gardner-Hopkins notes that Ms Mellsop acknowledged, in cross-examination, that the appeal areas are not surrounded by an ONL or encompassed by the rest of the ONL. Counsel submits that “if the Court were to find that the remaining contested areas were of only moderate naturalness, they would not need to be included (and should not be) as part of the wider ONL”. He went on to submit that the court would need to look carefully at the level of naturalness or non-naturalness (i.e. human intervention) in the appeal areas.¹⁸³

[241] Counsel also points out that Ms Steven’s LCAs included the part of the Pisa Range in the COD and, as such, she considered relative naturalness in that proper landscape context. He noted that, by contrast, Ms Mellsop did not assess the landscape or its naturalness “in respect of the Queensbury Hills and Terraces areas” and “so couldn’t assist significantly on where the ONL line should be on the COD side of the landscape – although she did suggest that it could be of moderate or moderate low naturalness”. He submits that:¹⁸⁴

Accordingly, Ms Steven’s assessment in respect of the relationship of the landscape and its level of naturalness in respect of the remaining contested areas, has been undertaken in a more integrated way with the LCAs extending into and with the CODC boundary. This is important, given the requirement to consider consistency in approach under the respective District Plans across the boundaries pursuant to section 74(2)(c).

[242] Finally, Mr Gardner-Hopkins addressed the issue raised by the court in questioning as to whether Sheepskin Creek Terraces could be classed as an ONF. He noted Ms Steven’s answers to the effect that the scarps and rocky shoulders of those Terraces could be. He explains that, while LMSL maintains its position that the Sheepskin Creek Terraces (and Plateau) are not an ONL, it would accept what Ms Steven identified as an ONF. That is on the basis that, were the court to decide to pursue that approach, some further assessment would be required to identify the boundaries of that ONF with greater precision. Counsel points out that QLDC did not seek to recall Ms Mellsop on the matter and, hence, Ms Steven’s evidence should be treated as the best evidence on the matter. Maintaining LMSL’s overall position that the appeal areas are not sufficiently natural to be part of the ONL, Mr Gardner-Hopkins submits that this area

¹⁸³ Closing submissions for LMSL, dated 26 July 2019, at [39], [40].

¹⁸⁴ Closing submissions for LMSL, dated 26 July 2019, at [43].



is more correctly treated as an ONF than as part of an ONL.¹⁸⁵

[243] On the wider question, noted in the court's 11 July 2019 Minute, as to whether the PDP should provide for the scheduling of ONL and ONF values, Mr Gardner-Hopkins refers to the evidence of Ms Steven and Ms Mellsop as identifying key values. He records that, in the event the court is inclined to require a scheduling approach, LMSL would seek opportunity to "ensure that they are appropriately identified in respect of Lake Mackay's Station". He notes that LMSL has not engaged on this, at this stage, not yet knowing the court's position including on issues of the nature, format and style of any such scheduling.¹⁸⁶

QLDC

[244] QLDC's closing submissions point to the "clear difference in approach" between Ms Mellsop and Ms Steven in terms of assessment. Counsel, Ms Scott, describes Ms Mellsop as having "considered the appeal area as a collective whole, by taking a step back and considering the landscape in its fuller context". It illustrates that with the following answer she gave in cross-examination:¹⁸⁷

I think this aerial photograph is too small to adequately refer to what I'm considering as the landscape as a whole which I have described in my evidence-in-chief which refers to the northern faces of the Pisa and Criffel ranges. So from the top of those mountains, down to the valley floor, that is the whole landscape that I'm assessing.

[245] Ms Scott submits that Ms Steven's approach of differentiating and comparing smaller LCAs across the appeal areas loses sight of the complete landscape. As such, it submits that Ms Mellsop's opinion should be preferred.¹⁸⁸

[246] As to the acknowledged modification of the appeal areas for pastoral farming, counsel emphasises the importance of taking an overall approach to consideration of the appeal areas. Ms Scott refers to Ms Mellsop's answer, when questioned on whether excluding the Mid Run Downs would alter her view of the naturalness of the contested appeal areas. In essence, Ms Mellsop replied that it would not, in the sense that the

¹⁸⁵ Closing submissions for LMSL, dated 26 July 2019, at [7] – [14].

