

Before the Hearings Panel
For the Proposed Queenstown Lakes District Plan

Under the	Resource Management Act 1991
In the matter	of a variation to Chapter 21 Rural Zone of the Proposed Queenstown Lakes District Plan, to introduce Priority Area Landscape Schedules 21.22 and 21.23

**SECTION 42A REPORT OF RUTH EVANS ON BEHALF OF QUEENSTOWN LAKES
DISTRICT COUNCIL**

11 August 2023



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1. PROFESSIONAL DETAILS

- 1.1** My name is Ruth Christine Cameron Evans. I am a planner at Barker & Associates, an independent, specialist planning consultancy. I am based in the Christchurch Office and work throughout New Zealand.
- 1.2** I hold a Master of Regional and Resource Planning (2005) and a Bachelor of Arts (2002), both from Otago University. I am a full member of the New Zealand Planning Institute.
- 1.3** I have worked as a planner in consultancy and government agency roles since 2005.
- 1.4** I have assisted Queenstown Lakes District Council (**QLDC** or **Council**) with various aspects of its Proposed District Plan (**PDP**) process since 2016. This includes the following roles:
- (a) s42A reporting officer for several Stage 1 topics, being: Chapter 26 Noise, Chapter 43 Millbrook, and Queenstown Commercial and Industrial rezonings;
 - (b) expert planning witness for QLDC for various Stage 1 appeal topics, including residential, noise and a number of Queenstown rezoning appeals (all of which were resolved by way of consent order);
 - (c) expert planning witness for the Topic 31 - Subtopic 2 appeal (Donaldson appeal), which included attendance at mediation, preparation of expert evidence and attendance at the Environment Court hearing; and
 - (d) s42A reporting officer for the re-notified Stage 1 submissions by Gertrude's Saddlery Limited and Larchmont Developments Limited, which concerned matters associated with land at Arthurs Point.

2. INTRODUCTION

2.1 In this s42A report I provide recommendations to the Hearings Panel on the submissions and further submissions lodged on QLDC's proposed variation to the PDP to introduce Priority Area Landscape Schedules 21.22 and 21.23 (collectively, the **PA schedules**). If adopted by the Council, the PA schedules would be included into Chapter 21 – Rural Zone.

2.2 I was not involved in the preparation of the proposed variation. I was engaged by QLDC to prepare the s42A report in March 2023.

2.3 In preparing my assessment of the submissions and further submissions, I have referred to and relied on the evidence of the following expert witnesses for the Council:

- (a) Ms Bridget Gilbert, Landscape Architecture; and
- (b) Mr Jeremy Head, Landscape Architecture.

2.4 In preparing this section 42A report, the key documents I have read and used to inform my assessment include:

- (a) Landscape Schedules Section 32 Report;
- (b) The PDP,¹ and in particular: Chapter 1 Introduction (dated December 2022), Chapter 2 Definitions (dated March 2023), Chapter 3 Strategic Directions (dated November 2021), Chapter 6 Landscapes (dated April 2022), Chapter 21 Rural (dated March 2023), Chapter 23 Gibbston Character Zone (dated March 2023), and Chapter 30 Energy and Utilities (dated April 2022), as updated by Environment Court decisions and consent orders;
- (c) Relevant parts of the Partially Operative Otago Regional Policy Statement (**POORPS**) and the Proposed Otago Regional Policy Statement (**PORPS**);

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

- (d) Joint statement arising from expert conferencing for Topic 2 – Rural Landscapes; titled “Landscape methodology and subtopics 2, 3, 5, 6, 7, 8 and 11”, dated 29 January 2019;
- (e) Joint statement arising from expert planner and landscape conferencing for Topic 2 – Rural Landscapes; which related to “Strategic policies and priority area expert conferencing”, dated 29 October 2020;
- (f) Memorandum of Counsel on behalf of Queenstown Lakes District Council Addressing List of Proposed Priority Areas and Related Directions, Topic 2: Rural Landscapes 10 July 2020;
- (g) The following Environment Court Consent order:
 - (i) Topic 1 subtopic 4 (RSI), Topic 2 subtopic 11 (RSI & Landscapes) and Topic 17 (Energy and Utilities) Consent Order (April 2023).
- (h) The following Environment Court Decisions:
 - (i) Interim decision Topic 2: Rural Landscapes, Decision 2.2 - Sub-topics 2 - 11 Decision No. [2019] NZEnvC 205;
 - (ii) Interim decision Topic 2: Rural Landscapes, Decision 2.3 - Sub-topic 1 remaining appeals Decision No. [2019] NZEnvC 206;
 - (iii) Interim decision Topic 2: Rural Landscapes – Priority Areas Decision 2.5 Decision No. [2020] NZEnvC 158;
 - (iv) Interim decision Topic 2: Rural Landscapes Chapters 3 and 6 Decision 2.7 Decision No. [2021] NZEnvC 60;
 - (v) Interim decision Topic 2: Rural Landscapes Sub-topic 1: mapping and s293 directions Decision 2.8 Decision No. [2021] NZEnvC 61;
 - (vi) Interim decision Topic 2: Rural Landscapes Provisions for Chapters 3 and 6 and s293 directions Decision 2.9 Decision No. [2021] NZEnvC 124;
 - (vii) Interim decision Topic 2: Rural Landscapes, Chapters 3 and 6, Decision 2.12 Decision No. [2021] NZEnvC 155;
 - (viii) Interim decision Topic 2: Rural Landscapes, Section 293 determination on the Clutha River/Mata Au ONF

corridor, Decision 2.14 Decision No. [2021] NZEnvC 198;

- (i) Te Tangi a te Manu Aotearoa New Zealand Landscape Assessment Guidelines;
- (j) The statement of Evidence in Chief (EIC) prepared by Ms Bridget Gilbert in relation to this proposed variation dated 11 August 2023; and
- (k) The statement of EIC prepared by Mr Jeremy Gilbert in relation to this proposed variation dated 11 August 2023.

2.5 I am generally familiar with the Priority Areas (PAs), having undertaken work in the District during my time living in Queenstown during 2006-2008, and for various projects for the Council since 2016.

2.6 In July this year I undertook site visits with the project team, including Ms Gilbert and Mr Head. This included viewing the Upper Clutha PAs and a number of the Whakatipu PAs, from various locations throughout the District.

Code of Conduct

2.7 I confirm that I have prepared this report in accordance with the Code of Conduct for Expert Witnesses contained in Part 7 of the Environment Court Practice Note 2023. The issues addressed in this report are within my area of expertise except where I state that I am relying on the evidence or advice of another person. The data, information, facts and assumptions I have considered in forming my opinions are set out in the part of this report in which I express my opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.

