

Before the Hearing Panel

Under the Resource Management Act 1991 (**Act**)

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

**Synopsis of legal submissions on behalf of various submitters and further
submitters represented by Anderson Lloyd**

24 October 2023

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May it please the Court

- 1 This synopsis of legal submissions is provided on behalf of the following submitters and further submitters represented by Anderson Lloyd in relation to the variation to introduce landscape schedules 21.22 and 21.23 (**Schedules**) into Chapter 21 Rural Zone of the Queenstown Lakes Proposed District Plan (**PDP**) (**Variation**):
 - (a) Gertrude's Saddlery Limited;
 - (b) Hansen Family Partnership;
 - (c) Jon Waterston;
 - (d) Queenstown Adventure Park 1993 Limited;
 - (e) RealNZ Limited;
 - (f) Sir Robert Stewart;
 - (g) Rock Supplies NZ Limited; and
 - (h) The Station at Waitiri Limited (collectively, the **Submitters**).
- 2 Given Counsel represent a range of submitters in this process, this synopsis has been split into a 'general' section, addressing broad and generic issues across all Schedules, and then Submitter-specific appendices, addressing Priority Area (**PA**) boundaries and site-specific issues in particular Schedules.
- 3 Submissions on the 'general issues' cover the following:
 - (a) Updated position on Schedules following joint witness conferencing:
 - (i) Removal of the 'no capacity' rating;
 - (ii) Schedules are descriptive, not directive/policy;
 - (iii) Exception Zone framework and Schedule preamble;
 - (iv) The high level and future-looking nature of the schedules;
 - (b) PA mapping:
 - (i) Application of the *Clearwater* tests on scope to amend the PA boundaries;
 - (ii) Notification of Variation and submitter perceptions;

- (iii) Consequential amendments;
- (iv) Whether the maps were notified or incorporated by reference and use of clause 16 amendments.

Updated position on schedules following joint witness conferencing

Removal of the 'no' capacity rating

- 4 The Submitters support the recommendation to remove the 'no landscape capacity' rating as agreed between the planning and landscape experts, and set out in the 3rd October 2023 joint witness statement (**3rd October JWS**). It is submitted that the 'no landscape capacity' rating would (or could) risk effectively translating to a 'do not allow' or 'avoid' regime, which is at odds with the 'high level' PA scale nature of the Schedules. It is also not supported in terms of any higher order policy in chapter 3 and 6, in the form of any avoidance or prohibition policy, or in a blanket non-complying or prohibited rule regime for Outstanding Natural Features (**ONF**) and Outstanding Natural Landscapes (**ONL**). To the contrary, this PDP seeks to protect identified values¹ and provides a broadly discretionary regime, allowing future appraisal and assessment of an activity / planning proposal against landscape values and related policy tests.
- 5 Despite the 3 October agreement between the experts, in opening submissions, Counsel for Council submitted a 'revised position', based upon concerns as to unsuitable vagueness resulting from the amended schema wording for the new 'extremely limited or no capacity' rating.
- 6 Counsel submits that the revised wording now proposed by Council, in particular the removal of the last sentence from the agreed version (set out below), is effectively tantamount to a reversion to the original 'no capacity' framing:

Extremely limited or no landscape capacity: there are extremely limited or no opportunities for development of this type. Typically this corresponds to a situation where development of this type is likely to materially compromise the identified landscape values. However, there may be exceptions where occasional, unique or discrete development protects identified landscape values.

- 7 Removal of the recognised exceptions for '*occasional, unique, or discreet development*' which protects identified landscape values, removes what was an appropriate nod to the intended high-level nature of these schedules, reflective of the fact that insufficient evidence and analysis has been done (or could reasonably be done) to robustly determine, at a PA

¹ Strategic Issue 3.1B.5 and Strategic Policy 3.3.48.

scale, that there is a presumption of (effectively) no capacity, for an infinite range of types, scales and locations of activities. Such a definitive determination would require a detailed spatial planning assessment – which is well beyond what has been undertaken in this process.

- 8 No authority was cited by Counsel for Council supporting his concerns as to undue vagueness in these descriptions. The JWS was agreed by a range of very experienced landscape architects and planning practitioners, many with decades of experience in this District. It is submitted that, in particular, those planning practitioners are well equipped to understand where terminology is unhelpfully vague in a plan, or where it is appropriate, and we defer to their collective expertise and recommendation.
- 9 In our submission, it is appropriate to retain this flexibility in the drafting as previously agreed in the JWS, and counsel disagrees that this is an inappropriately vague term for plan administration. To the contrary, this recognition allows for due consideration of proposals in a discretionary planning framework against the applicable policy and objective tests of the PDP. Council's 16 October version set out below, and the material modification of it tabled on the 17th, is therefore opposed:

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

Descriptive not policy/directive

- 10 This process of values, attributes and capacity identification (to remediate the Council's 'flawed' decision version from Stage 1 of the rolling PDP review), is a process to allow for identification of what is generally required to be protected in these landscapes². This is not a process to introduce new policy or evaluative tests, which potentially duplicate or run contrary to, the settled landscape policy framework from the Court now in Chapters 3, 6, and 21 (in particular).
- 11 Counsel therefore supports the Schedules as being confined, where possible, to this descriptive role, rather than introducing evaluative or policy-type language. For example, phrasing such as the '*reasonably difficult to see*' test, or hybrid terms, such as '*barely discernible*' should be

² *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160 at [30] citing *Man O'War Station Limited v Auckland City Council* [2017] NZCA 24.

cautiously used as they risk over stepping the mark into territory reserved for assessment matters, policies, and objectives.

Exception Zone framework and Preamble

- 12 Counsel support the reframing of the Schedule 21.22 Preamble text agreed in the 3rd October JWS, to the extent the intention is:
- (a) Reflecting the 'carve out' of the application of the primary ONF and ONL provisions from applying to Exception Zones. Due to the carve out in 3.1.B.6 of SP 3.3.29 in particular there is no policy 'hook' in strategic chapters requiring Exception Zones to have scheduled values and capacity identified in accordance with the VIF;
 - (b) Similarly, consent applications in the Exception Zones are not required to be considered against the Scheduled values, attributes and capacity ratings. However on the basis of 3.2.5.4 (b), if a consent application is for an activity not provided for in an Exception Zone, the policy requires the landscape values be protected. In that situation, it makes sense that an applicant may consider the Schedule to be a useful reference;
 - (c) For Ski Area Sub Zones (**SASZ**) at least, which sit within chapter 21 (as contrasted to other Exception Zones that are standalone zones like the Gibbston Character Zone (**GCZ**)), it is at least clear in Chapter 21 that consent applications for anticipated activities are not required to be considered against the Schedule 21.21. This clarity is found in the Assessment Matters section. Many of the Assessment Matters refer to assessment having regard to Schedule 21.11. However the lead-in to the Assessment Matters at 21.21.A.b specifies that no Assessment Matter is relevant to the SASZ unless it is a matter that is not anticipated by the Sub-Zone.
 - (d) It is possible that even for activities provided for/anticipated in Exception Zones that the Schedules 'may' be considered or taken into account in future planning decisions (but are not required to be). If this is the case, caution is required to ensure capacity is framed for anticipated activities in those exception zones, as well as the broader PAs within which they sit – as those activities are considered to be 'appropriate development' in the context of section 6(b). It is not clear whether there was clear direction given to the experts who prepared the Schedules on this point, and if that is reflected appropriately and consistently;

- (e) Given the mapping of PAs includes the spatial extent of either some or all of the extents of the Exception Zones (but the evaluation of future activities within those is not required to be assessed against the Schedules) there needs to be absolute clarity and understanding of this wording and approach, within the Schedules and potentially the Exception Zones themselves;
- (f) If the mapping continues to include these Exception Zones, and those areas are also described in terms of values and related capacity, then there needs to be certainty, that such descriptions are only matters that may be considered (and are not binding or determinative) for any future planning decisions and landscape assessments supporting applications.