¹⁸⁶ Closing submissions for LMSL, dated 26 July 2019, at [17], [18].

¹⁸⁷ Closing submissions for QLDC, dated 2 August 2019, at [4.17], 4.18, referring to Transcript, p 971, l 33 – 34.

¹⁸⁸ Closing submissions for QLDC, dated 2 August 2019, at [4.18] – [4.20].



areas “have a combination of highly natural areas, the gorges that pass through them are relatively unmodified typography and very little built modification present on them”.¹⁸⁹

[247] Counsel points out that there still remains a relative lack of “obvious built form, with the artefacts being ‘quite small, like fences and tracks’”.¹⁹⁰ In regard to Ms Steven’s opinion that the processes of managed pastoral use of the land are the most important,¹⁹¹ counsel refers to her acceptance, when questioned by the court, that the existence of natural processes is a matter of degree and scale (rather than “yes or no”). That included her observation that the “degree of interference”, in pastoral farming for example, “comes down to a judgement” and “a fairly factual assessment”.¹⁹²

[248] Ms Scott submits that it is open to the court, on the evidence, to find that the appeal areas are sufficiently natural to be part of the Pisa/Criffel Range ONL.

[249] On the matter of the court’s questioning about whether Sheepskin Creek Terraces could be classed as an ONF, counsel submits as follows:

- 4.3 At the close of the hearing Ms Steven was asked to consider realigning her ONL boundary as it relates to her Tin Hut Creek Plateau LCA, which she did as shown on Exhibit AS1. While Ms Steven was helpfully responding to a question from the Court (and then a further question from counsel for LMSL suggesting a further change), it is respectfully submitted that her realigned boundary is somewhat arbitrary and does not represent a sound, reasoned rationale that the Court may wish to adopt. It is submitted that any modified ONL boundaries need to be supported by an assessment that follows the agreed methodology, rather than boundaries developed on the spot during questioning.
- 4.4 Ms Steven’s proposed Sheepskin Creek Terrace ONF is another example of an arbitrary decision, again conceived during the hearing. Her recommended boundaries exclude terraced areas within the escarpments and ice-worn outcrops, which amount to very small “cut outs” and could (conceivably) be developed, undermining the protection afforded to the ONF landforms. Further, there may be a real question to be asked in terms of whether these escarpments warrant categorisation as an ONF in the context of this District.
- 4.5 Counsel for LMS notes that Ms Mellsoy was not recalled to provide an opinion on this matter. On that issue, Council respectfully suggests that if the Court is minded to consider categorising the Sheepskin Creek Terraces as ONF, rather than include

¹⁸⁹ Closing submissions for QLDC, dated 2 August 2019, at [4.23], referring to Transcript, p 978, l 7 – 9.

¹⁹⁰ Closing submissions for QLDC, dated 2 August 2019, at [4.24], referring to Transcript, p 1022, l 15.

¹⁹¹ Referring to Transcript at p 1022, l 24, 25.

¹⁹² Closing submissions for QLDC, dated 2 August 2019, at [4.25], [4.26], referring to Transcript, p 1042, 1043.



them as part of a wider ONL, it would be appropriate to involve Ms Mellsop and seek her views on the matter. Counsel for LMS, in paragraphs 9 and 11, also submits that further detailed analysis would be necessary. It is submitted that because this particular modification was conceived at a late stage when Ms Mellsop was not present to assist the Court (and the Council), it would be inappropriate to determine the status of the Sheepskin Creek Terraces without expert input on behalf of the Council.

[250] At this stage, however, there are some points we need to correct and clarify concerning counsel's comments in the first sentences of paragraphs 4.3 and 4.5. It is not correct for counsel to have observed that Ms Steven was asked about this matter at "the close of the hearing" nor to simply state that Ms Mellsop "was not recalled". Rather, the court's questioning of Ms Steven occurred at the usual time, following cross-examination and prior to parties being invited to ask questions arising before an evening adjournment. Furthermore, prior to that adjournment, the court specifically offered counsel opportunity to recall Ms Mellsop for questioning on the evidence Ms Steven gave in response to the court's questions. The court also enquired of when that would most suit Ms Mellsop's availability. However, counsel did not take up this invitation.¹⁹³ Nevertheless, we appreciate the various other points made by QLDC in closing and return to the substance of these below.