3. EXECUTIVE SUMMARY

- 3.1** This s42A report makes recommendations on submissions (including further submissions) on the Council's proposed variation to the PDP to introduced Priority Area (PA) landscape schedules for 29 PAs in the District.
- 3.2** The variation has been prepared to give effect to the strategic objectives and policies in Chapter 3 of the PDP. The variation does not change any objectives, policies, rules or other provisions in the PDP. The variation does not propose to make any changes to the mapping of PAs (or the ONF/L or RCL) that has been endorsed by the Environment Court.
- 3.3** The PA Schedules are intended to provide guidance to proposals in the Rural Zone, with respect to landscape attributes and values and associated landscape capacity.
- 3.4** The mapping of the PAs does extend over PDP zones other than the Rural Zone. The PA schedules have been drafted to reflect the values present within the wider PAs, as it is considered artificial from a landscape perspective to prepare schedules that do not consider areas / zones within the spatial extent of a PA. The direct application of the PA schedules is limited to proposals in the Rural Zone, although I note that where landscape assessments are required in other zones due to the presence of an ONL or ONF these schedules may be referred to.
- 3.5** A number of submissions seek changes to the landscape classification lines, PA boundaries and or zoning. Some submissions also seek changes to PDP text. These submissions are considered out of scope as the variation is confined to the text of the schedules.
- 3.6** The analysis and recommendations on submissions concerning the text of the PA schedules has been completed by two expert landscape experts,

Ms Bridget Gilbert and Mr Jeremy Head. They have recommended a number of changes in response to submissions, and I adopt those.

3.7 To assist plan users with understanding how the schedules will apply, a number of changes are recommended to the preambles, including how the PA schedules apply, further explanation of landscape capacity (and ratings), and clarification on the meaning of activities listed in the schedules.

3.8 Overall, with these recommended changes, I consider the recommended PA schedules to be appropriate for inclusion in the PDP to achieve the relevant SOs and SPs in Chapter 3.

4. SUMMARY OF THE PROPOSED VARIATION

4.1 The purpose of the variation is explained in detail in the s32 report.

4.2 In summary, the proposed variation has been prepared to implement Strategic Policy (**SP**) 3.3.42, which requires the Council to notify a plan change to implement the following:

- (a) SP 3.3.36 (identify specified Rural Zone Priority Areas within the ONFs and ONLs in Schedule 21.22);
- (b) SP 3.3.37 (describe the landscape attributes, landscape values and related landscape capacity for subdivision use and development activities);
- (c) SP 3.3.39 (identify specified Rural Zone Priority Areas within the Upper Clutha RCLs in Schedule 21.23); and
- (d) SP 3.3.40 (describe the landscape attributes, landscape character and visual amenity values and related landscape capacity for subdivision use and development activities).

4.3 The s32 report, and the framing of the variation generally, makes it clear that its purpose is to introduce schedules for the PAs that were

determined by the Environment Court through the Topic 2 appeal process,² and which have since been mapped by QLDC in accordance with the mapping endorsed by the Environment Court (other than minor amendments as set out at paragraph 3.9(e) of Ms Gilbert's EIC).

4.4 As set out in paragraphs 1.5 to 1.7 of the s32 report, the proposed variation is limited to the content of the schedules. The variation does not propose to change any objectives and policies in the PDP, or seek to introduce new provisions (other than the PA schedules themselves).

4.5 The variation also does not propose to change the landscape categorisation of any ONF/L, the identification of areas as PAs, or mapping of the PAs. It also does not introduce any new PAs.

4.6 The landscape methodology used to prepare the PA schedules is set out in Chapter 3, and is further described in the evidence prepared by Ms Gilbert for the Council.

4.7 As described in section 3.10 of the s32 report the PA schedules are not linked to specific rules in the PDP, and do not introduce any new resource consent requirements. Instead, the PA schedules are intended to assist with the assessment of land use and subdivision resource consent applications within the Rural Zone. At section 3.13, the s32 report explains that the PA schedules do not change how wāhi tūpuna are applied through the PDP, and that they have no impact on Statutory Acknowledgement Areas.

5. STATUTORY CONSIDERATIONS

5.1 The Resource Management Act 1991 (**RMA**) sets out the statutory framework for considering the submissions on the variation. Relevant sections include those concerning: the functions of territorial authorities (section 31); requirements for evaluation reports and further evaluation

² Decision 2.5 paragraph 83(a) and (b).

reports (section 32 and 32AA); purpose of district plans (section 72); preparing and changing district plans (section 73); matters to be considered by a territorial authority when changing a district plan (section 74); and contents of district plans (section 75). The procedure and requirements of Schedule 1 to the RMA are also relevant.

5.2 Sections 74 and 75 of the RMA require:

- (a) that the district plan is prepared in accordance with Part 2 of the RMA;
- (b) a s32 evaluation;
- (c) that the district plan is prepared in accordance with any national policy statement and any regulations;
- (d) that any relevant planning document recognised by an iwi authority be taken into account;
- (e) that the district plan must give effect to any national policy statement; and
- (f) that the district plan must give effect to any regional policy statement.

Part 2 of the RMA

5.3 As set out in the s32 report, the proposed variation relates to specific areas within the identified and mapped ONF, ONL and RCL within the Queenstown Lakes District.

5.4 The RMA requires that ONFs and ONLs are protected from inappropriate subdivision, use and development pursuant to section 6(b) of the RMA. As a section 7(c) landscape, the RMA requires that particular regard be had to maintaining and enhancing amenity values of the RCL.

5.5 The policy direction in Chapter 3 has been prepared to give effect to Part 2, and this proposed variation in turn is to give effect to the strategic objectives and policies.

National policy statements and regulations

- 5.6** The s32 report states that there are no relevant national policy statements or national environmental standards for this variation. In my opinion both the Resource Management (National Environmental Standards for Production Forestry) Regulations 2017 (**NES-PF**) and the National Policy Statement on Electricity Transmission 2008 (**NPS-ET**) are relevant to this proposal.
- 5.7** I consider these further in relation to my recommendations on submissions relating to PDP terminology and the national grid. If the recommended amendments set out in **Appendix 1** are included, I consider the variation will meet the requirement to be prepared in accordance with the NPS-ET and the NES-PF, and give effect to the NPS-ET.
- 5.8** For completeness I note I have also considered the potential relevance of the National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**) and the National Policy Statement for Renewable Energy Generation 2011 (**NPS-REG**). With regard to the NPS-HPL, I do not consider there is anything in the Variation that compromises the purpose of the NPS-HPL to protect highly productive land for productive purposes, particularly given the role of the schedules as guidance for landscape assessments and that the Variation does not change the policy approach to rural landscapes. In terms of the NPS-REG, the PDP has been drafted to give effect to this NPS, including via provisions in Chapter 30. The Variation does not seek to change this approach and the preamble to the NPS-REG acknowledges that in some instances the benefits of renewable electricity generation can compete with matters section 6 and 7 of the RMA, in particular (among other examples) ONLs and ONFs.

