

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2020] NZEnvC 157

IN THE MATTER of the Resource Management Act 1991
AND of appeals pursuant to clause 14 of the First
Schedule of the Act
BETWEEN HAWTHENDEN LIMITED
(ENV-2018-CHC-55)
UPPER CLUTHA ENVIRONMENTAL
SOCIETY INCORPORATED
(ENV-2018-CHC-56)
SEVEN ALBERT TOWN PROPERTY
OWNERS
(ENV-2018-CHC-095)
JAMES COOPER
(ENV-2018-CHC-144)
ALLENBY FARMS LIMITED
(ENV-2018-CHC-148)
LAKE MCKAY LIMITED PARTNERSHIP
(formerly LAKE MCKAY STATION
LIMITED)
(ENV-2018-CHC-160)
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: In Chambers at Christchurch

QTN PLAN APPEALS – TOPIC 2 – INTERIM DECISION 2.4



Date of Decision: 21 September 2020

Date of Issue: 21 September 2020

INTERIM DECISION OF THE ENVIRONMENT COURT
Sub-topic 1: landscape mapping, s293 applications and drafting refinements
to SO 3.2.1.7 and SP 3.3.20
Decision 2.4

- A: Directions are made for Queenstown Lakes District Council ('QLDC') to include in the district plan the updated planning map for Mt Alpha ONL (Hawthenden Farm) as per Annexure B and to provide to the court for confirmation as being in accordance with Decision 2.1 an updated planning map for Mt Iron ONF (removing Area A).
- B: Determination of the applications for directions under s293 for proposed alterations to the mapping of the Mt Alpha ONL and Pisa/Criffel Range ONL are reserved. While directions are considered appropriate in principle, further information is required to enable directions to issue.
- C: Determination of QLDC's application for directions under s293 for further mapping of the Clutha River/Mata Au Corridor ONF is reserved and directions made.
- D: SO 3.2.1.7 and SP 3.3.20 are confirmed as per Decision 2.2. subject to the deletion of (c) in SP 3.3.20.
- E: Costs are reserved and timetable directions will issue in due course.

REASONS

Introduction

[1] This decision follows from Decision 2.1,¹ 2.2² and 2.3³ on 'Topic 2: Rural

¹ *Hawthenden Limited & Ors v Queenstown Lakes District Council* [2019] NZEnvC 160.

² *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* [2019] NZEnvC 205.

³ *Lake McKay Station Limited & Ors v Queenstown Lakes District Council* [2019] NZEnvC 206.



Landscapes', in the review ('PDP') of the Queenstown Lakes District Plan.

QLDC's updated mapping

Mt Iron ONF and ONL boundary relative to Maungawera Valley

[2] Allenby Farm Limited ('Allenby') appealed aspects of the mapping of the Mt Iron Outstanding Natural Feature ('ONF'). Decision 2.1 determined that the planning map(s) relevant to the Mt Iron ONF were to be changed to remove one of the areas challenged in Allenby's appeal, namely 'Area A'. One of the points of the appeal Upper Clutha Environmental Society Inc ('UCESI') concerned the mapping of land in the Maungawera Valley area as Rural Character Landscape. UCESI sought to have this replaced with an Outstanding Natural Landscape ('ONL') notation. Decision 2.3 declined that relief and confirmed the pre-existing mapping.

[3] On 6 March 2020, QLDC sought from the court:⁴

... final determination of the following ONF and ONL boundaries determined as part of Subtopic 1 of Topic 2:

- (a) Mt Iron ONF, as determined in relation to the Allenby Farms Limited appeal, with the Court determining that 'Area A' ought to be removed from the ONF; and
- (b) The boundary of the ONL relative to the Maungawera Valley.

[4] Dealing first with Maungawera Valley, as noted Decision 2.3 declined UCESI's related relief and confirmed unchanged the PDP's "related mapping of Outstanding Natural Landscape and Rural Character Landscape boundaries". Hence, this is finally determined and the ODP and PDP is to be treated accordingly.

[5] For completeness, we note the following finding in Decision 2.3 with respect to the lack of any enunciation of landscape values for the Maungawera Valley RCL:⁵

... a more appropriate response to s7(c) RMA 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.