The high level and future-looking nature of the schedules

- 13 Counsel supports the references to the schedules being, effectively, a '*high level*' starting point of analysis. They are essentially a description of values and capacity at a very broad geographic scale (for the most part), and are reflective of an unknown future character (and therefore capacity) of landscape, which will likely change over the lifetime of the District plan.
- 14 As above, no policy direction in the PDP, and no Council evidence supports³, an approach in the schedules tantamount to a 'no capacity' or avoidance regime.
- 15 Retention of a 'no capacity' rating, or wording which is effectively the same, would provide for a presumption or bias towards retaining current landscape state without change. This does not recognise that changes to attributes and values can have positive or neutral impacts. Particularly where a site is degraded at present, there are benefits to landscape and other values (such as biodiversity) related to subdivision and development proposals that remedy existing degraded characteristics. Consequently, change in a landscape does not and need not, of itself, necessarily constitute an adverse landscape or visual effect.
- 16 Landscape is dynamic and is changes over time in both subtle and more dramatic transformational ways. These changes are both natural and human induced. What is important in managing landscape change, is that adverse effects on important values are sufficiently mitigated to ameliorate

³ The Council experts agree 'no landscape capacity' should be amended to 'very limited to no landscape capacity'. Mr Giddens appears to be the only expert who supports the use of the term "no capacity" at paragraph [26] of his evidence.

the effects of the change in land use and, where degraded landscapes or features exist, that such degradation be remedied. The Schedules should be amended to recognise and provide for such benefits of change, enhancement and remediation, rather than a presumption that 'no change or capacity' is the only way to achieve protection of values.

- 17 There is not a clear message from evidence that existing development is a detractor. That would also presume some ideal landscape condition - which has not been identified. The conclusion of "no" capacity for additional development does not have a sound basis.

PA mapping

Further application of the Clearwater tests on scope to amend the PA boundaries

- 18 Counsel has already addressed this Panel in terms of scope and jurisdiction to make mapping adjustments to PA boundaries in the Passion Developments Limited Submissions dated 16 October 2023 (**PDL Submissions**)⁴. The PDL Submissions addressed and applied leading authority for scope of submissions "on" a plan variation, as follows:
- 19 The High Court in *Clearwater Resort Ltd v Christchurch City Council* considered that in order for a submission to be regarded as "on" a variation it must address "the extent to which the variation changes the pre-existing status quo" and not cause the plan change to be "appreciably amended without real opportunity for participation by those potentially affected".⁵
- 20 The Environment Court in *High Country Rosehip Orchards Ltd v MacKenzie District Council*, citing *Clearwater*, stated "it is the extent to which the variation or plan change differs from the status quo which sets the scope of the plan change".⁶
- 21 The High Court in *Palmerston North City Council v Motor Machinists Ltd* endorsed the approach in *Clearwater* stating that for a submission to be "on" a plan change, it must address "the alteration of the status quo brought about by that change".⁷ The Court considered an appropriate way of analysing this issue was to ask "whether the management regime in a district plan for a particular resource is altered by the plan change".⁸ If was,

⁴ Legal submissions for Passion Developments Limited, 16 October 2023.

⁵ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 at [66].

⁶ *High Country Rosehip Orchards Ltd v MacKenzie District Council* [2011] NZEnvC 387 at [27].

⁷ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [80].

⁸ At [91].

then a submission on that new management regime could be "on" the plan change.

- 22 Counsel summarised the application of these tests, being largely a reiteration of the *Clearwater* tests, in terms of:
- (a) What was or was not included in the public notice documents as part of the 'notified' Variation (and what was misleading as a result);
 - (b) The changed status quo of the planning framework by the introduction of PA mapping and related schedules;
 - (c) A contemporaneous values and boundary assessment process for landscapes being squarely within the ambit of the section 32 assessment; and
 - (d) There being no natural justice issue of unexpected appreciable amendment to the mapping, given over a quarter of submitters in the process have sought this outcome.

Validity of notification of Variation and submitter perceptions

- 23 The summary of the PDL submissions in terms of notification and submitter perception is set out below, and is of direct relevance to the application of the first of the *Clearwater* tests:
- (a) Council's approach to notification of the Schedules Variation has been confusing, contradictory, and misleading, with respect to the mapping;
 - (b) While Council's notification page and section 32 assessment refers to maps as being included in the 'web mapping link',⁹ it is understood that Council's position now is that the PA mapping is not in fact within the PDP maps (any longer), but is only 'incorporated by reference'. Counsel has the following issues with that approach:
 - (i) Counsel has searched, and nowhere in the Council's section 32 documentation, expert evidence, or public notice documents is there reference to the mapping as being 'incorporated by reference into the PDP';
 - (ii) Council's webpage for material incorporated by reference does not, as at the date of these submissions, include the PA

⁹ Which is the common reference term for the PDP mapping.

mapping.¹⁰ As the Panel will be aware, a District Plan (including its mapping) can only be amended through a Schedule 1 public consultation process, so the inclusion of the PA mapping within the PDP maps for the last two years¹¹ has reasonably led the public to believe that, at some point, the PA mapping was notified and therefore must have been (or is) the subject of a submission process;

- (iii) Council's own expert witnesses have described the mapping as 'notified'. They have never described the mapping as 'incorporated by reference';
- (iv) The PA mapping indicated by a pink hatched overlay polygon within the PDP maps was only removed one working day before these hearings commenced, with no explanation in opening from Counsel for Council as to why.

24 The PDL Submissions provide an overview of the difficulties in understanding the legal status between:

- (a) The PA maps from the Court-endorsed 2020 Joint Witness Statement (**JWS**)¹² (the green layer), determined by Judge Hassan's division to be incorporated by reference into the PDP in Interim Decisions 2.5¹³, 2.7¹⁴ and 2.12¹⁵ and which still appear as a spatial layer on QLDC's public notice webpage for the Variation, described as the "ONF and ONL Priority Areas" in the layer legend; versus
- (b) The legal status of the yellow layer which appears to be amended versions of the green layer, and the (now deleted) PDP pink hatching layer;
- (c) No explanation or differentiation between these layers is provided in QLDC's public notice document;

¹⁰ Referring to Council's webpage at: <https://www.qldc.govt.nz/your-council/district-plan/proposed-district-plan/documents-incorporated-by-reference>

¹¹ Since 3 December 2021 according to Counsel for Council.

¹² Joint Statement Arising from Expert Planner and Landscape Conferencing in Relation to Strategic Policies and Priority Area Expert Conferencing Topic 2: Rural Landscapes, 29 October 2020.

¹³ *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* [2020] EnvC 158.

¹⁴ *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* [2021] EnvC 060.

¹⁵ *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* [2021] EnvC 155.