Iwi planning documents

5.9 The Kāi Tahu Ki Otago Natural Resource Management Plan 2005 and The Cry of the People, Te Tangi a Taurira: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 are the relevant iwi management plans for the District.

5.10 The preparation of the PDP has taken into account the outcomes of the iwi management plans, including Chapter 5 Tangata Whenua and Chapter 39 Wāhi Tūpuna. The proposed variation does not seek to change this approach.

Regional Policy Statement

5.11 There are two relevant regional policy statements:

- The Partially Operative Otago Regional Policy Statement 2019 (**POORPS**) (declared partially operative on 15 March 2021); and
- The Proposed Otago Regional Policy Statement 2021 (**PORPS**) (notified June 2021).

5.12 The s32 report notes that both of these documents have been considered as part of preparing the proposed variation and that Chapter 3 of the PDP gives effect to these higher order documents. The key Environment Court decisions relating to this proposal were issued over the period of December 2019 (Decision 2.2) to August 2021 (Decision 2.9).

5.13 For completeness I note that the POORPS requires the following with respect to natural features and landscapes:

- Recognise the values of natural features, landscapes and seascapes are recognised as deriving from the biophysical, sensory and associative attributes outlined in the POORPS Schedule 3 (Policy 3.1.11);

- Significant and highly-valued natural resources are identified and protected, or enhanced where degraded (Objective 3.2);
- Areas and values of outstanding natural features, landscapes and seascapes, are identified using the attributes in Schedule 3 of the POORPS (Policy 3.2.3); and
- Protect, enhance or restore outstanding natural features, landscapes and seascapes (Policy 3.2.4).

5.14 The PORPS requires the following with respect to natural features and landscapes:

- Identification of values of outstanding and highly valued landscapes, and the protection of ONFs and ONLs and the maintenance and enhancement of highly valued natural features and landscapes (Objective NFL-O1, NFL-P1, NFL-P2).

5.15 The proposal Variation is in accordance with these objectives and policies of the RPSs.

6. APPROACH TO THE COUNCIL'S RECOMMENDATIONS ON RELIEF SOUGHT IN SUBMISSIONS

6.1 In total, 208 submissions and 37 further submissions were received on the proposed variation. Over 4,600 submission points were received.

6.2 The submissions comprise a mix of general points and points requesting specific relief in relation to particular PA schedule(s).

6.3 Council has engaged two landscape experts to assess the submissions and provided evidence and recommendations on the relief sought by submissions – Ms Bridget Gilbert and Mr Jeremy Head. Ms Gilbert has assessed and provided recommendations on all landscape related submission points of a general nature. The landscape experts have split

the assessment of submission points relating to the content of the PA schedules.

6.4 Ms Gilbert has assessed and made recommendations on the submission points concerning the following schedules:

- (a) 21.22.1 Peninsula Hill PA ONF
- (b) 21.22.2 Ferry Hill PA ONF
- (c) 21.22.3 Shotover River PA ONF
- (d) 21.22.5 Lake Hayes PA ONF
- (e) 21.22.6 Slope Hill PA ONF
- (f) 21.22.8 Arrow River PA ONF
- (g) 21.22.12 Western Whakatipu Basin PA ONL
- (h) 21.22.13 Queenstown Bay and Environs PA ONL
- (i) 21.22.14 Northern Remarkables PA ONL
- (j) 21.22.15 Central Whakatipu PA ONL
- (k) 21.22.16 Eastern Whakatipu PA ONL
- (l) 21.22.21 West Wānaka PA ONL
- (m) 21.22.23 Hāwea South North Grandview PA ONL
- (n) 21.23.3 West of Hāwea River PA RCL
- (o) 21.23.4 Church Road Shortcut Road PA RCL

6.5 Mr Head has assessed and made recommendations on the submission points concerning the following schedules:

- (a) 21.22.4 Morven Hill PA ONF
- (b) 21.22.7 Feehly Hill PA ONF
- (c) 21.22.9 Kawarau River PA ONF
- (d) 21.22.10 Mount Barker PA ONF
- (e) 21.22.11 Mount Iron PA ONF
- (f) 21.22.17 Victoria Flats PA ONL
- (g) 21.22.18 Cardrona Valley PA ONL
- (h) 21.22.19 Mount Alpha PA ONL
- (i) 21.22.20 Roys Bay PA ONL

- (j) 21.22.22 Dublin Bay PA ONL
- (k) 21.22.24 Lake McKay & Environs PA ONL
- (l) 21.23.1 Cardrona River/Mount Barker Road PA RCL
- (m) 21.23.2 Halliday Road/Corbridge PA RCL
- (n) 21.23.5 Maungawera Valley PA RCL

6.6 In addition to the landscape-focussed submissions, a number of general and planning related submission points have been made. These are assessed and the subject of recommendations in section 8 below.

6.7 Recommendations on all submission and further submission points (relying on where necessary on the recommendations of Ms Gilbert and Mr Head) are attached at **Appendix 2**. In relation to recommendations on further submissions, these are directly linked to the analysis and recommendation made for the primary submission point. The recommendation tables prepared by the landscape architects do not include further submissions.

6.8 Recommended amendments to the schedules (including the preambles) are attached at **Appendix 1**. The recommended amendments have for the most part been prepared by the respective landscape architect who has assessed the schedule specific submission points (refer paragraphs 6.4 and 6.5 above).

6.9 As described in Ms Gilbert's evidence, Council's landscape experts have also jointly reviewed and moderated the recommendations and amendments for each schedule, to ensure that a consistent approach has been taken. Recommended amendments to the preamble for each schedule have been prepared collectively by Ms Gilbert, Mr Head and myself.

6.10 There is a degree of overlap in the evidence of Ms Gilbert and Mr Head, and this report. This s42A report therefore needs to be read alongside the

evidence of Ms Gilbert and Mr Head to get a comprehensive picture of the Council's recommendations on relief sought by submissions.

- 6.11** Where submission points are referenced in this report, the submission number allocated by Council has been used. These numbers and the submitter name, relevant provision, and detail of relief sought can all be found in the attached Accept / Reject Table – **Appendix 2**.

7. SUBMISSION POINTS THAT ARE OUT OF SCOPE

- 7.1** As outlined in section 4 above, the proposed variation is confined to the content of the PA schedules.

Requested mapping alterations

- 7.2** A number of submissions³ have sought changes to the PDP's landscape classification lines, and/or the PA boundaries, or requested that the PA schedules not apply to their land. The ONL, ONF and RCL boundaries have not been notified as part of the Variation, nor have the PA boundaries.