⁴ QLDC memorandum dated 6 March 2020 at [5].

⁵ Decision 2.3 at [189].



[6] Again, this deficiency (which Decision 2.2 records as applying more generally to ONF/Ls and the Upper Clutha RCL) is now to be addressed through the directions made in Decision 2.2.

[7] As for the Mt Iron ONF, the court will need to see updated planning map(s) showing removal of 'Area A' so as to direct that the PDP be so updated. This decision directs accordingly.

[8] Decision 2.1 reserved for determination the nature and extent of any s293 direction for including in the PDP schedules for values and attributes of the Mt Iron ONF. In the absence of any application for such directions, this aspect of Decision 2.1 is now superseded by the related findings and directions in Decision 2.2 for a Values Identification Framework to direct Sch 1 processes for the inclusion of such schedules in relation to 'Priority Areas'.

Mt Alpha ONL: Hawthenden

[9] In regard to the Hawthenden appeal, Decision 2.3 found that "the eroded face of the scarp" is properly part of the ONL and that the boundary is properly to be positioned at the foot of the scarp.⁶ It directed QLDC to file, for the purposes of the court's final decision, updated planning map(s) showing its recommended adjustment of the ONL boundary to the toe of the scarp on the Hawthenden land.⁷

[10] Following the withdrawal of Hawthenden's High Court appeal, QLDC provided an updated planning map (attached as Annexure B) for approval. The court is satisfied that this updated map accords with the findings in Decision 2.3 and is fit for purpose. Therefore, directions are made for the DV-PDP to be updated accordingly.

Requests for s293 directions

Section 293 and related principles

[11] Section 293 is as follows:

⁶ Decision 2.3 at [99].

⁷ QLDC memorandum in relation to certain Subtopic 1 matters, Topic 2: Rural Landscapes, dated 3 August 2020



- 293 Environment Court may order change to proposed policy statements and plans**
- (1) After hearing an appeal against, or an inquiry into, the provisions of any proposed policy statement or plan that is before the Environment Court, the court may direct the local authority to—
- (a) prepare changes to the proposed policy statement or plan to address any matters identified by the court;
 - (b) consult the parties and other persons that the court directs about the changes;
 - (c) submit the changes to the court for confirmation.
- (2) The court—
- (a) must state its reasons for giving a direction under subsection (1); and
 - (b) may give directions under subsection (1) relating to a matter that it directs to be addressed.

[12] Section 293 essentially involves a court-directed process for considering changes to a policy or planning instrument that go beyond the scope of relief in appeals. Importantly, this is in order “to address any matters identified by the court”. As such, while parties may invite the court to initiate s293 processes, it is for the court to determine the substance of any potential change to a plan as it may direct be considered through s293. Similarly, it is for the court to determine the nature of any process whereby the local authority is to consult about the potential plan change before the court ultimately decides whether or not the change is to be made.

[13] As discussed in Decision 2.1, the High Court in *Federated Farmers (Mackenzie Branch)* observed that the court’s role under s293 remains an appellate one not that of a planning authority.⁸ Furthermore, we understand s293 is to be considered in light of the overarching imperatives in s269 as to “timely and cost-effective resolution” of proceedings, and fairness and efficiency. Hence, we consider each of the proposed candidates for a s293 process in terms of whether:

- (a) the substance of the requested plan change is suitable for consideration under s293; and
- (b) the process is procedurally fair and appropriate.

[14] In terms of substance, our primary focus is on the nature of the resource management matters in issue. If these would require careful evaluation of options and



⁸ *Federated Farmers of New Zealand Inc (Mackenzie Branch) v Mackenzie District Council* [2014] NZHC 2616, at [1], [106], [120] – [122], [134] – [138], [144] – [155]; Decision 2.1 at [239].

the related benefit/cost choices, that would tend to suggest Sch 1 processes are more appropriate. That is in the sense that these are instigated and led by the responsible planning authority and allow for first instance rights of participation and appeals. On the other hand, if they are essentially remediating or completing what has already been considered at first instance or on appeal, s293 may well be a more appropriate cost-effective and efficient approach. These matters can be questions of degree and judgment.