- (d) Council's notification page in fact provides links to both the above versions of mapping (with no differential description) as shown in the screenshot below (although Council recently removed this spatial layer¹⁶):

Priority Areas included in the schedules

The twenty-nine Priority Areas included in the schedules are:

- parts of the Outstanding Natural Features of Peninsula Hill, Ferry Hill, Shotover River, Morven Hill, Lake Hayes, Slope Hill, Feehly Hill, Arrow River, Kawarau River, Mt Barker, and Mt Iron. (see [Policy 3.3.36.a.](#))
- parts of the Outstanding Natural Landscapes of West Wakatipu Basin, Queenstown Bay and environs, Northern Remarkables, Central Wakatipu Basin Coronet Area, East Wakatipu Basin and Crown Terrace Area, Victoria Flats, Cardrona Valley, Mount Alpha, Roys Bay, West Wanaka, Dublin Bay, Hāwea South and North Grandview, and Lake McKay Station and environs. (see [Policy 3.3.39.b.](#))
- parts of the Rural Character Landscapes of Cardrona River/Mt Barker Road, Halliday Road/Corbridge, West of Hāwea River, Church Road/Shortcut Road, and Maungawera Valley (see [Policy 3.3.39](#))

[Landscape and Priority Areas and Rural Character Landscape \(arcgis.com\)](#)

The priority areas can also be viewed in the District Plan maps [here](#)

- 25 All of the above leads to a situation where the Council's notification and evidence exchange has reasonably informed submitters that the mapping is within the scope of the notified Variation, and a matter that can be contested. In our submission, this is reflected in the fact that at least a quarter of submissions have sought such relief. Counsel have identified at least 55 submitters, including at least 36 submitters not represented by Anderson Lloyd, who sought amendments to the PA boundaries.¹⁷ A number of submitters also sought the boundaries be retained, indicating they too understood the boundaries were being notified, and / or were within the "scope" of the Variation to submit on. This supports the proposition that the public perceived the Variation as including jurisdiction over mapping amendments.

¹⁶ Screenshot taken from weblink: <https://www.qldc.govt.nz/your-council/district-plan/landscape-schedules> on 19 October 2023, at 9.09pm.

¹⁷ The following submission points sought amendments to the PA overlay (asterisk* indicates submitter represented by Anderson Lloyd): OS 2.4 - 2.5; OS 3.2 & 3.4; OS 7.3; OS 16.1; OS 17.1 – 17.2; OS 34.1; OS 37.1 and 37.4 - 37.7; OS 47.8; OS 49.6; OS 52.1; OS 57.1 and 57.11; OS 63.5; OS 68.6; OS 81.4; OS 86.1; OS 93.2 – 93.3; OS 94.4 – 94.5; OS 95.1 – 95.2; OS 100.1; OS 101.1; OS 102.1; OS 103.1; OS 105.1; OS 106.1 – 106.2; OS 108.1; OS 109.3; OS 119.4; OS 120.1; OS 124.2; OS 125.2; OS 126.13; OS 132.1 – 132.2 and 132.5*; OS 133.1 – 133.2*; OS 134.2*; OS 137.1*; OS 138.12*; OS 139.1 – 139.3*; OS 140.1 – 140.3*; OS 141.25*; OS 142.1 – 141.3*; OS 145.1* ; OS 146.1; OS 175.1; OS 177.1 – 177.2*; OS 178.1*; OS 179.4; OS 180.4; OS 181.1; OS 182.1*; OS 183.1; OS 186.3 – 186.5; OS 188.1; OS 189.1*; OS 200.1*; OS 207.1-2.

- 26 If the Council's position remains that the mapping was not notified, then it is submitted, the notification of the Variation is flawed and misleading¹⁸.

Consequential amendments

- 27 As summarised in Counsel's PDL Submissions, the serious concerns above as to the notification process go primarily to the first of the *Clearwater* tests, as to what was considered to be "on" the plan change, and whether submissions are seeking to amend the status quo planning framework.
- 28 It is submitted that changes to the ONL or ONF boundaries in the PDP GIS map (i.e. the brown dashed lines) are a matter that is reasonably anticipated to be consequently amended by submissions. Clause 10(2)(b) of Schedule 1 includes scope for Council to include matters relating to any consequential alterations necessary to the proposed plan (including a variation to a proposed plan) arising from the submissions in its decision. Counsel for QLDC at the first Arthurs Point Stage 1 hearing submitted Council could exercise its powers under Clause 16(2) to create an ONL boundary around the Arthurs Point settlement despite that relief not being notified or sought in submissions.¹⁹ The Independent Hearing Panel accepted Council's legal advice and recommended insertion of a new ONL line around the urban zoned area of Arthurs Point. Similarly, counsel for QLDC at the second Arthurs Point Stage 1 hearing submitted that the extension of a building restriction area on the PDP maps could be a consequential amendment pursuant to clause 10(2)(b) of Schedule.²⁰ As discussed in the PDL Submissions, the nature of landscapes is that their boundaries are informed by a values assessment, which is only just now being done through this Variation in a detailed way for the first time, for a number of areas. The omission of this detailed step in Stage 1 of the PDP review was the 'deficiency' noted in Judge Hassan's interim decisions. Ms Gilbert's evidence in opening of these hearings noted that the Dr Read report from 2014 is almost 10 years old and 'somewhat out of date', and that she found the schedules process 'constraining' in not being able to revisit mapping contemporaneous with the values assessment, as has been the practice in other regions.

¹⁸ *Milne v Northland Regional Council* ENC Auckland A086/2004, 30 June 2004 at [48] and *Creswick Valley Residents Association Inc v Wellington City Council* [2012] NZHC 644 at [64].

¹⁹ Queenstown Lakes District Council Independent Hearing Panel Report 17:04 Report and Recommendations of Independent Commissioners Regarding Mapping of Arthurs Point at [68] and [100]. <https://www.qldc.govt.nz/media/nyvfx1rs/report-17-04-stream-13-mapping-of-arthurs-point.pdf>

²⁰ Recording 1 Arthurs Point Stage 1 at 11.00 minutes. <https://drive.google.com/drive/folders/18LkXZNdvD9YDLTF3lus0mBnDuOFToujF>

- 29 A number of the boundaries from Stage 1 of the PDP notified in 2015 were never sufficiently 'audited', were not based upon a values assessment like this process, were never litigated (so this process is not 're-litigating') and / or may now be out of date. Capacity ratings "change over time"²¹, and it follows that a more detailed assessment undertaken as part of the Variation may in some cases lead to a better and more defensible boundary, informed by best practice landscape assessment methodology (which may not have been done before this point). Assessment of values and attributes of landscapes, and consequent mapping of boundaries supported by values and attributes identification, is squarely within the ambit of the section 32 report, as envisaged in the *Clearwater* tests.
- 30 If some boundaries are indeed clearly 'wrong' or 'out of date' it seems illogical and inefficient that those cannot be remedied now by this Panel. During week 4 of the PDP Topic 2 Environment Court hearings, Judge Hassan referred to the "overriding importance of achieving a quality plan that serves the community" and is "for and on behalf of the community".²² Constraining scope artificially, and in contradiction to best practice landscape guidance and Court jurisprudence is unlikely to result in an enduring quality plan.
- 31 If a finding is made that boundaries may be amended in the scope of this Variation, and a values assessment leads to a revised PA boundary, it logically follows that consequently, the same values assessment should lead to a refined ONF or ONL PDP line.

Whether the maps were notified or incorporated by reference and use of clause 16 amendments

- 32 Council's explanation that clause 16 has been used to amend the Court's JWS (green layer) boundaries is problematic for a number of reasons:
- (a) Council's clause 16 memo dated 7 June 2022, which purports to explain the differences between the yellow and green layers, was not made publicly available as part of the Variation. It was only uploaded to the hearing page on the second day of these hearings, and has likely not been seen by a number of submitters.
 - (b) Counsel have identified at least four examples where the green and yellow boundaries differ and where that difference has not been, or has been incorrectly, explained in the clause 16 memo. This suggests

²¹ Statement of Evidence of Mr Stephen Skelton for PDL at 6.