- 7.3** The PA boundaries were determined through the Topic 2 appeal process by the Environment Court (refer Decision 2.5), and the proposed variation does not propose to make any changes to those boundaries. In addition, the PA boundaries relied on the ONL, ONF and RCL boundaries that were also determined through the PDP process (largely Stage 1), including through Environment Court decisions where the ONF/L, and RCL, boundaries were subject to appeal. For completeness, the section 32 report describes the proposal as including landscape schedules in Chapter 21 only (ie. relating to the inclusion and content of the PA schedules).

- 7.4** Given the limited scope of the variation, and the genesis of the PAs, submission points seeking to change the landscape classification lines

³ For example OS3.4, OS5.1, OS16.1, OS34.1, OS37.1, OS86.1, OS89.1, OS126.1, OS132.1, OS134.12, OS140.1, OS140.2, OS176.3, OS181.1, OS182.5, OS183.1, OS186.4, OS188.1. Refer to **Appendix 2** Accept / Reject table for others.

(ONF, ONL or RCL) or PA boundaries are considered beyond scope, and it is recommended that they be rejected.

7.5 The same position applies to any submissions⁴ seeking zoning changes. These submissions are outside the scope of the variation, as it is not concerned with zoning, only the content of the PA schedules that are to be included in the PDP to comply with SP 3.3.42.

7.6 I note that through the assessment of submissions several minor/non-substantive mapping issues have been identified, and that Council is considering whether to address these issues. I will be in a position to advise the Hearings Panel about this ahead of the hearing commencing.

PDP provisions

7.7 Some submissions⁵ have sought changes to PDP objectives and policies. Given the confined scope of this variation, these requests are considered to be out of scope and recommended to be rejected.

7.8 A number of submissions⁶ have requested amendments to Chapter 2 - Definitions, to include new definitions for terms used in the proposed PA schedules. In response to several of these submissions, amendments to the preamble to the PA schedules have been recommended to provide additional clarity around the application of the Chapter 2 definitions, and terminology used in the PA schedules. This substantive issue is discussed in section 10 below.

4 For example OS183 which requests that the landscape schedule 21.22.1 Peninsula Hill is amended to remove the site at 48 Peninsula Road, Kelvin heights and have the site rezoned to the Proposed District Plan's Lower Density Suburban Residential zone.

5 For example OS80.4 which requests that Provision 3.1B.5 and Policy 6.3.1 be amended (if required) to exclude the Maungawere Rural Visitor Zone from landscape schedule 21.23.3; and alternative relief 'catch all' submission points such as OS122.24, OS125.10 which seek additional or consequential relief to address matters raised in the submission, including to PDP provisions.

6 For example OS84.5, OS119.6, and OS174.5 seek that tourism activities be defined in Chapter 2 or clarified in the landscape schedule.

7.9 In some cases where submitters have sought changes to landscape classification lines, as an alternative form of relief they have requested that if the landscape lines and spatial extent of the PAs are not changed, and the relevant schedule is retained as part of the variation, then an exception regime for their land is provided for.⁷ As the variation does not consider any PDP provisions other than those proposed for inclusion in the PA schedules themselves, introducing a new exception regime is considered out of scope, and these submissions are recommended for rejection.

Additional schedules

7.10 One submitter⁸ has requested that the variation include additional schedules for non-priority areas of the RCL, i.e. the Upper Clutha Non Priority Area RCL Schedules (and consequential amendments to Chapters 3 and 6).

7.11 As outlined above, amendments to other PDP provisions are considered out of scope. In terms of the requested non-PA RCL schedules, given the direction provided by SP 3.3.42 and limited framing of section 32 report, I consider that this request is not in scope of this variation.

7.12 I understand that the Council is progressing a separate workstream to prepare the non-PA RCL schedules, and that a future variation to the PDP will be initiated to incorporate these.

8. KEY THEMES FROM SUBMISSIONS

8.1 Submissions range from supporting the variation to opposing the variation in its entirety. Many submissions seek amendments to the PA schedules.

⁷ OS177.3.

⁸ OS67.1.

8.2 For submissions requiring planning analysis I have grouped my analysis of submissions into the following broad submission topics/themes:

- (a) Topic 1: Application of the schedules
- (b) Topic 2: Terminology and definitions
- (c) Topic 3: Preparation of the variation
- (d) Topic 4: Mapping
- (e) Topic 5: Particular activities
- (f) Topic 6: Miscellaneous points

8.1 For each topic/theme, I have summarised the key issue(s) and relief sought in the submissions, considered whether the relief sought better achieves the relevant objectives of the applicable policy documents, and evaluated the appropriateness, including costs and benefits, of the requested changes in terms of section 32AA of the RMA.

8.2 Where a submission point is purely landscape related, I have relied on the evaluation by Ms Gilbert and Mr Head, and adopt their recommendations for those submission points. These recommendations are included in the Accept / Reject Table appended as **Appendix 2**.

9. TOPIC 1: APPLICATION OF THE SCHEDULES

9.1 Many submitters⁹ have sought clarity or confirmation that the PA schedules do not apply outside the Rural Zone.

9.2 Typical examples of these issues raised by these submissions are:

- (a) That the variation, as notified, fails to recognise that the ONL, ONF and RCL only apply to Rural Zone landscapes, and that zones such as the Open Space and Recreation Zone, Cardrona

⁹ For example OS84.7, OS89.1, OS113.7, OS113.8, OS119.4, OS129.2, OS129.3, OS130.1, OS133.6, OS133.10, OS153.13.

Village Settlement Zone and Mount Cardrona Special Zone should not be part of the PA mapping;

- (b) That Ski Area Sub-Zones cannot be part of the PAs due to the exception regime applying to that sub-zone;
- (c) That the Victoria Flats PA Schedule 21.22.17 be amended to provide for the exception regime; and
- (d) That the Cardrona Settlement Zone be excluded from Schedule 21.22.18.

9.3 Because of this, a number of submitters¹⁰ have requested clarity in relation to where and how the PA schedules apply, how the information in the PA schedules is to be used and/or requested that the variation be amended so it is clear that the PA schedules do not apply outside of 'rural zones' or the Rural Zone specifically.

Summary of position on Topic 1

9.4 Having considered the relevant PDP objectives and policies (including those in Chapter 3), I consider that the PA schedules will be of direct relevance to land use and subdivision applications or plan changes in the Rural Zone.

9.5 For zones other than the Rural Zone, while there is no direct policy link to the PA schedules, in practice I consider that they would be referred to in order to inform the identification of relevant landscape values and associated capacity (as anticipated by SP 3.3.45). However, the existing PDP provisions will not make the PA schedules directly applicable.

9.6 The will include the PDP Exception Zones, where for any activities that are not provided by those zones, the PA schedules will be useful to inform the identification of the landscape values that are to be protected.