[15] In terms of procedural fairness, we bear in mind that we are considering candidates for s293 directions at a stage where we have not yet concluded our decisions on Topic 2. It is important to consider the interests of both the existing parties and persons who may be invited to join the proceedings in that context. Existing appellants and s274 parties are already provided for in the sense that they maintain rights to be heard. For those persons who are not yet parties, we must consider the nature of participation rights (including any right to be heard) and how widely we confer those rights. Section 293 does not, itself, confer rights on other persons to be joined as parties and heard. However, nor does it preclude the court from granting a waiver to enable anyone eligible under s274 RMA, to join as a party to the proceeding. Furthermore, we retain capacity to make procedural directions such as on any rights to call evidence on matters in issue.

Clutha River/Mata Au Corridor ONF mapping

[16] Decision 2.1 determined two appeals concerning discrete sections of the Clutha River/Mata Au Corridor ONL and ONF mapping. An appeal by Seven Albert Town Property Owners concerned a section of the corridor in the general vicinity of Albert Town and the State Highway bridge. An appeal by James Cooper concerned a downstream section of the Corridor through the Cooper Farm. In its closing submissions, QLDC first raised the potential to seek s293 directions to alter the boundaries of the Clutha River/Mata Au Corridor ONF to the Queenstown Lakes/Central Otago District boundary. Related to that request, Decision 2.1 records:⁹

In the case of the Clutha (Mata Au) Corridor, we find QLDC's proposals (in its closing submissions) for completing the mapping in order to define an ONF from the Lake Wanaka outfall to the District boundary appropriate. We also agree with QLDC that an initial step



⁹ Decision 2.1 at [243], [244], [245].

should be to direct further expert conferencing in order to assist the sound identification of its boundaries for s293 purposes.

A further issue we are mindful of, in regard to the Clutha River (Mata Au) Corridor, is that the evidence we have so far received is confined to those sections of the Corridor that pertain relevantly to the appeals before us. Our insight into the land uses and values along the remainder of the Corridor is limited at best.

Furthermore, it is important to go beyond broad generic descriptions of values if a schedule is to serve its intended purpose in assisting application processes. Our findings on the Seven Albert Town Property Owners and James Cooper appeals illustrate that. As we have noted, mapping and scheduling are forms of provision that serve their related objectives, policies, and implementing rules including assessment matters. Schedules supplement ONF (and ONL) mapping by enunciating why the land so mapped is sought to be protected. That pertains directly to the effective implementation of related objectives and policies through rules including assessment matters. A very strong common theme across the spectrum of interests represented in Topic 2 is the importance of providing as much certainty as possible on what is being protected and why.

We find that the QLDC's administration of the ODP would be better served by the inclusion in the ODP of schedules that accompany the ONF maps for ... the Clutha River (Mata Au) Corridor and effectively identify key informing values and compatible land uses and natural hazard mitigation works. We reserve whether we will make s293 directions to achieve that end or whether it is more appropriate to leave this to QLDC to complete, through this review or by later plan change, subject to our determination of remaining Topic 2 matters.

[17] Decision 2.1 identifies the associated importance of scheduling ONF values. However, we understand QLDC's request, at this stage, is for s293 directions to be confined to the mapping issue. That is on the basis that it seeks that the Clutha River/Mata Au Corridor ONF would be identified as one of the 'Priority Areas' to which the 'Values Identification Framework' policies would apply for the purposes of scheduling values through a later Sch 1 plan change process.¹⁰

[18] For its proposed ONF mapping alteration, QLDC has identified some sixty landowners and ninety-one sites that would be affected, to varying degrees.

[19] QLDC seeks s293 directions to the following effect:

¹⁰ See Decisions 2.2 and 2.5. It would appear, however, that the mapped boundaries of this proposed Priority Area do not align with what QLDC proposes for s293 consideration. We return to this point later in this decision.



- (a) QLDC would notify its proposed mapping alteration to identified affected landowners and publicly notify it on its website;
- (b) any persons with “an interest greater than the general public has” would be eligible to join the appeal proceedings, as a s274 party, for consideration of the mapping alteration;
- (c) a 25 working day time period would be set for the filing of s274 notices to join as parties;
- (d) those who give s274 notice would be required to provide “written feedback” to QLDC and file this with the court together with any landscape affidavit evidence in support or opposition to what QLDC proposes;
- (e) QLDC would provide an updated position on the mapping alteration in light of this feedback and, unless that updated mapping is not opposed, file associated rebuttal landscape affidavit evidence.