Discussion

[251] There are two preliminary points of difference of methodology between the experts which are significant to our overall determination, namely as to the related questions:

- (a) what is the appropriate geographic scale for assessment?
- (b) is there any minimum threshold of naturalness (of 'moderate-high') for land to be eligible for inclusion in an ONL?

[252] Decision 2.1 includes relevant findings on both these questions which we adopt. As Decision 2.1 records, those findings were in light of the submissions and evidence concerning LMSL's appeal.¹⁹⁴ On these two questions:

¹⁹³ Transcript, p 1046, l 7 – p 1047, l 18.

¹⁹⁴ *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160 at [4] and [50].



- (a) it records (at [80]):¹⁹⁵

... evaluation must be at the appropriate geographic scale treating a landscape or feature as a whole.

... The DV's ONL and ONF maps are ultimately servants of s6(b) RMA. The focus in s6(b) is at the landscape scale for ONLs and feature scale for ONFs.

- (b) it finds no necessary 'threshold' of 'moderate – high' to be met in order for an area of land to qualify as part of an ONF or ONL, for the reasons it sets out at [42]–[63], including:

[61] ... It is simply artificial to try to construct a threshold for what is inherently a judgement call. Doing so also wrongly assumes that the judgment rests with the expert. It does not. Rather, an expert's evaluative role is to assist the decision-maker to make a properly informed judgment on whether the land in issue should be within the ONF or ONL.

[62] We also accept QLDC's submission, supported by the Landscape Methodology JWS and Ms Mellsop, that the primary enquiry should be as to whether the area of land in question belongs within the landform that properly defines the boundaries of the ONF or ONL. Once that is determined, attention turns to the degree of naturalness of the land in question. Contextual evaluation then guides the judgment. The judgment called for is as to whether the area of land in issue is too modified or inappropriately developed such that including it in the ONF or ONL would detract from, or undermine, the values of the ONL or ONF when considered as a whole.

[63] The fact that a landscape or feature is classed as an ONF or ONL on the basis of expert opinion that it has 'moderately high' or even 'high' naturalness does not necessarily dictate that the same threshold must be passed for land to be added to, or excluded from it. Rather, an overriding consideration must be to ensure the legibility of the ONL or ONF is maintained. Again, that question is one of properly informed judgment.

[253] LMSL's closing submissions endeavour to characterise Ms Steven's approach as being at an appropriate geographic scale and to argue that the material difference between the experts is as to matters of thoroughness and rigour, and hence reliability. However, without accepting that criticism of Ms Mellsop's approach, we find that Ms Steven's approach of focusing on her identified LCAs within the Station results in a

¹⁹⁵

Hawthenden Ltd v Queenstown Lakes District Council [2019] NZEnvC 160 at [80].



number of distortions that ultimately materially undermine the reliability of her conclusions on this occasion.

[254] An illustration of this is Ms Steven's different ratings (as we set out at [227]) for the Pisa Range steep range slopes of 'High to Very High' and for each of the LCAs for the appeal areas as 'Moderate'. If the LCAs and the appeal areas are considered as separate units within the Station, those are sound relative comparisons of the naturalness of the LCAs. In particular, as we have noted, the appeal areas contain much of the Station's improved and irrigated pastures. That is readily observable, as we have noted, on an inspection of the Station, including from public roads and other public viewing points.

[255] We make the observation that biophysical phenomena such as vegetation cover, the presence of animal and plant species, whether indigenous or exotic, or the symptoms of human use and development such as tracks, roads, fences and buildings tend to occur at much smaller spatial scales than geomorphological phenomena such as the underlying processes and patterns of erosion and deposition. Thus, when landforms are segmented into relatively small units, the underlying geomorphological processes cannot be discussed logically in terms of an individual unit because the processes span and inter-connect many such units.

[256] The corollary of this is that surface features and vegetation patterns take on greater relative significance in distinguishing the character of one landscape unit from the landscape character of other units.

[257] Relatively small landscape character units may be visually distinct and exhibit contrasting degrees of natural character – for example, contrast the surface features and natural character assessment of Tin Hut Creek Plateau with the neighbouring Mid-Run Downs where Ms Steven finds a significant difference. Or contrast the natural character of the Tin Hut Creek Plateau with that of the Pisa Range which borders it to the south, where Ms Steven again finds a significant difference.