²² Hearing Transcript. PDP Topic 2 Week 4 at 1419.

there may be a second undisclosed clause 16 memo or that the changes may have been made without authority. Some examples found so far include:

- (i) The boundary of the Shotover River ONF in the location of Lot 2 DP 24233 is identified in the clause 16 memo as being amended to follow the landscape classification line and cadastral boundaries. It instead appears to align with a row of wilding pines.
 - (ii) The north-eastern boundary of the Peninsula Hill ONF PA is identified in the clause 16 memo as being aligned with the landscape classification line and the cadastral boundary but the ONL boundary in this location is approximately 30 metres from the cadastral boundary according to the PDP GIS maps. This may simply be a mapping anomaly, but it could lead to ambiguities going forward.
 - (iii) The northern boundary of the Mt Iron ONF has been reduced to exclude 10 Goldie Lane, Albert Town, legally described as Lot 2 DP 546044 held in Record of Title 928701 but continues to include 9 Goldie Lane, Albert Town, legally described as Lot 1 DP 546044 held in Record of Title 928700. However, 9 Goldie Lane is located entirely outside of the ONL/F landscape classification area on the PDP GIS map. The clause 16 memo states the boundary has been amended to align with the (northern) cadastral boundary, which is illogical, because the ONL/F landscape classification on the PDP map already follows the southern cadastral boundary.
 - (iv) The boundary of the Feehly Hill ONF has been amended without explanation in the clause 16 memo. The yellow layer now appears to include Lot 801 DP 533364 held in Record of Title 875913 in its entirety, with the eastern boundary aligning with the cadastral boundary of the property. Lot 801 DP 533364 has not yet been included in the district plan review, meaning the Operative District Plan (ODP) applies and there is no PDP landscape classification line for the boundary to align with and no corresponding framework with which to assess effects on the PA in that location.
- (c) No planning analysis has been provided in the clause 16 report (prepared by a GIS specialist) as to how, or whether, each of the proposed changes are within the jurisdiction of clause 16 of Schedule

1 and of minor effect. No case authority has been provided in Counsel's opening submissions to support such changes from a legal perspective.

- (d) If clause 16 can be used to make amendments to material incorporated by reference in a plan (noting no authority has been provided for that position from Council) the issue remains, as set out above, that the PA maps have never been held out to the public (until the opening of this hearing) as being incorporated by reference on or from a particular date. Moreover, the strategic policy in chapter 3 has still not been updated referring to an extraneous link for this mapping, and the Council's webpage of such materials still does not include this mapping. Therefore, there is a real question as to whether in fact the PA maps are already incorporated and therefore amenable to a clause 16 change.

- 33 Furthermore, clause 16 of Schedule 1 only authorises a local authority to make "minor" alterations or correct "minor" errors in a proposed policy statement or plan. Proposed Plan is defined in the Act as:²³

a proposed plan, variation or plan change "that has been notified under clause 5 of Schedule 1 or given limited notification under clause 5A of that schedule".

- 34 Minor alterations and errors are not defined in the Act. Judge Willy's division of the Environment Court in *Christchurch City Council (Re an application)* held the power to make alterations under Clause 16 cannot "extend to errors which are more than minor or changes to information supplied by the plan which will have an effect that is more than minor".²⁴ Judge Smith's division of the Environment Court in *Power v Whakatane DC*, citing *Christchurch City Council*, determined that a decision to extend the cadastral ONL/F boundary further down the slope to align with the ONL/F and residential zone boundary and include a previously unincorporated property was not an alteration of information with minor effect:²⁵

[9] Schedule 1, clause 16(2) reads:

"A local authority may make an amendment, without further formality, to its proposed ... plan to alter any information, where such an

²³ Resource Management Act 1991, s 43AAC.

²⁴ *Application by Christchurch City Council* (1996) 2 ELRNZ 431 at page 1.

²⁵ *Power v Whakatane District Council* W007/07.

alteration is of minor effect, or may correct any minor errors.”

The relevant legal tests for determining whether a correction is authorised by clause 16 are found in *Christchurch City Council (Re an application)*. There are two parts to the power. In the case of alterations to information the alteration must have minor effect. The test is: does the amendment affect (prejudicially or beneficially) the rights of some members of the public, or is it neutral? If neutral, it is permitted by clause 16. The legal test for correction of minor errors should be approached in the same way as the slip rule, rule 12 of the District Court Rules 1992, where the rule may only be used to correct a slip in the expression of a judgment not the content. These tests safeguard the right of the public to participate in the Resource Management Act process, which could be undermined if a Council makes an amendment to its district plan without allowing those affected to be heard.

...

[17] We find that the alteration is not the alteration of information with minor effect. We agree with the submissions of Mr Williams. It is not neutral as it may have attracted a submission. The extent of the scheduling would have either prejudicial or beneficial effects depending on perspectives and interests. We note the Council as property owner, has consented to the change. However, we also need to take an independent, objective look at whether a reasonable person would consider it to have an effect. We should not look just at whether the owner consents because there could be major changes made with an owner's consent especially if they are in favour of the owner. We also note that an ONFL could have an effect on the activities undertaken on 1A Muriwai Drive, with activities not undertaken within the scope of a designation subject to the underlying plan provisions.

[18] We also find that the alteration is not a correction of a minor error. We have some doubt that there was an error at all, given the background on the submission, hearing and decision-making process. Be that as it may, we are clear that the change made to the location of the ONFL is not a minor error. On the face of it, its correction can have consequences on neighbouring landowners, particularly the Reef Site.

35 The yellow layer of mapping includes a number of properties (and parts of properties) that are not included in the green layer (directed by Judge

Hassan's interim decisions). It is submitted that extending the PA overlay to include a previously unincluded property, or part of a property, is akin to extending an ONL/F boundary, in that it also triggers the application of additional criteria and / or a different assessment and evaluation, in terms of consideration against the schedules, in particular their capacity ratings. These extensions may in some cases therefore have a "more than minor" prejudicial effect (depending on perspectives), as likely considered by an 'independent and objective viewer' and fail the clause 16 test articulated in *Christchurch City Council (Re an application)* and *Power v Whakatane DC*.

- 36 Where applicable, these extensions are further addressed in the site-specific submissions appended to these submissions. These are of course only matters addressed by submitters represented by Anderson Lloyd, and there may be more across the District similarly affected. If the Commissioners do however make a finding that the yellow mapping was notified and / or is within the 'ambit' of the Variation and amenable to submission, natural justice issues may be remedied to a degree, by this providing an approach for landowners to engage on mapping amendments. In our submission, that is also consistent with what we understood to be the intention from Judge Hassan's comments as to the next stage of this process (as cited in the PDL Submissions)²⁶.
- 37 In our reading of that interim decision, it is reasonable to conclude that the Court anticipated that the PA maps and related text in the Schedules would be matters that affected parties would have the right to subsequently submit on. Hence he declined to notify the PAs to affected landowners using section 293 in 2021, because of His Honour's clear understanding and assumption that affected parties would be able to participate in this process as to the effects of the nature and extent of the PA overlay and Landscape Schedule.

Dated this 24th day of October 2023



Maree Baker-Galloway/Rosie Hill
Counsel for the Submitters

²⁶ Referring to Interim Decision 2.5 at [68].