¹⁰ For example OS147, OS148

- 9.7** Overall, the relevance of the PA schedules in relation to proposals will depend on the zoning of the land that is subject to the application.

Background to the PAs and PA schedules

- 9.8** The genesis of the PAs, and the background to the Chapter 3 direction to prepare and include PA schedules in Chapter 21 (including the mapping) is outlined in section 4 above and in Ms Gilbert’s EIC at paragraphs 3.4-3.9.
- 9.9** The mapped PAs, which were confirmed by the Environment Court in Decision 2.1, apply to land that is subject to the Rural Zone, as well as a number of other zones.
- 9.10** The RCL PAs do not include any land that is not Rural Zone. As a result, there are no other zones that are subject to those RCL PAs, or the associated schedules.
- 9.11** The ONF/L PAs extend over a number of PDP zones.
- 9.12** In some cases, the degree of intersect/overlap is very small. In some cases, I understand from talking to Council’s GIS officer that the overlap is so small that plan users would not readily identify the overlap, other than it being tagged to the information that pops up when a user of the web mapping clicks on a property.

The s32 report

- 9.13** Paragraph 3.10 of the s32 report states that: “... the schedules will assist with the assessment of land use and subdivision resource consent applications in the rural zones”. In terms of how they will assist, the s32 goes on to state at paragraph 3.10 that: “They will clearly identify the values to be protected, maintained and/or enhanced by a proposed development that falls within the Priority Areas”.

- 9.14** Although paragraph 3.10 uses the words ‘rural zones’, it does not specifically state that the content of the PA schedules will only apply to the parts of the PAs that fall within rural zones. It also does not define what ‘rural zones’ are in the context of the PDP. Rather, the section 32 report refers to proposed development that falls within the PAs.
- 9.15** Notwithstanding that the schedules are proposed to be located in Chapter 21 (as required by Chapter 3), there is nothing in the s32 report that restricts the scope, or limits the application, of the PA schedules to only the Rural Zone, or the rural zones in Part 4 of the PDP.
- 9.16** I acknowledge that a s32 report is not a replacement for a policy or provision included in a district plan, and that it cannot have that effect, but consider this relevant background context given that this issue has been raised by submissions.

The distinction between the Rural Zone and ‘rural zones’

- 9.17** The PDP is structured into six parts: Introduction, Strategy, Urban Environment, Rural Environment, District-Wide Matters and Special Zones.
- 9.18** Part 4 of the PDP groups together four zones and describes them as ‘rural zones’. This group includes: Chapter 21 Rural Zone, Chapter 22 Rural Residential and Lifestyle, Chapter 23 Gibbston Character Zone and Chapter 24 Wakatipu Basin. Part 2 contains Chapter 6 Landscapes – Rural Character, which provides relevant strategic direction for ONF/L and RCL areas, and the rural environment more generally.
- 9.19** The structure of the PDP, grouping of zones in Part 4, and the associated zone purpose descriptions provide a signal that the references to ‘rural zones’ in the PDP, is intended to capture the Rural Zone, the GCZ, the RRZ and the RLZ.

- 9.20** The zone descriptions, as relevant, are – for Chapter 21, at 21.1, (emphasis added):

There are four rural zones in the District. The Rural Zone is the most extensive of these. The Gibbston Valley is recognised as a special character area for viticulture production and the management of this area is provided for in Chapter 23: Gibbston Character Zone. Opportunities for rural living activities are provided for in the Rural-Residential and Rural Lifestyle Zones (Chapter 22).

- 9.21** The Zone Purpose for Chapter 22 Rural Residential and Rural Lifestyle contains the same introduction.

- 9.22** Section 21.1 of the Rural Zone chapter goes on to state that (emphasis added):

Ski Area Sub-Zones are located within the Rural Zone. These Sub-Zones recognise the contribution tourism infrastructure makes to the economic and recreational values of the District. The purpose of the Ski Area Sub-Zones is to enable the continued development of Ski Areas as year round destinations for ski area, tourism and recreational activities within the identified Sub-Zones where the effects of the development are cumulatively minor.

In addition, the Rural Industrial Sub-Zone includes established industrial activities that are based on rural resources or support farming and rural productive activities.

- 9.23** Another feature of the PDP is the use of sub-zones. As sub-zones form part of a parent zone, references to the ‘Rural Zone’ include the SASZ and the Rural Industrial Sub-Zone. Both of these subzones sit within the Rural Zone, and are regulated by rules and standards in Chapter 21, including rules that apply specifically to those sub-zones and to the Rural Zone more generally.

9.24 Also of relevance to the application of the PAs is the separate planning regime set out in the PDP for Exception Zones. The PDP “Exception Zones” are listed in section 3.1B.5, and include the SASZ, Rural Residential Zone, Rural Lifestyle Zone, Gibbston Character Zone and Jacks Point Zone. I discuss the Exception Zone framework shortly.

Relevant PDP Objectives and policies

9.25 The strategic objectives and policies that direct the preparation of the variation were determined by the Environment Court as a result of appeals on Stage 1 of the PDP.

9.26 Strategic Objective (**SO**) 3.2.5.1 requires the identification of ONF and ONL including their landscape values and related landscape capacity, this SO does not specifically reference any particular type of zone.

9.27 SO 3.2.5.2 states that within the Rural Zone, new subdivision, use and development is inappropriate unless those values (either specified in Schedule 21.22 or identified using Strategic Policy (**SP**) 3.3.45) are protected. Outside of the Rural Zone, landscape values of ONFs and ONLs must be protected from inappropriate subdivision, use and development (SO 3.2.5.4). The reference in SO 3.2.5.2 to the Rural Zone provides an indication that the PA schedules are directly applicable to the Rural Zone, but not necessarily outside of the Rural Zone.

9.28 SP 3.3.29 directs the identification of values and capacity assessments for the PAs through Schedule 21.22 (SP 3.3.29(a)). Although the requirement is to include these PA schedules within Chapter 21, SP 3.3.29 does not distinguish between the different zones overlaid by the PAs, i.e. the SP direction is not tied to the Rural Zone, or rural zones only. However, SP 3.3.29 does refer to the schedules and other policies where the Rural Zone reference exists.