[258] However, unless the wider geomorphological system is acknowledged, the significance of geomorphological processes for landscape classification cannot be argued logically. Furthermore, the area under appeal in this case covers five of the LCAs defined by Ms Steven.



[259] Related to this issue, we find that Ms Steven's assessment methodology has not factored in realistic viewpoints and actual visibility of the flatter surface of the plateau. We acknowledge Ms Steven's explanation, to the effect that she did stand back and look at the landscape to confirm her thinking. We observe, however, that she went on to explain that this was in order to "compare the broad landscape character of the total plateau as an entity including the Queensberry Hills, to confirm my analysis at a finer grain level that all those landscape character areas have the same natural character rating". That is a much narrower frame of reference than is required for our purposes in that it does not go on to address whether the shoulder area reads as part of the ONL and whether having it remain in the ONL would undermine the ONL's relevant values. By contrast to Ms Mellsop, nor did Ms Steven clearly elucidate what those ONL values are.

[260] Considering the appeal areas as a proportion of entire Pisa/Criffel Range ONL, we find Ms Mellsop's opinions are demonstrably sound, namely:

- (a) this shoulder area reads as part of the mountain landscape despite the different land use and land cover; and
- (b) including it within the Pisa/Criffel Range ONL does not undermine the high biophysical, natural, legibility and transient values of that ONL.

[261] On the matter of the relative naturalness of the appeal areas, there is ultimately no material difference between the ratings offered by Ms Steven and Ms Mellsop.

[262] We agree that the areas are fairly rated as 'Moderate' on the seven-point scale. We do not accept LMSL's submissions to the effect that the court should not include the appeal areas in the ONL simply on the basis that the evidence does not establish that they are of moderate-high naturalness. We note that counsel's submissions on that point referred only to part of Ms Mellsop's answers in cross-examination. As we have noted, acknowledging the appeal areas had 'moderate' naturalness, Ms Mellsop went on to confirm her view that those areas have "sufficient attributes and values to be included as part of" the ONL. Her opinion on that is consistent with the view she and other landscape experts record in the Landscape Methodology JWS (to which Ms Steven was not a signatory).



[263] In response to questions from the court,¹⁹⁶ Ms Steven agreed that the steeply incised gullies are clearly of sufficiently high natural character to be included in an ONL, noting their recommended SNA status.¹⁹⁷ Ms Steven explained that she sought to include “the larger gullies”. She noted that the gullies get progressively smaller to the east and “at some point you have to stop ...”.¹⁹⁸ Ms Steven provided some further helpful light on this matter when the court asked about whether parts of Sheepskin Creek Terraces could be an ONF. On Exhibit AS4, she identifies the gully associated with Tin Hut Creek, passing through the centre of the Tin Hut Creek Plateau LCA, as well as the next (un-named) gully to the west, also within the same LCA, as appropriately ONF. Informed by our site visit, we observe that the next gully to the east, associated with Dead Horse Creek,¹⁹⁹ is of similar character, although Ms Steven did not recommend that it be included in any ONF. Similarly, Ms Steven said that she could include the north-facing escarpments and the rocky shoulders that they lie in between as ONFs”.²⁰⁰ At that stage, Ms Steven did not mark up the gully at the northern entrance to Sheepskin Creek. However, she did so when asked about whether she would include the north-facing escarpments and the rocky shoulders that they lie in between as ONFs (which she agreed should be included).²⁰¹

[264] Taking into consideration all these adjustments, we compare this with the green shaded areas on the 2014 ONL Plan for Pisa Range-Luggate covering all the LCAs assessed by Ms Steven for this appeal.²⁰² Notably, the green shaded areas referred to above include the gullies of all the aforementioned creeks and north-facing escarpments with the description “areas of mod-high to very high natural character”.

[265] On the basis of that evidence, we find that, although the appeal areas are of ‘Moderate’ natural character, they continue to be sufficiently enclosed by areas of higher natural character along the gullies and the north-facing escarpments. We do not accept Ms Steven’s opinion that they read as “contiguous with more modified basin floor

¹⁹⁶ Transcript, pp 1036 – 1046.

¹⁹⁷ Evidence-in-chief of Ms Steven, for LMAL, dated 30 November 2018 at [113] notes that “most of the remaining more natural gully areas on the Tin Hut Creek and Sheepskin Creek Plateau areas are proposed as SNAs, which LMS have not appealed”.