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Gertrude's Saddlery Limited

Background and summary

- 1 The zoning and landscape classification of the Gertrude's Saddlery Limited (**Gertrude's** or **GSL**) Site at 111 Atley Road, Arthur's Point²⁷ has been contested since Stage 1 of the PDP was notified in 2015.
- 2 One Council decision has determined that the Gertrude's Site is not ONL and is suitable for urban rezoning,²⁸ and one Council decision has determined the opposite.²⁹ No Environment Court decision has yet considered the merits and evidence for the landscape classification and any rezoning of the Gertrude's Site. The determination of the landscape classification of the Gertrude's Site, and the most appropriate zoning outcome, is a separate and live matter before the Environment Court.
- 3 However, in our submission, the matter of the identification of the Shotover ONF PA, and consequentially, the Shotover River ONF classification (on PDP planning maps)³⁰ is a matter within the scope and jurisdiction of this hearing, and should be determined by the Panel in this process. It is submitted, the correct Shotover River ONF PA boundary (and ONF classification boundary) is:
 - (a) The 'green boundary' directed from the Court's Topic 2 decisions and JWS³¹;
 - (b) Which is now agreed in rebuttal evidence from Ms Gilbert and in the JWS dated 4th October 2023 between Mr Espie and Ms Gilbert based upon the values and attributes assessment; and
 - (c) Is not opposed or contradicted by any other landscape expert called in this hearing process.

²⁷ Legally described as Lots 1 and 2 DP 518803 held in Record of Title 814337 and Part Section 1 SO 24074 held in Record of Title OT17C/968 (**Gertrude's Site**),

²⁸ Council decision issued in May 2018 based upon IHP recommendation report 17.04 (chaired by Commissioner Nugent, Cr Crawford and Cr Mountford).

²⁹ Council decision issued 13 July 2023, based upon IHP recommendation report dated 8th June 2023 (chaired by Commissioner Taylor, Cr Munro).

³⁰ Referring above to position on consequential scope for amendments to planning mapping, at [24]

³¹ The 'green boundary' post-dates the suspension. Judge Jackson's decision ordering the drawing of the ONL boundary line around, the movement of the Urban Growth Boundary to include, and the rezoning of the Shotover Loop to Low Density Residential be suspended is dated 11 September 2019 (*Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 150). The JWS is dated 29 October 2020, being 13 months later, and the relevant Interim Decisions 2.5, 2.7 and 2.12 are dated 2020 and 2021.

ONL and ONF (PA) distinction and the need to separately identify the ONF

- 4 The distinction between an ONL and an ONF is an important one. As listed in the strategic policies listing identified PAs, the Council has been directed by the Court's Topic 2 decisions to identify values of the Shotover River ONF. The ONF is a distinct physical, identifiable feature. The Schedules were prepared and notified on the basis that they identify values, attributes, and related capacity of just the riverine Gorge ONF, the mapping extent of which excludes the Gertrude's Land, as mapped in Ms Gilbert's rebuttal appendices.
- 5 In our submission, it is important to note the distinction between an ONL and an ONF in terms of case law, as well as in this PDP's planning framework.
- 6 The Environment Court's Topic 2.1 decision (*Hawthenden v QLDC*) upheld an agreed landscape JWS, which confirms the separate and sequential consideration of whether an area is either a 'landscape' or a 'feature':

[40] It can be observed that pRPS Sch 3 reflects *WESI* and the case law that built on it. Furthermore, the Landscape Methodology JWS explains:

- (a) For a landscape to rate as an ONL or ONF, three key questions need to be satisfied:
 - a. Is the area a 'landscape' or 'feature'?
 - b. Is the landscape or feature 'natural'?
 - c. Is the natural landscape or feature 'outstanding'?
- (b) For the purposes of a Landscape Study, the following definition of 'landscape' (endorsed by the NZILA) is usually applied by the study team:

"Landscape is the cumulative expression of natural and cultural features, patterns and processes in a geographical area, including human perceptions and associations."

– NZILA Best Practice Note 10.1
'Landscape Assessment and Sustainable Management'

- 7 In this iteration of the PDP most features are mapped separately from ONLs, even where they are contiguous with, or connected to, or nested within, those³².
- 8 In the Topic 2.1 decision, at paras 35-38, 40, 158-160 there are similar distinctions made between ONFs and ONLs:

³² For example. Mt Iron ONF, Clutha River corridor, Lake Hayes.

[158] Hence, we find that those scarps and terraces are legibly and sufficiently related to the River, itself an ONF.

[159] Having reached that finding, the next issue is whether the wider River Corridor should be treated as a landscape or a feature. We have considered Ms Mellsop's opinion that the River Corridor is of "too large a scale and extent to be considered a feature (a discrete landform or biophysical entity)". Having considered the evidence, including the Landscape Methodology JWS, we do not agree with Ms Mellsop on that point.

[160] Our starting point is that the choice of allocating an area to the class of 'landscape' or 'feature' for s6(b) purposes is a matter of informed judgment, as the following explanation in the Landscape Methodology JWS indicates:¹²⁴

- (a) Typically, 'landscapes' display characteristics such that they are distinctive from adjacent landscapes and can be identified and mapped. However, in some circumstances the attributes are more subtle and/or common to more than one area, making it more difficult to define the spatial extent of a landscape. In such circumstances it may be appropriate to focus on whether the landscape can be meaningfully perceived as 'a whole'. It is important that where this approach to the identification of a landscape is applied, it is clearly transparent in the assessment.
- ...
- (c) A feature typically corresponds to a distinct and clearly legible biophysical feature (eg. *r che moutonn e*, volcanic cone, water body). It is acknowledged that scale and context will play a role in determining whether the area is a feature or landscape.

- 9 Although the policy framework in the PDP is the same for ONFs and ONLs across chapters 3 and 6, there are no policies which conflate the two into a combined 'ONF/L'. There are also different rules which flow from the identification as either an ONL or an ONF.³³ Without due identification of the extent of an ONF on PDP planning maps, there are likely to be issues of plan interpretation – for example, whether the rules applicable are the 10m³ limitation on earthworks (for ONFs) or 1000m³ for ONLs (in the Rural Zone).

Evidence for the mapping of the Shotover River ONF extent

- 10 No expert on the record has ever considered the Gertrude's Site to be part of, or within, the Shotover River ONF³⁴, in particular:
- (a) In 2016, Dr Marion Reid considered the Site was not part of the Shotover River ONF;³⁵

³³ For example rules relating to earthworks volume, farm buildings standards, and mining.

³⁴ See also, evidence in chief of Mr Espie, at para 39-40.

³⁵ Marion Reid Report to Queenstown Lakes District Council on appropriate landscape classification boundaries within the District, with particular reference to Outstanding Natural Landscapes and Features at 4.5.2

- (b) In 2023, Ms Mellsop considered the Site was not part of the Shotover River ONF;³⁶
 - (c) Mr Espie's expert evidence is that the Gertrude's Site is outside the Shotover River ONF;³⁷
 - (d) In the recent IHP rehearing on the rezoning of the Gertrude's Site (currently under appeal), the transcript records that Mr Stephen Brown for APONLS confirmed, in response to Cr Munro questioning, that he was in agreement with the 'three other landscape architects, that for this site we are not talking about the possibility of it being an ONF'.³⁸
- 11 All of the above evidence supports confirmation of the 'green boundary'.
- 12 In this hearing, there is no contradictory expert evidence called by APONLS, any of its membership, or any other submitter, to contradict the agreed findings of Mr Espie and Ms Gilbert in the signed JWS, as to the correct PA extent. In our submission the Panel does not have evidence to recommend any other boundary which includes the Gertrude's Site within the ONF PA.
- 13 As discussed in Mr Espie's evidence, if the Gertrude's Site is considered to be within the Shotover River ONF PA, there would be significant issues to overcome, including:
- (a) A lack of expert evidence to support any finding that the Gertrude's Site is within the ONF;
 - (b) A considerable amendment to the text of the schedule to take account of the different attributes and values of the Gertrude's Site (which is not ONF)³⁹;
 - (c) A jurisdictional issue in otherwise amending the Schedule so it becomes a 'hybrid' (and anomalous in the PDP sense) ONF/L combined property area⁴⁰.