[20] QLDC envisages also that the court may make further directions on all matters, including on request by parties.

Mt Alpha ONL s293 boundary adjustment

[21] While Decision 2.3 declined to extend the Mt Alpha ONL to encompass an area sought to be included by UCESI in the vicinity of Waterfall Creek, it records the following finding:

Finally, we return to the matters noted by Ms Mellsop ... 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.

[22] On the Mt Alpha ONL boundary adjustment, QLDC applied an iterative approach to derive its final position on precisely where the boundary should be positioned, relative to Mt Alpha/Waterfall Creek. This included taking initial soundings from landowners, seeking follow up advice from Ms Mellsop, and undertaking further consultation with landowners. Its final position is explained in its 21 August 2020 memorandum. QLDC proposes s293 directions similar to those proposed for the Clutha River/Mata Au Corridor ONF.



Pisa/Criffel Range ONL: Lake McKay Station

[23] Lake McKay Station was owned by the original appellant, Lake McKay Station Limited. The Station was acquired by Lake McKay Limited Partnership ('LMLP') which is the successor in the appeal.¹¹ Subject to some boundary adjustment¹², Decision 2.3 substantially declined LMLP's requested relief in regard to the positioning of the Pisa/Criffel Range ONL over the Station.

[24] In addition, Decision 2.3 identified merit in a further adjustment to the ONL boundary as agreed by the landscape experts (to encompass an area known as "Knoll A3KV"). However, for this matter, it identified scope constraints.

[25] LMLP was invited to make supplementary submissions.¹³ It questioned whether the court would have jurisdiction to amend the ONL boundary even if the parties were agreed that the adjustment in regard to Knoll A3KV was appropriate.¹⁴ QLDC filed a memorandum in response, noting that it shared LMLP's views as to jurisdiction. It invited the court to consider whether to make directions under s293 on the matter.¹⁵ QLDC and LMLP then agreed that it would be appropriate to make s293 directions for the purposes of modifying the Pisa/Criffel Range ONL boundary on Lake McKay Station so as to encompass Knoll A3KV. Their 28 August 2020 joint memorandum was accompanied by a map depicting this proposed change (attached to this decision as Annexure C). This shows:

- (a) a red line – the PDP-DV ONL boundary;
- (b) a blue line – the boundary agreed by Ms Mellsoop and Ms Steven (to which we refer to Decision 2.3 for our findings); and
- (c) a yellow line – the amended ONL boundary now agreed between QLDC and LMLP.

[26] QLDC and LMLP consider that the Amended Yellow Boundary is more

¹¹ Counsel for Lake McKay Station Limited advised by way of memorandum dated 31 January 2020 that at the time of hearing the land in and around Knoll A3KV was under contract to LMLP, and that LMLP is now the registered proprietor of the subject land.

¹² Decision 2.3 at [268].

¹³ Decision 2.3 at [206], [274] and [275].

¹⁴ Memorandum for LMSL dated 31 January 2020.

¹⁵ Memorandum for QLDC dated 14 February 2020.



appropriate to capture “the upper, more natural part of the landform, and follow a logical contour/gradient boundary around the northern aspect, and the base of several rocky outcrops and escarpments around the south-western corner of the feature”.¹⁶

[27] The parties seek related s293 directions. LMLP is the only relevant landowner with any proprietary interest. Given that, QLDC and LMLP agree that directions can provide for a relatively simpler process. They agree there is no need to serve written notice. Any person who would have an interest in the mapping alteration “greater than the interest that the general public has” would have opportunity to provide feedback to QLDC and the court within a specified period of time. Notice of this opportunity and the proposed amendment would be put on QLDC’s website.¹⁷

Discussion

Clutha River/Mata Au Corridor ONF mapping and values’ scheduling

[28] Decision 2.1 found that the Clutha River/Mata Au Corridor was properly classified ONF (rather than a combination of ONL and ONF). There is a consequential need to provide for a complete ONF mapping notation for this corridor.