¹⁹⁸ Transcript, p 1037, l 25 – 27.

¹⁹⁹ Dead Horse Creek aligns with the boundary between two LCAs identified by Ms Steven, namely Tin Hut Creek Plateau and Sheepskin Creek Plateau.

²⁰⁰ Transcript, p 1040, l 7 – 9.

²⁰¹ Transcript, p 1040, l 7 – 9.

²⁰² Evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018, Map series contained in Appendix 1.



areas”.²⁰³ Rather, in light of our site visits from longer views typically experienced by the public (Mt Iron, parts of the State Highway, and public roads in the Queensbury Hills), we accept Ms Mellsop’s opinion, supported by Dr Read’s analysis, that they read as part of the mountain landscape.

[266] As Ms Mellsop observed, the northern end of the Criffel/Pisa range is “a complex landscape where the schist mountains meet glacial lateral moraine remnants, mounds and terraces of glacial till and outwash plain terraces”.²⁰⁴ We also note Ms Mellsop’s opinion that the schist scarps that front SH6 provide a defensible boundary in geomorphological and visual integrity terms. Informed by our site visit, we agree with Ms Mellsop that those scarps legibly tie in the northern shoulder of the ONL in the sense that the schist mountain runs along the rear of the terraces east of Mount Barker, to the north of Luggate Creek gorge on the southern side of Knob A3KV (which the experts agree should be integrated into the ONL). We find the productive pastures (green at the time of our visits) sit in a complex landscape that includes rugged framing steeper slopes and intervening bush clad gullies. Nevertheless, those contrasting elements are part of a legible mountain landscape, at a point where the Pisa and Criffel Ranges converge. That landscape, properly considered as a whole, has sufficiently high biophysical, perception and transient values to be an ONL.

[267] However, we do not accept Ms Mellsop’s opinion that the Queenstown Lakes and CODs’ boundary is an appropriate boundary for the ONL. As we have noted, Ms Mellsop’s opinion on that matter is somewhat at odds with her approach of preferring what is a legible geomorphological boundary. In fairness, Ms Mellsop acknowledged the circumstances at the inter-district boundary create the potential for inconsistency – or at least discontinuity – in landscape classification.²⁰⁵ However, we note that Landscape Methodology JWS puts cadastral boundaries last in preference for determining ONL and ONF boundaries. That is clearly a sound view in the sense that a boundary on a legal instrument is not necessarily legible in the environment. More so a district boundary. Indeed the only signifier of this we identified on our site visit was a small sign on the State highway.

²⁰³ Evidence-in-chief of Ms Steven, for LMSL, dated 30 November 2018, at [26].

²⁰⁴ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [12.8].

²⁰⁵ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [12.13] – [12.14].



[268] On the evidence, we find that an adjustment of this part of the ONL boundary to reflect obvious changes in land use in the vicinity and better respect geomorphology can and should be done. In particular, Ms Steven's evidence assists in this.

[269] Ms Steven rightly observed that there are some distinct landscape transitions, particularly in the vicinity of the inter-district boundary, associated with recent developments on the Queensberry Hills and the *Bald Developments* site. Fig 4 to Ms Steven's evidence in chief provides clear photographic evidence of the extent of change in land use that occurred between 2007 and 2017 (i.e. since the *Bald Development* decision was issued). Exhibits AS2 and AS4 together further reveal a consistent picture of the east-west transitional trend. We also accept that the photographic evidence indicates a progression in levels of natural character across the area covered by the photographs.

[270] We find the lowest levels of natural character are in the vicinity of Queensberry with its relatively dense network of new roads and building platforms visible clearly east of the inter-district boundary. Rural residential colonisation of the Range is particularly evident on the *Bald Developments* site between the District boundary and LMSL. That residential colonisation, and associated reduction of naturalness, is most visible from viewpoints in the COD. An exception is the recent development just northeast of Ms Steven's Sheepskin Creek Terraces LCA. It is clearly within Queenstown Lakes District. However, apart from that, there are comparatively very few viewpoints in Queenstown Lakes District of these rural residential incursions onto the Pisa Range.

[271] Further west, land use is exclusively related to farming activities, although the gradient of natural character continues.