³⁶ Summary of evidence of Helen Mellsop on behalf of QLDC in relation to the Arthurs Point renotification dated 1 February 2023 at [3].

³⁷ Statement of evidence of Ben Espie dated 11 September 2023 at [41], [56] and [85].

³⁸ Recording 2 Arthurs Point Stage 1 – 03.02.23 – at 1hr:31min: 20sec.

³⁹ Evidence of Mr Espie, at para 58

⁴⁰ See also, evidence in chief of Ms Shepperd in respect of the separation of ONFs and ONLs in the planning framework and the jurisdictional bar to amendments to higher order policies identifying the listed priority areas.

- 14 As agreed between Mr Espie and Ms Gilbert as a result of conferencing, their JWS confirms:

The experts agree that the correct and appropriate PA is an ONF PA and not an ONF/L PA.

The experts agree that the PA mapping attached to Ms Gilbert's EiC Figure 1 and Appendix 3 is the correct mapping. The PA mapping excludes the Gertrude's Site from the 21.22.3 Kimiākau (Shotover River) PA ONF.

- 15 The figures and appendices referred to are the 'green' (Court directed / October 2020 JWS layer), where the PA of the ONF exclude the Gertrude's Site.
- 16 Some clarity is required from Council as to the mechanisms and jurisdiction for a change to the original 'green layer', whether it be through clause 16, or as a change within scope (as advocated in Counsel's general submissions above) or a consequential change.
- 17 Ms Gilbert also confirms the PA is to remain as originally labelled (and reflected in the strategic policies) as an ONF, and removes references to values and attributes that are not specific to the ONF values.
- 18 The final determination of the Gertrude's Site being ONL or not, and what its rezoning fate will be, remains a separate matter for the Environment Court. Determination of the PA boundary (and consequentially, the ONF boundary in PDP planning maps) in this hearing will not predetermine, undermine, or otherwise influence that separate and future process.
- 19 Any future determination of the Gertrude's Site's rezoning fate will require consideration of its effect on adjacent PA ONF values, decided in this hearing.

Text issues

- 20 The below comments on the text of the Shotover River ONF schedule are provided on the basis the Gertrude's Site is not within the PA. Should that boundary change to include the Gertrude's Site, Counsel reserves the ability to revisit the position set out below.
- 21 The experts are aligned in terms of values description and related capacity for the riverine gorge, as set out in the schedule appended to Ms Gilbert's rebuttal evidence. This provides for the removal of the 'no capacity' rating (as discussed above in general submissions). In particular, this removes specific references to the Gertrude's Site, such as the rouché moutonée knoll.

- 22 It is acknowledged that planning evidence tabled by Mr Giddens (for APONLS) has sought retention of a 'no capacity' rating for a number of matters, including earthworks, and transport infrastructure.
- 23 That position is fundamentally at odds with the recognition of Arthurs Point as an urban area destined to grow in the Council's Spatial Plan, and the inevitable need for a replacement or additional Shotover Bridge crossing (given Edith Cavell capacity).
- 24 The entire Shotover River PA spans a significant length of the riverine gorge. It is submitted that care should be taken to ensure the schedule is duly 'high level' and not singling out the Shotover Loop (or the Gertrude's Site), or sites with visibility of the Shotover Loop, in particular. Furthermore, counsel note that a number of lay submitters to this process have provided their opinion on recent tree clearance activities undertaken at the Gertrude's Site and adjacent DOC land. These are entirely irrelevant to this Panel's decision making. There is no basis to allege that GSL is seeking to benefit from these recent wilding clearance works *vis a vis* a decision on the ONF landscape classification and PA boundaries.
- 25 Mr Espie will present on the test of this specific schedule and matters arising from the JWS process.

Sir Robert Stewart – Central Wakatipu Basin Coronet

- 1 Sir Robert's statement of evidence dated 10 October 2023 discusses the history of the Stewart Site including the restoration work he has already undertaken in relation to the historic buildings on Lot 1. It sets out his aspirations to restore the ruins and to construct a family home or boutique lodge at Part Lot 2 DP 16632 and Sections 16, 17 and 19 SO 416447 held in Record of Title 538340 (**Ruins Property**). It sets out Sir Robert's work alongside Council to achieve practical outcomes for the benefit of the community, including road realignment and boundary frontage changes to extend the Coronet Peak Road parking area, and widening and straightening of Malaghans Road and removal of wilding pines and planting of natives.
- 2 Mr Blair Devlin's statement of evidence dated 11 September 2023 notes the mapping anomaly in relation to Sir Robert's land at Arthurs Point Road, legally described as Lot 1 DP 515200 held in Record of Title 803168 (**Lot 1**), Lot 2 DP 515200 held in Record of Title 803169 (**Lot 2**) and the Ruins Property (collectively, **Stewart Site**) and sets out his recommended amendments to Schedule 21.22.15 (Appendix C but inadvertently referred to as Appendix D in the body of his statement) including:
 - (a) Recognising the Skippers Hotel (aka the ruins) as an important archeological and heritage feature; and
 - (b) Amending the landscape capacity ratings to recognise there is capacity for development at and in proximity to, and in order to enable the restoration of, historic heritage items.
- 3 With respect to the boundary of the PA, the green and yellow PA layers differ significantly with respect to the Stewart Site.
- 4 The Stewart Site is identified in Appendix 1 to Sir Robert's evidence and reproduced as Figure 1 below:

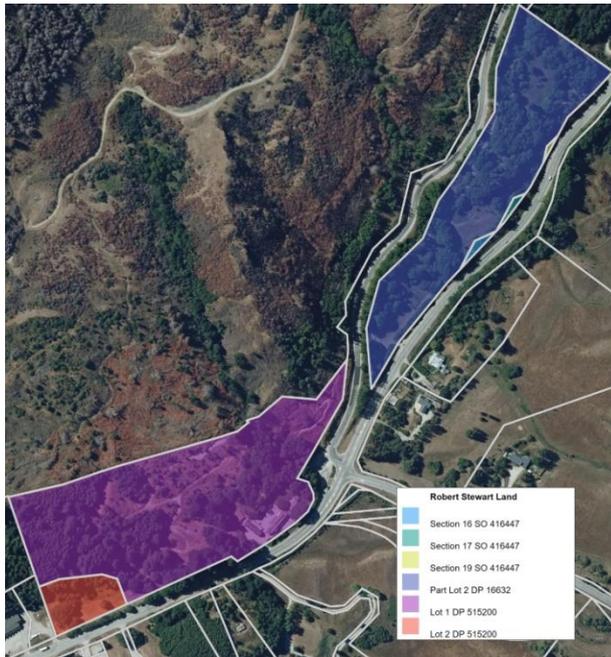


Figure 1 – Stewart Site

- 5 The green layer includes the entirety of the Ruins Property and a small part of the rural-zoned part of Lot 1. The location of the green layer boundary in relation to Lot 1 appears to align with the location of the ONL boundary and Urban Growth Boundary (UGB) in the Stage 1 PDP decisions version map 39a,⁴¹ as demonstrated in Figures 2 and 3 below:



Figure 2 – PDP Stage 1 decisions version map 39

⁴¹ <https://www.qldc.govt.nz/media/xmqnfmq/pdp-decision-of-council-map-39-arthurs-point-kingston-may-2018.pdf>



Figure 3 – Green layer

- 6 However the yellow layer includes entirety of the Ruins Property and the entirety of the rural zoned part of Lot 1. The extension is shown in Figure 4 below:



Figure 4 – Extension with Lot 1 outlined in teal

- 7 It is submitted the extension to the PA boundary will prejudicially affect Sir Robert and does not constitute an alteration with minor effect or a correction of a minor error. The extension, coupled with the introduction of the schedules, will introduce new consenting barriers for activity, subdivision and development within Lot 1 which were not anticipated by the experts at the expert conferencing session or the Environment Court in its determination in respect of the JWS setting the PA green layer boundaries. Given these material effects, the PA boundary cannot have been lawfully changed using clause 16, in accordance with the Environment Court's decision in *Power v Whakatane DC*⁴² referred to in the primary submissions at 34 above. The yellow extension, and the PA boundary generally, should

⁴² *Power v Whakatane District Council* W007/07.

therefore be treated as being the subject of notification, and able to be amended and corrected arising from this Sir Robert's submission and evidence.