- 9.29** One of these other policies is SP 3.3.36, which refers to the ‘Rural Zone’. SP 3.3.36 requires the Council to: *identify in Schedule 21.22 the following Rural Zone Priority Areas within the Outstanding Natural Features and Outstanding Natural Landscapes.*
- 9.30** SP 3.3.37 requires that Schedule 21.22 describe, at an appropriate landscape scale, the attributes, values and related capacity for the PAs listed in SP 3.3.36 (which refers to Rural Zone PAs). SP 3.3.38 similarly links back to 3.3.37, and so the reference to the Rural Zone can be extended to SP 3.3.38. Both SPs 3.3.36 and 3.3.37 provide policy direction to achieve SO 3.2.5.1, which is not limited to Rural Zoned land.
- 9.31** SP 3.3.45 sets out the requirements for a landscape assessment, and SP 3.3.46 sets out the methodology required (by SP 3.3.45) to be implemented when assessing (emphasis added):
- (a) A proposed plan change for the rural environment (not specific to the Rural Zone, therefore could include rural zones, particularly given Part 4 of the PDP is title “Rural Environment”);
 - (b) A restricted discretionary, discretionary or non-complying resource consent in relation to land within an ONF or ONL or giving rise to landscape effects and on land with Rural zoning;
 - (c) A notice of requirement in relation to land within an ONF or ONL or giving rise to landscape effects and on land with Rural zoning;
 - (d) A resource consent where the proposal is in an Exception Zone¹¹ and gives rise to landscape effects on the receiving environment that includes an ONF or ONL on land with Rural zoning outside that Exception Zone.

11 Ski Area Sub-Zone, Rural Residential Zone, Rural Lifestyle Zone, Gibbston Character Zone and Jacks Point Zone (as per section 3.1B.5).

- 9.32** The reference to the word Rural in clauses b, c and d, using capitals, but not capitalising the word ‘zoning’ could have two interpretations:
- (a) that ‘Rural zoning’ refers to the Rural Zone; or
 - (b) that ‘Rural zoning’ is referring to the broader rural zones in Part 4 of the PDP (ie. the Rural Zone, GCZ, RRZ and RLZ).
- 9.33** In considering this issue in the context of the relevant objectives and policies, including SP 3.3.46(a), my interpretation is that the reference to ‘Rural zoning’ is to the four rural zones in Part 4 of the PDP, rather than only the Rural Zone.
- 9.34** What this means is that the PA schedules will be relevant to the four Rural zones in Part 4 of the PDP, but not directly engaged in a policy sense for zones other than the Rural Zone. In terms of those zones, Chapter 22 and 23, and the SASZ, are Exception Zones (which I discuss further below), and the other, Chapter 24 – Wakatipu Basin – does not comprise any ONF/L (and so is not relevant for the PA schedules).
- 9.35** I also note that SP 3.3.46(d) captures situations where Exception Zones are adjacent to, or surrounded by the Rural Zone and other zones, and overlaid with the ONF or ONL, and that if that is the case, there is a need to consider effects of activities outside of the Exception Zone on these other zones.

The Exception Zone framework

- 9.36** The PAs extend across zones and sub-zones that are identified as ‘Exception Zones’. This issue has been raised in submissions, and I respond to it below.
- 9.37** The list of Exception Zones is provided in Section 3.1B.5(a), with Section 3.1B.6 clarifying which of the strategic objectives and policies¹² do not

12 SO 3.2.1.7.a (agricultural uses enabled provided those uses protect the landscape values of the ONF or ONL;

apply to the consideration or determination of any applications within the Exception Zones, except in so far as the receiving environment includes an ONL or ONF that is outside the Exception Zone.

- 9.38** In summary, the Exception Zones have been developed on the basis that they already achieve (through their approach to regulating subdivision, use and development) the relevant ONF/L policy directions of the PDP (see Policy 6.3.1.3).
- 9.39** This is the case unless SO 3.2.5.4 applies. SO 3.2.5.4 provides that in each Exception Zone located within an ONF or ONL, applications for subdivision, use and development are provided for to the extent anticipated by the Exception Zone, and on the basis that any **additional** subdivision, use or development (**not provided for by the zone**) protects the landscape values of the relevant ONF or ONL.
- 9.40** As a result, applications for subdivision, use or development that are anticipated within the Exception Zones are not subject to a number of SOs and SPs. This includes the SPs that require scheduling of values and landscape capacity. This exception does not extend to development that is not provided for within the Exception Zones, in which case all relevant SOs and SPs will apply (SO 3.2.5.4).

SO 3.2.1.8.a (diversification of land use in rural areas beyond traditional activities provided that the landscape values of the ONF and ONL are protected);
SO 3.2.5.1 (the ONF and ONL landscape values and related landscape capacity are identified);
SO 3.2.5.2 (new subdivision, use and development inappropriate on ONF or ONL unless landscape values are protected);
SP 3.3.2.a (provision for commercial recreation and tourism related activities that enable people to access and appreciate landscapes, provided that those activities are designed and of a nature that protects landscape values of ONF and ONL and maintains landscape character and maintains or enhances visual amenity values of RCL);
SP 3.3.21.a (enable continuation of existing farming activities and evolving forms of agricultural land use in rural areas except where those activities conflict with protection of landscape values of ONF and ONL and maintenance of landscape character and maintenance or enhancement of visual amenity values of RCL);
SP 3.3.23.a (ensure the effect of cumulative subdivision and development for the purposes of rural living does not compromise the protection of landscape values of ONF and ONL and maintenance of landscape character and maintenance or enhancement of visual amenity values of RCL);
SP 3.3.29 (identification of landscape values and capacity for ONF and ONL in accordance with the VIF in SP 3.3.36-3.3.38 and otherwise through SP 3.3.45 and best practice landscape methodology for PAs in Schedule 21.22; and outside of PAs in accordance with SP 3.3.45 and best practice landscape methodology);
SP 3.3.30 (protect the landscape values of ONF and ONL);
SP 3.3.31 (avoid adverse effects on ONF and ONL from residential subdivision, use and development where there is little capacity to absorb change).

9.41 In terms of plan development (e.g. zoning changes), all of the SOs and SPs will apply. While there is no direct link to the SPs that relate to PA scheduling, I consider that the PA schedules will be relevant to any plan change or variation relating to Exception Zones, as part of the overall package of PDP provisions and methods that provide policy direction for areas categorised as ONF/L.

How will the PA schedules be applied to a consent application?

9.42 The relevance of the PA schedules in relation to consent applications will depend on the zoning of the land subject to the application.

9.43 Having considered the PDP objectives and policies outlined above, I consider that the schedules will be of direct relevance to land use and subdivision applications or plan changes in the Rural Zone. For non-Rural Zones, while the schedules in practice will likely be referred to when identifying the relevant landscape values and associated capacity (as anticipated by SP 3.3.45), the existing PDP provisions will not make the PA schedules directly applicable.

9.44 I also note that for certain zones, which either remain under appeal, or which have not yet been included in the PDP, if the PA schedules are prepared on the basis that they describe all landscape values / capacity regardless of zoning, there will be the potential to create a policy link between the PA schedules and those zones at a later date, if that is determined to be appropriate.