[272] We find that the easternmost boundary of the Criffel/Pisa ONL at this north-eastern shoulder area should most properly align with the top of the gully along the true right of Sheepskin Creek and the northernmost boundary east of Luggate Township as far as the north-eastern corner of LMSL should follow the dashed blue line as shown on Exhibit AS1. We acknowledge some remaining uncertainty at the north-eastern corner of the Decisions Version boundary, being the area on AS4 identified by Ms Steven as requiring further, more detailed assessment.



[273] As Mr Gardner-Hopkins notes, s74(2)(c) RMA requires that particular regard be had to “the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities”. As he also notes, there is the related direction in s75(3)(c) to “give effect to any regional policy statement”. We are satisfied that our findings as to this boundary adjustment properly respect those statutory directions.

[274] Preferably, the mapping adjustment would also account for the experts’ agreed position concerning the inclusion in the ONL of the whole summit of Knoll A3KV, and Luggate Creek valley west and the true left of lower Luggate Creek downstream of the Knoll.

[275] On the basis of LMSL’s closing submissions, our present understanding is that this further adjustment, whilst going beyond the scope of LMSL’s appeal, is not opposed. However, our directions allow for supplementary submissions from LMSL if our understanding on that is not correct. As an overall representation of our findings as to the various adjustments to the DV’s mapping position, **Annexure 1** to this decision is a copy of Exhibit AS1 marked up with our solid and dashed black lines depicting our intended adjustments. The dashed lines depict areas where our directions seek further input from Ms Steven and Ms Mellsop to resolve the final boundary positions for the purposes of updating the PDP planning map.

Scheduling of the ONL values

[276] Insofar as it goes, Ms Mellsop offers a helpful expression of the values she associates with the Pisa/Criffel Range ONL.²⁰⁶ However, as we have traversed for other ONLs in issue in this decision, and in Decision 2.1, an obvious limitation of this list is that it is not an expression of what QLDC, as the statutory planning authority, necessarily associates with this ONL. Unless it is incorporated into the PDP, its value is short-lived. That is in the sense that it would leave for consent authorities, from time to time, to reinvestigate and identify what may be considered relevant values, and not on a basis that has necessary enduring relevance in the manner that a planning instrument can.



²⁰⁶ Evidence-in-chief of Ms Mellsop, for QLDC, dated 2 November 2018, at [12.5].

[277] Meaning no disrespect to Ms Mellisop, we find her list of values falls a little short in expressing the particular complex nature of the landscape at the northern end of the Pisa/Criffel Range. As she herself described, this end of the Range is “a complex landscape where the schist mountains meet glacial lateral moraine remnants, mounds and terraces of glacial till and outwash plain terraces”.²⁰⁷ A source of that complexity is that this is an intersection point for two Ranges. This warrants proper description in the PDP, on a basis that duly recognises the complex interface of rugged framing steeper slopes, pastorally farmed lower plateaus and terraces and intervening bush clad gullies.

[278] To achieve that transparency, and more effectively link the relevant planning maps to objectives, policies and assessment matters, our preliminary view is that it would be appropriate to incorporate a schedule of values into the ODP. We recognise that a limitation in what Ms Mellisop has offered, in that regard, is that only a very small part of the entire Pisa/Criffel Range has been open to consideration within the scope of LMSL’s appeal.

[279] We acknowledge LMSL’s submission that it should be given opportunity for further input into the development of any ONF schedule. Our directions allow for such input in regard to finalisation of provisions addressed in Decision 2.2.

Conclusion and directions

[280] For those reasons, we decline the relief in these remaining appeals but subject to the leave we now reserve.

[281] In Decision 2.2, directions are made, for the purposes of the final decision on the most appropriate Chs 3 and 6 provisions. A particular aspect of Decision 2.2 of potential significance to parties to both this decision and Decision 2.1 is the findings that new Strategic Policies are needed that would direct future Sch 1 plan change(s) to include in Ch 21 of the ODP schedules of ONF/L values and associated landscape capacity. These are to be targeted to so-termed ‘Priority Areas’ to be specified in the SPs. Related directions are made. These include directions to QLDC to inform the court of its final position as to what Priority Areas should be so selected (and mapped). Parties are given opportunity to respond to what QLDC proposes, by supplementary submissions. There are also directions for further expert witness conferencing between named planning and

²⁰⁷ Evidence-in-chief of Ms Mellisop, for QLDC, dated 2 November 2018, at [12.8].



landscape witnesses so that the court is provided with drafting recommendations on these SPs through a further joint witness statement.