- 8 Sir Robert was not a party to the Environment Court decisions leading to the Priority Areas, Values Identification Framework and subsequent Schedules arising from the Court's Decision on Chapter 3 of the PDP. He was one of the affected landowners identified by counsel as being potentially interested in, and affected by, the PAs in the memorandum on behalf of various parties regarding Strategic Topic 2 referred to at paragraph [29] of the legal submissions presented for PDL, dated 16 October 2023. Based on the Court's subsequent statement at [68] of Decision 2.5 *Upper Clutha Environmental Society v Queenstown Lakes District Council* [2020] NZEnvC 158 it was understood, and relied upon, that Sir Robert would be entitled to participate in the mapping and content of the schedules as part of this process.
- 9 Sir Robert seeks the PA boundary be amended to exclude the Stewart Site, or alternatively, that the schedules be amended to enable development within the Stewart Site and in particular, to enable the restoration and development of the Ruins Property.

Jon Waterston – Ferry Hill PA ONF

- 1 Mr Waterston's property at 215 Tucker Beach Road, Lower Shotover, legally described as Lot 20 DP 49188 and held in Record of Title 713588 (**Waterston Site**) is described in Mr Baxter's Statement of Landscape Evidence dated 20 April 2021. The property sits adjacent to the Ferry Hill PA ONF, and is zoned a combination of Wakatipu Basin Rural Amenity Zone and Rural Zone and is adjacent to an area zoned Wakatipu Basin Lifestyle Precinct. Mr Waterston's property contains a mix of farmed pastures, farm buildings, fences and tracks, his home, and significant planting associated with rural lifestyle consents obtained over time.
- 2 Mr Waterston's primary concern is that the boundary of the ONF PA does not appear to be accurate.
- 3 The green and yellow layers on the PA map identify the northern boundary of the Ferry Hill ONF PA as being in the incorrect location in relation to the Waterston Site. Similarly, the QLDC PDP map identifies the ONL Landscape Classification boundary as being in the incorrect location in relation to the Waterston Site. The error is likely to simply be a consequence of the scale at which the GIS mapping work has been undertaken, noting the same issue appears at the north-eastern boundary of the Peninsula Hill ONF PA (referred to at para [32 (b)(ii)] of these submissions), with the boundary positioned only 10 – 15 metres north of its correct location. However, the mapping error, and the added layer of the schedules which would inevitably be "triggered" by the error, could unfairly prejudice future activity in the location of the dwelling and approved building platform that is Mr Waterston's home, and should be amended as part of this process.
- 4 Judge Jackson's division of the Environment Court determined the correct location of the ONF (then ONL) boundary in an interim decision on a rezoning for the Waterston Site under the Operative District Plan.⁴³ His Honour described the correct location of the boundary as being at the change of slope at the row of poplars uphill from the Mr Waterston's dwelling:⁴⁴

Fourthly if we take all those matters into account, and the need for a practical boundary between the outstanding natural landscape and the visual amenity landscape - not just across the referrer's land but also across adjacent properties on Ferry Hill - we consider the change of slope at the row of

⁴³ *Waterston v Queenstown Lakes District Council* EnvC Christchurch C169/2000, 5 October 2000 at [10].

⁴⁴ At [10].

poplars is the place to draw the line. Consequently both the site and some land above 400m asl falls into the visual amenity landscape. We now turn to ascertain the relevant objectives and policies of the amended plan as they apply to the land.

- 5 The correct location of the ONL/F boundary is demonstrated Attachment A to the statement of evidence of Patrick Baxter dated 20 April 2021 (appended to the memorandum filed on behalf of Mr Waterston dated 11 September 2023) and Appendix 1 to Mr Waterston's submission #310 (RM190049 approved plans). Attachment A and Appendix 1, showing the boundary of the ONL/F at the row of poplars south of Mr Waterston's dwelling, are reproduced as Figures 1 and 2 below:

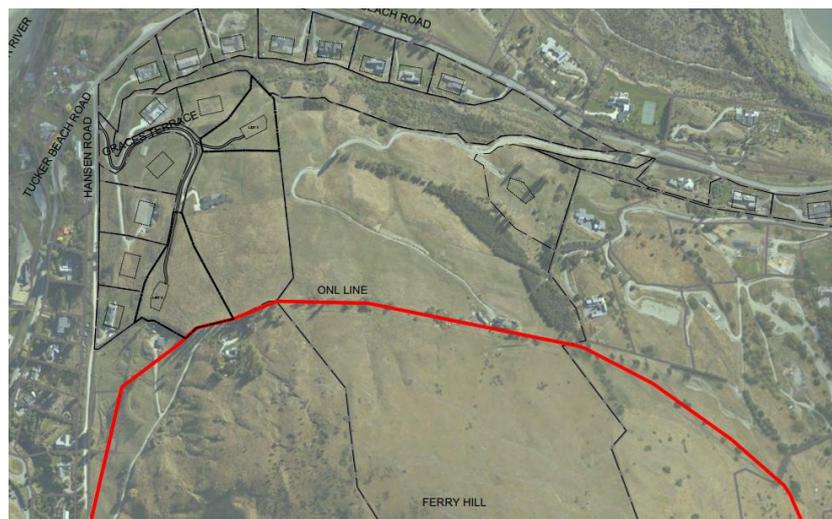


Figure 1 – Extract from Baxter Attachment A map showing ONL boundary at the change of slope at the row of poplars south of the dwelling

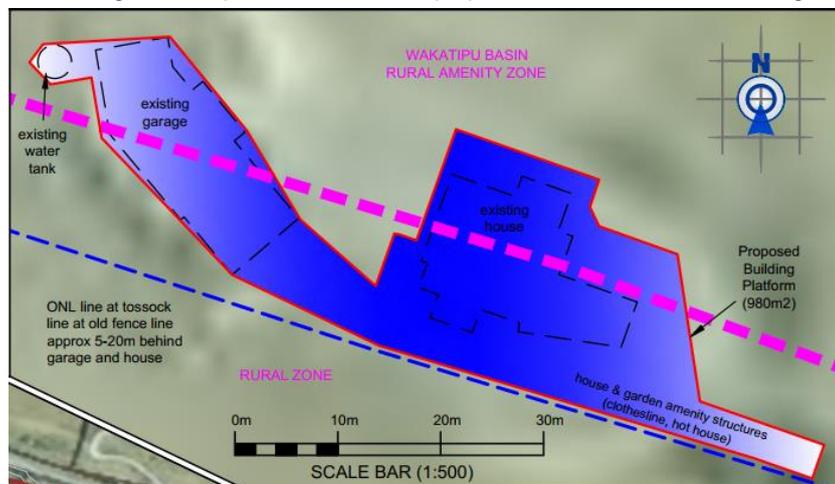


Figure 2 – Extract from RM190049 Approved Plans showing ONL boundary at the change of slope at the row of poplars south of the dwelling

- 6 The PA and PDP maps incorrectly show the ONL/F and PA boundaries as being north of the row of poplars and passing **through** Mr Waterston's dwelling as demonstrated in Figures 3 and 4 below:



Figure 3 – PA map showing PA boundary north of the row of poplars through Mr Waterston's dwelling



Figure 4 – PDP Map showing ONL/F Landscape Classification boundary (brown dashed line) through Mr Waterston's dwelling

- 7 The error was recognised by Commissioners Taylor and Costello in their decision to grant RM190049.⁴⁵

While we consider it is likely given margins of error in GIS mapping and the merits of the topography change as presented by the Applicant that the ONL line has been incorrectly mapped, we also find that given the nature of the proposal it is of no importance in this case.