[29] The evidence before the court for sections of the Corridor beyond that in issue in the Seven Albert Town Property Owners and Cooper appeals is limited. However, we find it sufficient to enable us to consider s293 directions to alter the mapping of the ONF through to the Queenstown Lakes/Central Otago District boundary. That is simply on the basis that the effective protection of ONF values relies upon accurate and complete mapping of the Corridor.

[30] However, as Decisions 2.1 and 2.2 found, mapping is not itself a sufficient planning response to s6(b), RMA. It needs to be accompanied by the scheduling of ONF values and attributes.

[31] We are not yet in a position to finally determine whether s293 directions should be made to assist to address those deficiencies in the ODP. In particular, we need further input from QLDC as follows.



¹⁶ Joint memorandum for QLDC and LMLP, dated 28 August 2020, at [10].

¹⁷ Joint memorandum for QLDC and LMLP, dated 28 August 2020, at [11] and [12].

Mapping and supporting documentation

[32] We have not yet received from QLDC all the information we need to be able to make the necessary directions in Stage 1 of the process under s293. In particular, QLDC has not yet provided to the court its proposed map changes and the supporting documentation (including any information on values and attributes that inform QLDC's proposed map changes).

[33] A related issue is that QLDC's indicative 'Priority Area' for the Clutha River/Mata Au Corridor would not appear to fully align with the mapping alteration QLDC seeks for s293 consideration. QLDC needs to clarify this aspect.

Would s293 provide fair opportunity to be heard?

[34] A s293 process has the potential to significantly extend the Topic 2 hearing and inquiry. We bear in mind that there are some sixty landowners and ninety-one sites that would be affected by QLDC's proposed mapping alteration. It is particularly important that any directions to govern rights of participation ensure procedural fairness. As matters stand, we are not yet satisfied about that.

[35] Firstly, we find it would not be appropriate to seek to constrain who may participate to those with an interest greater than the general public. Rather, given the potential public interest in the Clutha River/Mata Au Corridor, the scope for participation should extend to any person. That properly parallels the available scope under Sch 1, RMA.

[36] A further issue is that the envisaged s293 process would be confined to rectifying and completing the ONF mapping of the Clutha River/Mata Au Corridor, leaving for later Sch 1 processes the scheduling of ONF values and attributes. Perhaps that would be consistent with fairness and efficiency. However, we do not want to presume that would be so without at least allowing those who are eligible to join the proceedings to state their preference (should they so wish) as between:

- (a) leaving all matters aside for a later Sch 1 processes; or
- (b) resolving the mapping through s293 and leaving the scheduling of values



and attributes to later Sch 1 processes.

[37] If any response on those matters reveals that any person would be unduly prejudiced by the envisaged s293 process, the court would have a more informed basis to decide whether or not to instigate the process.

[38] A related issue concerns what a party could submit or provide evidence on concerning the proposed mapping changes. As we understand QLDC's proposed directions, any evidence would be confined to landscape opinion. Landscape opinion on values and attributes is undoubtedly important to making an informed determination of mapped ONF boundaries. However, evidence on matters such as present and anticipated land uses and development can also be highly relevant. On this, we refer to our findings in Decision 2.1 (e.g. for the Seven Albert Town Residents and Cooper appeals) and in Decision 2.2. In fairness terms, s274 parties ought to be able to present and contest evidence on such matters.

Directions for further input from QLDC

[39] Our directions provide for QLDC to further assist the court on these matters, including with any proposed updated directions. Once that is received, the court would expect to be in a position to determine whether or not, and on what basis, any s293 process would be instigated. At the same time, the court would hope to be in a position to make a determination on QLDC's proposed Clutha River/Mata Au Corridor Priority Area.

Mt Alpha ONL boundary adjustment and Pisa/Criffel Range ONL

[40] By comparison with the Clutha River/Mata Au Corridor, these proposed mapping changes are relatively simple and confined. On the evidence and our related findings in Decision 2.3, we have no difficulty in finding there is clear jurisdiction and that it is appropriate that s293 directions be made. Furthermore, we find the proposed directions generally appropriate, subject to some minor drafting refinements as we set out in Annexure A. To ensure clarity on all matters, we direct that QLDC file for each matter:

- (a) a final version of the 'plan change' (i.e. maps and any related text) in the form intended to be notified;



- (b) a final version of the updated requested directions (see suggestion in the Annexure); and
- (c) a proof copy of the related notices.