9.45 In order to assist the Hearing Panel, I set out below how I consider the PA schedules will apply to specific zones / sub-zones:

9.46 Rural Zone:

- (a) The PA schedules are of direct relevance to proposals within the Rural Zone.

9.47 Ski Area Sub Zones:

- (a) The SASZs are a sub-set of the Rural Zone and also an Exception Zone. As outlined above, specified SOs and SPs do not apply for development anticipated in these zones, and the Exception Zone related provisions take precedence for any activity that is *anticipated by the SASZ*.
- (b) The Schedule 21.22 descriptions of landscape values and landscape capacity acknowledge (or are recommended to be amended to acknowledge) ski area activities anticipated within the SASZ. This means there is alignment between the Chapter 21 (SASZ) provisions, and the PA Schedules. Identifying capacity in this way is consistent with SO 3.2.5.4.
- (c) Where an activity is proposed that is not provided for by the SASZ (in terms of SO 3.2.5.4), all relevant SOs and SPs will be engaged and an assessment against the landscape values and capacity set out in the PA schedules will be required.

9.48 Gibbston Character Zone:

- (a) The GCZ is a rural zone, but is not part of the Chapter 21 Rural Zone. The GCZ is also an Exception Zone.
- (b) Similar to the SASZ, the schedules have been drafted (or are recommended to be drafted) so that they consider the activities anticipated within the GCZ within its PA landscape context (ONL and ONF), including the development enabled by the GCZ.

- (c) The GCZ is regulated by the provisions in Chapter 23 (as well as district-wide chapters), which provides for the protection of the values of the ONF/L for activities that are anticipated by the zone. Where any activity is proposed that is not provided for (in SO 3.2.5.4 terms), the PA schedules could be used to inform the landscape assessments and determination of landscape capacity, as required by relevant Chapter 3 SOs and SPs (and where the activity has a restricted discretionary, discretionary or non-complying activity status).

9.49 Rural Residential Zone and Rural Lifestyle Zone:

- (a) As the Chapter 22 zones are both 'rural zones' and Exception Zones, the application of the PA schedules will be the same as for the GCZ. That is, the PA schedules will not directly apply, or apply to *anticipated* activities, but could be used to inform the assessment of landscape values and capacity for development that is **not provided for** by those zones.

9.50 Jacks Point Zone:

- (a) The Jacks Point Zone (Chapter 41) is an Exception Zone, and included in the special zone section of the PDP (Part 6). It is also within the Urban Growth Boundary, although it is applied to land that is classified as ONF/L.
- (b) Similar to the GCZ, RRZ and RLZ, the PDP does not direct that the PA schedules be applied to the Jacks Point Zone. The relevant PA schedule (Peninsula Hill) has been prepared to acknowledge the proximity and inclusion of part of this PA to Jacks Point, and the range of activities enabled by the zone. While the PA schedule will not directly apply to activities anticipated by Chapter 41, the PA schedules could be used to

inform an assessment of landscape values and capacity in the part of the zone that is an ONF, where proposals are not provided for.

- (c) I am aware that there is an unresolved appeal point concerning the Jacks Point Zone, and the area within the Peninsula Hill PA, which concerns the potential inclusion of a new policy that will apply to this area. It is my understanding that this appeal point was placed on hold, waiting on the progress of this variation.

9.51 Other zones:

- (a) For the remaining PDP zones that the PAs (and ONLs and ONFs) overlap with, the PA schedules are not directly engaged, but are likely to be referred to if a resource consent requires an assessment of landscape values and capacity (informally).
- (b) The same applies to Operative District Plan zones (for example the Settlement Zone at Cardrona) that the PA schedules overlap with. This is because as explained in part 1.1B of Chapter 1 of the PDP, Chapters 3, 4, 5, and 6 of the PDP apply (unless there is a specified exclusion) to the Volume B land that has not been reviewed.

Activities permitted in a zone but requiring consent under a district wide rule – do the schedules apply?

- 9.52** Some submitters¹³ have requested clarity on how the PA schedules will apply where a resource consent does not trigger any zone rules, for example where earthworks associated with a permitted activity (in the zone provisions) requires a resource consent.

13 For example OS129.4.

- 9.53** The PA schedules set out a capacity rating and description for a number of activities, including earthworks. If the earthworks are occurring in an ONL or ONF and are not a permitted activity, then an assessment against the Chapter 3 and 6 policies may be required (if there is a matter of control or discretion which requires this). In turn, this may require an assessment of landscape values in accordance with SP 3.3.45.
- 9.54** Where the area is within a PA, and within the Rural Zone, Schedule 21.22 will be engaged (for example, where the matters of discretion in 25.8.3 are engaged).
- 9.55** Outside of the Rural Zone, the PA schedules could be used (informally) to guide any assessment of landscape values (in terms of SP 3.3.45 and 3.3.46) and capacity associated with earthworks (where this is required by the strategic objectives and policies).
- 9.56** As noted above, for Exception Zones, it will only be possible to consider the PA schedules for activities that are not provided for by those zones.
- 9.57** One issue raised is that it would be inefficient and add additional unnecessary costs to applications if an assessment against the objectives and policies in Chapter 3 is required for district wide applications, as these should have been given effect to by the balance of the PDP provisions. Given that an application for earthworks in an ONL or ONF is involved, and if the rules trigger a consent requirement (rather than the activity being permitted) that engages with landscape considerations, then it will be necessary to look at both the Chapter 3 and Chapter 6 objectives and policies.
- 9.58** The introductory text in Chapter 6 (section 6.1 and 6.1.1) makes it clear that Chapter 6 policies should be read in conjunction with the Chapter 3 objectives and policies as these elaborate / implement those in Chapter 3. In addition, part 3.1B.2(a) and (b) of Chapter 3 clearly states that the SOs and SPs in Chapter 3 provide guidance to related objectives and

policies of other chapters of the PDP, and that there is no hierarchy between any of the objectives and policies of the PDP, for plan implementation purposes – they need to be considered together. I therefore consider it appropriate to look at both the Chapter 3 and Chapter 6 objectives and policies. I also note that the location of the rule within the PDP is not determinative of whether these provisions apply.

Recommended addition to the PA schedules

9.59 Given the extent of submissions seeking clarity as to how the PA schedules apply, and on the basis that it does not make sense from a landscape methodology perspective to exclude or carve out certain zones or areas which are not directly subject to the PA schedules, I recommend the below addition to the schedule preambles.

9.60 While the preambles are guidance, given their association with the PA schedules themselves, I consider that they will be useful in terms of guiding how the PA schedules are used.

Application of the schedules

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

- Other than the Ski-Area Sub Zone (see below), the PA schedules apply (as relevant) to any proposal requiring resource consent in the Rural Zone, including the Rural Industrial Sub Zone.
- The PA schedules apply (as relevant) to any activity in the Ski-Area Sub Zone that is not provided for by that sub-zone.
- The PA schedules do not directly apply to proposals in other zones, but may inform landscape assessments for proposals involving any land within a PA.