- 8 It is submitted that the error can and should be corrected as part of this Variation to ensure the introduction of the schedules into the PDP do not unfairly prejudice future activities in the location of the Waterston dwelling

⁴⁵ RM190049 at [68].

in terms of the application of the Schedule, and the consequential minor correction to the ONF line.

- 9 In terms of the PA boundary, if Council is correct that the maps were incorporated by reference and that they are able to make alterations to correct minor errors pursuant to clause 16 of Schedule 1 then it follows that they can use clause 16 to correct this error. If Council is incorrect, and the maps were notified as part of the Variation, then there is scope in Mr Waterston's submission to amend PA map and to make consequential amendments to the GIS PDP maps. As was the case with Sir Robert, Mr Waterston was not a part to the proceedings that established the VIF, Priority Areas and Schedule framework, so this is his opportunity to have the standing to take part in the appropriate process to correct the PA boundary (and the consequential correction to the ONF boundary).
- 10 Mr Waterston's main priority is in ensuring he is able to construct a small farm building in the part of the Waterston Site outside the ONF and PA (within the southern slopes of the Waterston Site zoned Wakatipu Basin Rural Amenity Zone), and in reducing fire risk to his dwelling and his extensive native plantings. He may choose to speak to those matters this afternoon.

Hansen Family Partnership – Queenstown Hill and Ferry Hill ONF

- 1 Hansen Family Partnership (**Hansen Family**) have an interest in land at Hansen Road included within the Ferry Hill ONF PA and the Western Whakatipu ONL PA identified on the map attached as Appendix 1 to the Hansen submission and reproduced as Figure 1 below (**Hansen Site**):

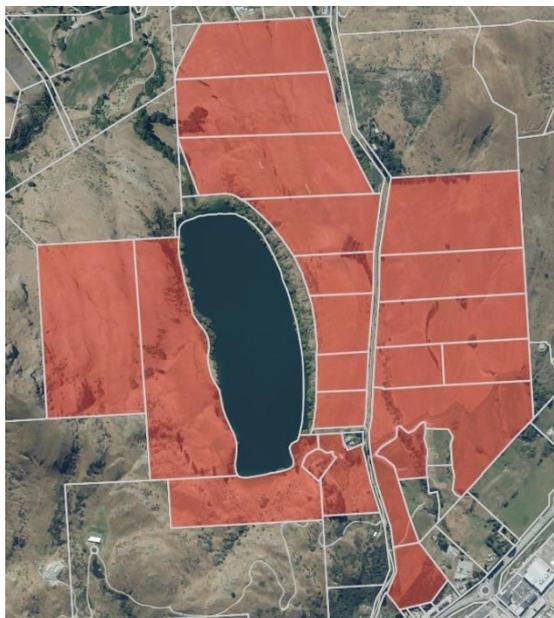


Figure 1 – Hansen Land

- 2 As you will see when you go on your site visit, the Hansen Family Site exhibits a range of established and historical activities, including historical and existing farming uses, accessways and stock tracks, roads, fences, introduced vegetation, pest control and residential and consented development. It is close to the urban environment (with a small part of the Hansen Site being zoned High Density Residential Zone) close to the airport and is lower lying and significantly more modified than the cone-like peak of the Ferry Hill ONF and elevated parts of the West Whakatipu ONL.
- 3 It is submitted that the schedules, including the proposed capacity rankings, do not recognise or provide for the full spectrum of available land uses anticipated, or available development capacity. The Hansen Family seek the lower slopes of the Ferry Hill ONF and lower-lying land of the West Whakatipu ONL be excluded from the PAs, or alternatively, that the respective Schedules be amended to more accurately recognise and provide for these existing uses, their likely and anticipated future upgrade, replacement, or redevelopment, as set out in the Submission Appendices 4 and 5.

Rock Supplies NZ Limited and Station at Waitiri

- 1 These Submitters have interests in land identified below, located on State Highway 6, Gibbston Valley, east of the Nevis Bluff (**Submitter Land** or **Site**). The Submitter Land is zoned Gibbston Character Zone (**GCZ**) under the PDP, although is currently subject to rezoning appeals under Stage 3 of the PDP, whereby the Submitter seeks a rezoning to General Industrial Zone, or similar relief.
- 2 The Submitter Land is currently identified as being within the Victoria Flats ONL PA and the Kawarau River ONF PA and indicated on Figure 1 below:



Figure 1 – Submitter Land

- 3 The Submitters have sought general relief in terms of the text of the Schedules, as well as site-specific relief seeking to remove the PA mapping over the Submitter Land and / or revise the ONL classification.

History of zoning and landscape classification

- 4 It is submitted that the underlying ONL classification for much of the Gibbston Valley, and in particular, the GCZ, is problematic, and possibly stems from an issue in terms of timing of the rolling plan review.
- 5 When chapter 6 of the PDP was originally notified, it included the 'carve out regime' which was a copy-over from the Operative District Plan approach, to effectively only identify Rural Zone land as ONL or ONF landscape categories. Other zones, including special zones such as the GCZ, were entirely exempted from classification and identification of those categories. At the same time as this framework was notified, the mapping of the PDP took a new approach as compared to the ODP, to map the boundaries of

ONLs and ONFs. The Gibbston Valley and in particular the GCZ was included in the ONL notation.

- 6 As appeals progressed on strategic chapters of the PDP through the Court, the 'carve out' framework evolved into Judge Hassan's 'exception zone' framework, which was quite different. The exception zone framework took the approach of identifying non-Rural Zones as within ONFs or ONLs (if applicable) but exempting activities within those from being assessed against a number of strategic or higher order policies and objectives relating to landscapes, and in particular the protection of their values.
- 7 It is quite possible, that landowners at the time of the initially notified PDP process, did not participate in or submit to oppose the mapping of the GCZ as within an ONL, because at that time, the 'carve out' framework applied, as it had under the ODP.

Court and Council decision on landscape classification

- 8 These Submitters have not called expert evidence in this process, however support the conclusions made by experts Mr Giddens and Mr Smith for CCCL insofar as those experts consider parts of the Gibbston Valley, including the Submitter Land, is not part of an ONL. Those experts have cited previous Environment Court authority concluding the same position, and in addition, the following Council decisions appear to support the same:

- (a) QLDC decision RM060059 which related to the setting up of a boutique distillery on adjacent land, stated:

It accords with common sense not to classify land in the Gibbston Character Zone as Outstanding Natural Landscape when the very purpose for which the zone exists is completely contrary to the very restrictive approach to development and land usage within areas of Outstanding Natural Landscape.

- (b) QLDC decision RM110712, dated 10 September 2012, paragraphs 8-13, also quoted Council landscape architect, Dr Marion Read, stating:

It is generally the case that landscape classifications are generally unnecessary within the Gibbston Character Zone. It is the case however, that with noncomplying activities such classifications may be made.

- 9 For the reasons set out above in general sections of these submissions, the Submitters support relief for mapping amendments to PA boundaries and the ONL classification in planning maps, where there is evidence from

a values assessment that land does not qualify or reach the thresholds for section 6b identification.