[41] Once we receive that documentation and are satisfied it is in order, further decision(s) will issue that will make the relevant s293 directions.

Some matters of drafting refinement for SO 3.2.1.7 and SP 3.3.20

[42] Decision 2.2 proposed that SO 3.2.1.7 and SP 3.3.20 be revised. It set out the following preliminary drafting:

- SO 3.2.1.7 Agricultural land uses are enabled provided those uses are consistent with:
- a. the protection of the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes;
 - b. the maintenance of the landscape character of Rural Character Landscapes and the maintenance or enhancement of their visual amenity values; and
 - c. the maintenance of significant nature conservation values.
- SP 3.3.20 Enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with:
- a. protection of the landscape values of Outstanding Natural Features or Outstanding Natural Landscapes;
 - b. maintenance of the landscape character and maintenance or enhancement of the visual amenity values of Rural Character Landscape; or
 - c. maintenance of significant conservation values or Ngāi Tahu values, interests or customary resources.

[43] Directions were made inviting QLDC to report on whether the changes were in scope or needed to be subject to directions under s293.

[44] In its response, QLDC helpfully set out the relevant appeals on these provisions. In regard to SO 3.2.1.7, Ms Scott submits that the proposed changes would be within the scope of those appeals. In addition, she considers they can be fairly regarded as consequential to relief sought on other strategic provisions. In regard to SP 3.3.20, Ms Scott submits that there is scope for the amendments to (a) and (b). However, she queries whether (c) has been included in error. In particular, she points out there is no discussion of the new qualifier in Decision 2.2. Nor is QLDC aware of any relief or evidence seeking this change. As such, QLDC sensibly seeks clarification from the court



before responding to the request for an appropriate consultative procedure under s293.

[45] We confirm that (c) was included in error. We suspect that was in the context of carrying over drafting from similar provisions. We consider QLDC's analysis as to scope to be sound and agree there is no requirement for the s293 process. Therefore, SO 3.2.1.7 and SP 3.3.20 are confirmed as per Decision 2.2, subject to the deletion of (c) in SP 3.3.20.

Outcomes and directions

Mt Iron ONF: Allenby appeal

[46] QLDC is directed to confer with Allenby and file a memorandum of counsel **within 10 working days** of the date of this decision proposing a date by which it will file for the court's approval updated planning map(s) showing the removal of Area A to give effect to the findings in Decision 2.1.

Mt Alpha ONL: Hawthenden appeal

[47] Completing the findings and determinations in Decision 2.3, QLDC is directed to:

- (a) update the ODP by replacing the relevant PDP-DV map approved by this decision (and as set out in Annexure B); and
- (a) file a reporting memorandum as to that once completed.

Mt Alpha ONL boundary adjustment s293 application

[48] To ensure clarity on all matters before those directions are made, QLDC is directed to file **within 10 working days** of the date of this decision:

- (a) a final version of the 'plan change' (i.e. maps and any related text) in the form intended to be notified;
- (b) a final version of the updated requested directions; and
- (c) a proof copy of the related notices.



[49] Determination of the application is reserved pending satisfactory response to that direction.

Clutha River/Mata Au Corridor s293 application

[50] QLDC is to consider the matters raised at [28] – [39] and further report to the court **within 10 working days** of the date of this decision.

Pisa/Criffel Range ONL boundary change s293 application

[51] To ensure clarity on all matters before those directions are made, QLDC is directed to confer with LMLP and file **within 10 working days** of the date of this decision:

- (a) a final version of the 'plan change' (i.e. maps and any related text) in the form intended to be notified;
- (b) a final version of the updated requested directions; and
- (c) a proof copy of the related notices.

[52] Determination of the application is reserved pending satisfactory response to that direction.

SO 3.2.1.7 and SP 3.3.20

[53] SO 3.2.1.7 and SP 3.3.20 are confirmed as per Decision 2.2. subject to the deletion of (c) in SP 3.3.20.