[282] Those aspects of Decision 2.2 pertain, in particular, to the Darby Planning appeal (and, to some extent, the UCESI appeal). We are satisfied on the evidence and our findings in this decision and Decision 2.1, that each of the following parties demonstrates eligibility, under s274(1)(d) RMA, to join the Darby Group appeal, in that each is directly affected by the present DV's uncertainty in regard to ONF/L values that are substantially addressed in that appeal:

- (a) Hawthenden;
- (b) LMSL;
- (c) Seven Albert Town Property Owners;
- (d) Otago Regional Council;
- (e) James Cooper;
- (f) Allenby Farms Limited;
- (g) Rob Roy Residents group;
- (h) Upper Clutha Environmental Society Inc.

[283] We are also satisfied that, if leave is granted to any of those parties to file a late s274 notice for the purpose of responding to the directions in Decision 2.2, that would not unduly prejudice any other party.

[284] Therefore, waiver under s281 RMA is granted to enable the late filing by any of the parties named in paragraph [281] (a)–(h) of a notice under s274(1)(c) to join the Darby Planning appeal for the purposes of enabling opportunity to respond to the relevant directions in Decision 2.2 concerning ONF/Ls, provided that any such s274 notice must be filed and served by **3 February 2020**.

[285] By **3 February 2020** QLDC must file, for the purposes of our final decision:

- (a) an updated planning map(s) showing its recommended adjustment of the ONL boundary to the toe of the scarp on the Hawthenden land; or
- (b) a memorandum from counsel reporting on when it can do so.



[286] Costs are reserved. A timetable will be set in due course.

For the court:



J J M Hassan
Environment Judge



SCHEDULE

ENV-2018-CHC-053	Federated Farmers of NZ
ENV-2018-CHC-082	Kawarau Jet Services Holdings Limited
ENV-2018-CHC-083	Mt Cardrona Station Limited
ENV-2018-CHC-091	Burdon
ENV-2018-CHC-092	Trojan Helmet Limited
ENV-2018-CHC-093	Queenstown Airport Corporation Limited
ENV-2018-CHC-094	The Middleton Family Trust & others
ENV-2018-CHC-095	Seven Albert Town Property Owners
ENV-2018-CHC-099	Bill and Jan Walker Family Trust & others
ENV-2018-CHC-103	Mt Christina Limited
ENV-2018-CHC-104	Soho Ski Area / Blackmans Creek
ENV-2018-CHC-106	Te Anau Developments
ENV-2018-CHC-107	Treble Cone Investments
ENV-2018-CHC-108	Aurora Energy Ltd
ENV-2018-CHC-114	Transpower NZ Ltd
ENV-2018-CHC-115	Willowridge Developments Ltd
ENV-2018-CHC-119	Halfway Bay Lands Limited
ENV-2018-CHC-124	Waterfall Park Developments Limited
ENV-2018-CHC-126	Remarkables Park Limited
ENV-2018-CHC-127	Queenstown Park Limited
ENV-2018-CHC-129	Slopehill Properties Limited
ENV-2018-CHC-130	SYZ Investments Limited
ENV-2018-CHC-131	Real Journeys Limited
ENV-2018-CHC-134	Ngai Tahu Tourism Limited
ENV-2018-CHC-136	Burgess
ENV-2018-CHC-137	Coneburn Preserve Holdings Limited & Others
ENV-2018-CHC-138	Real Journeys (trading as Go Orange Limited)
ENV-2018-CHC-141	Glendhu Bay Trustees Limited
ENV-2018-CHC-142	Queenstown Wharves GP Limited
ENV-2018-CHC-144	James Wilson Cooper
ENV-2018-CHC-145	Glen Dene Limited
ENV-2018-CHC-146	Real Journeys Limited (trading as Canyon Food and Brew Company Limited)
ENV-2018-CHC-148	Allenby Farms Limited
ENV-2018-CHC-150	Darby Planning Limited
ENV-2018-CHC-151	NZ Tungsten Mining