[54] Leave is reserved to seek further (or other) directions.

[55] Costs are reserved and timetable directions will issue in due course.

For the court:



J J M Hassan
Environment Judge



ANNEXURE A

Drafting refinements to proposed directions for consideration

Mt Alpha ONL s293 boundary adjustment

Under s293, to enable consideration of a mapping alteration for the Mt Alpha ONL boundary, it is directed:

- a. within 5 working days of the date of [this decision], QLDC must:
 - i. send written notice to all affected landowners advising of the proposed mapping alteration, by way of letter to all registered ratepayers of the relevant street addresses; and
 - ii. publicly notify the proposed mapping alteration, by way of written notice on Council's website, in order to provide other parties, with an interest in the mapping alteration that is greater than the interest the general public has, with an opportunity to join the section 293 process.
- b. any person who is not already a party but who has an interest in the proposed mapping alteration greater than the interest the general public has may give notice under s274 (using Form 33) to join as a party for the purposes of the s293 process for consideration of the proposed mapping alteration, provided that person files that notice within 25 working days of the date of [this decision];
- c. where notice is duly filed and the court is satisfied that person has an interest in the proposed mapping alteration greater than the interest the general public has, waiver of the late filing of that notice will be given;
- d. within 35 working days after the date of [this decision] (or such further period as the court may direct) every party must serve on QLDC and file with the court:
 - i. written notice of whether that party supports or opposes the proposed mapping alteration and related reasons;
 - ii. any affidavit landscape evidence for their position.
- e. within 45 working days after the date of [this decision] QLDC is to provide to the court a link to the updated Mt Alpha ONL boundary map and file either:
 - i. landscape affidavit evidence in response to any landscape evidence filed by any interested party, including an updated recommendation (if it has changed) on the proposed mapping alteration, together with, an affidavit from Council's planner, outlining the feedback received from parties; or
 - ii. a memorandum of counsel advising that no party opposes Council's proposed mapping alteration.
- f. on receipt of the information listed above, the court will consider the material filed by the parties and issue further directions as to the next steps including as to whether the court wishes to hear further from any party, or whether a determination on the papers can be made.
- g. leave is to be reserved to any party to seek modifications to the directions, on application to the court.



Pisa/Criffel Range ONL: Lake McKay Station Ltd and Lake McKay Limited Partnership appeal

Under s293, RMA, it is directed:

Notification

- (a) within 5 working days of the date of this decision, QLDC must publish on its website a notice:
 - (i) stating that any person with an interest greater than the interest of the general public in the proposed amendment to the Pisa/Criffel Range ONL mapping may provide to QLDC written comments on the proposed alteration by a date specified in the notice (not less than 10 working days after publication of the notice);
 - (ii) describe the proposed alteration to the ONL map boundary relative to Knoll A3KV;
 - (iii) include a copy of the map attached as Annexure B to this decision; and
 - (iv) provide information on how written comments may be provided to QLDC.

Rights to make written comments

- (b) by the date specified in the notice in (a) (not less than 10 working days after the date QLDC publishes that notice) any person with an interest in the mapping alteration that is greater than the interest of the general public may provide to QLDC:
 - (i) written comments on the proposed mapping alteration; and
 - (ii) any landscape affidavit evidence to support those comments.

Council report

- (c) within 20 working days after the date QLDC publishes the notice in (a), QLDC must file report(s) from a planning and/or landscape expert (as required):
 - (i) summarising all feedback received (if any); and
 - (ii) making recommendations for the court's consideration.

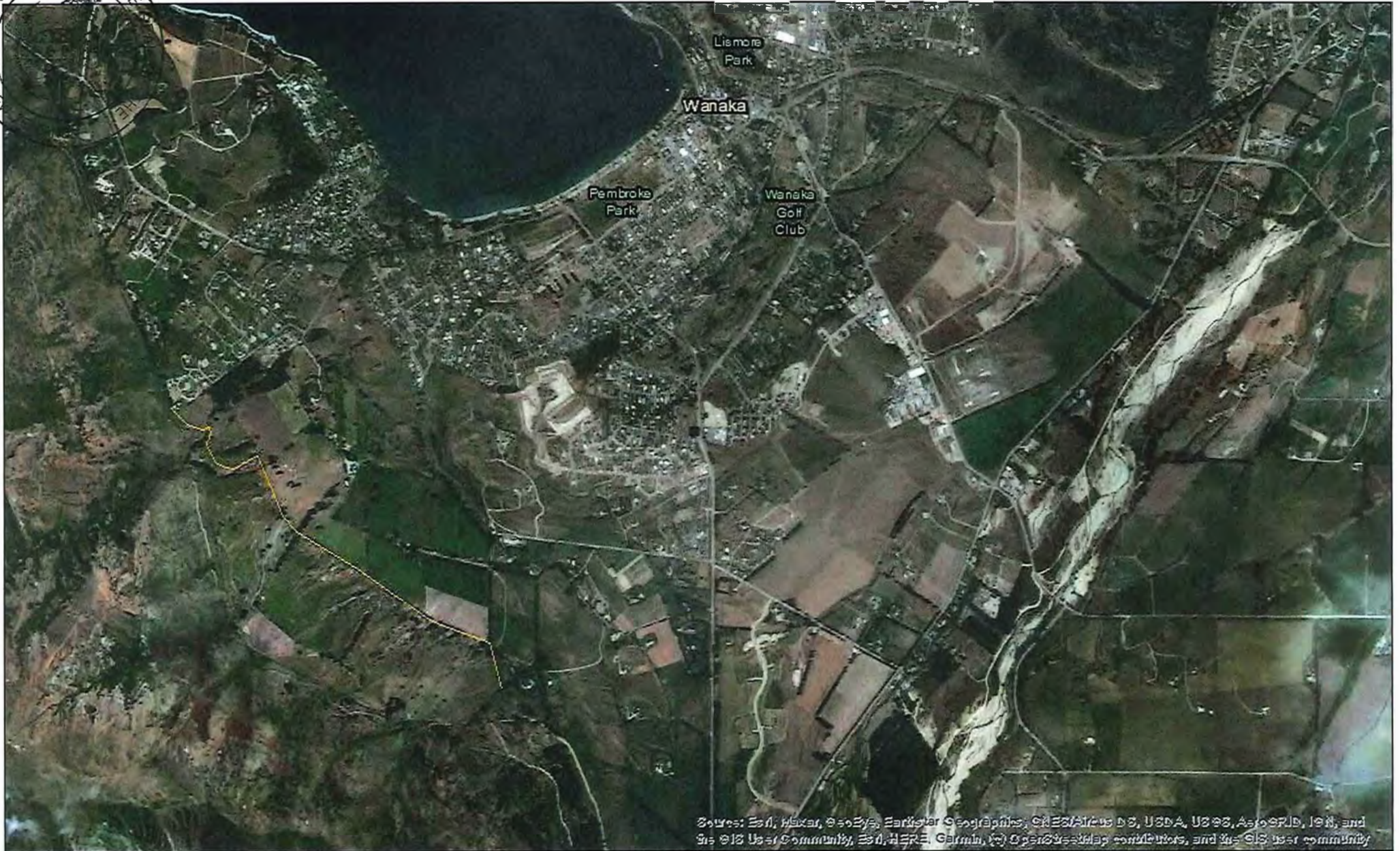
Court's determination

- (d) once the court has received the report from QLDC as directed, this will be considered and the court will then either determine the mapping alteration or issue further directions (if required). Pending the conclusion of those s293 processes, the court reserves final determination of the appropriate ONL boundaries to give effect to the findings in Decision 2.3 (and any concerning the s293 direction). It can be anticipated that, at some stage, QLDC will be called upon to provide an updated set of map(s) to reflect the court's final determinations(s).





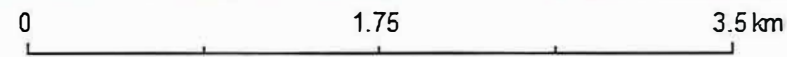
Map of final location of the ONL boundary at the foot of the escarpment, relative to the Hawthenden Ltd appeal



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Scale @A4 paper size - 1:36,112



Map produced by Queenstown Lakes District Councils GIS viewer

Map date: 31/07/2020



Map showing amended ONL boundary relative to Knoll A3KV agreed between Council and LMPL