The role of the PA schedules

- 9.61** The s32 report discusses, at paragraphs 3.8-3.13, the role of the PA schedules.
- 9.62** I generally agree with the s32 description of the role and effect of the PA schedules. I agree that they will assist in providing certainty that the direction of Chapter 3 will be achieved, but note that they are one component in a suite of PDP provisions to achieve the strategic objectives and policies of Chapter 3, and it is clear from the preambles to the PA schedules that they are not intended to be a substitute for site-specific assessments. The notified version of the PA schedule preambles refers to them being a *tool to assist with identification of landscape values*. I agree.
- 9.63** Several submission points¹⁴ seek clarity that the schedules apply at a PA level and/or do not preclude future development. Similarly it has been requested¹⁵ that Schedule 21.23.2 be amended to include wording that the capacity assessments apply to the PA as a whole and that sites or parts of sites will have greater capacity to absorb change.
- 9.64** In my view it is clear that the PA schedules apply at a PA level. The notified version of the preamble to Schedules 21.22 and 21.23 includes that the following wording: *the landscape attributes and values relate to the priority area as a whole and should not be taken as prescribing the attributes and values of specific sites; a finer grained location specific assessment is required for any plan change or resource consent; the capacity descriptions are based on the scale of the PA and should not be taken as the capacity of specific sites, across the PAs there is likely to be variation in capacity which requires consideration through consent applications or plan changes.*

14 For example OS48.3, OS48.8, OS50.2, OS167.1, OS172.1, OS173.1, OS181.2, OS206.5.

15 OS184.3.

- 9.65** The PA schedules themselves will not preclude future development. While concern has been raised about a “no capacity” rating, I do not consider that this ‘shuts the door’ on applications for consent. It does, however, signal that a particular activity may be unlikely to be suitable within the PA, for landscape reasons.
- 9.66** I do not consider there to be any need to amend the PA schedules to state that they apply at a PA level, as in my view this is already clear from the preambles. I recommend these submission points are rejected but I note that the amended preambles may address some of the submitters’ concerns.
- 9.67** In the same submission point¹⁶ relating to Schedule 21.23.2 it has been requested that the PA schedule be amended to include the wording: *The capacity assessments do not apply where development is proposed to be facilitated by a plan change.*
- 9.68** As noted above, it is my interpretation of Chapter 3 that the PA schedules, including Schedule 21.23.3, as a whole (including the capacity description), could be relevant to both resource consents and plan changes. Part 3.1B.1 of the PDP states that for the purposes of plan development, including plan changes, the SOs and SPs in Chapter 3 provide direction for the development of more detailed provisions elsewhere in the PDP in relation to strategic issues.
- 9.69** In the case of a plan change the capacity descriptions for specific activities could inform the context of landscape assessment for the plan change. A future plan change may also seek to change the capacity rating for particular activities based on a site specific landscape assessment. I recommend that this part of the relief sought is rejected.

16 OS184.3.

9.70 One submitter¹⁷ seeks that the landscape capacity for Halliday Road/Corbridge Road is amended to read:

...(iii) no landscape capacity, in the absence of a plan change.

9.71 Mr Head has reviewed the relevant capacity rating. I do not consider the additional text 'in the absence of a plan change' to be necessary here as the preambles, including the recommended amendments, explain how the schedules apply to plan development.

9.72 There are submissions suggesting that the operative rural rules provide the most appropriate level of protection¹⁸, that the operative rules relevant to Schedule 21.22 are enough and that no change is necessary¹⁹, that landscape capacity is better assessed within the consenting process and removed from the schedule of attributes and values²⁰. Given that the PA schedules are required by SP 3.3.37, including statements relating to capacity, not including them would not give effect to this policy (and therefore the District Plan, which is a requirement of section 84 of the RMA). I therefore recommend that these points are rejected.

Application of the schedules to permitted activities and resource consents

9.73 In summary, the PA schedules will only be engaged if consent is required under the PDP. They cannot apply to permitted activities. It will only be when resource consent is required in the Rural Zone (and in the case of controlled or restricted discretionary activities, only when landscape is a matter of control or discretion), and the site is within a PA, that the PA schedules will be engaged.

17 OS184.5 in relation to Schedule 21.23.2 Halliday Road/Corbridge Road.

18 For example OS 65.2, OS66.2, OS193.1, OS196.1 in relation to Maungawera Valley.

19 For example OS26.1.

20 For example OS146.2.

9.74 Some submitters²¹ have raised a concern that the PA schedules will result in increased regulatory burden for farmers and that the functional requirements of rural properties be taken into consideration when assisting applications for earthworks and farm buildings. If resource consent is required, and a landscape assessment is required (through a rule, or as required by SP 3.3.45) then the PA schedules will be required to be engaged with as part of the overall package of PDP provisions. The requirement for landscape assessments in ONLs and ONFs already exists through Chapter 21 and referring to the PA schedules is not anticipated to significantly increase the cost associated with an application that is already required. As I understand it, the intention sitting behind the requirement to include PA schedules was to reduce costs associated with inconsistency of landscape assessments, and the resulting risk of challenges to those assessments.

Content of the PA schedules / broader issues

9.75 In addition to multiple submission points seeking specific changes to the text of the PA schedules, which have (for the most part) been assessed by the landscape architects, a number of submission points address broader matters related to the content of the schedules. I address these issues below:

Landscape Capacity

9.76 Section 3.1B.5(b) of the PDP defines landscape capacity. The concept is also explained in the PA Methodology Report at paragraph 1.10.²²

9.77 A number of submissions²³ have sought that the capacity section for certain schedules be deleted, or if requested amendments to capacity are not made then the landscape capacity section be deleted. SO 3.2.5.1, SO 3.2.5.4, SP 3.3.29, SP 3.3.33, SP 3.3.37, SP 3.3.38, SP 3.3.40, SP 3.3.41 all

21 For example OS20.1 in relation to the Mount Alpha schedule, OS98.3 and OS190.8.

22 Note that the numbering referred to in paragraph 1.10 has changed since the Chapter 3 was finalised.

23 For example OS132.43, OS138.13, OS141.24, OS142.11, OS142.17, OS145.11, OS169, and OS183.28.

require that the related landscape capacity be identified, and a number of these policies directly require that the capacity be recorded in the PA schedules.

9.78 Deleting the capacity section of the schedules would not assist in satisfying these objectives and policies, and would be inconsistent with SPs 3.3.29, 3.3.33, 3.3.37, 3.3.38 and 3.3.41 in particular. I therefore recommend that these submission points be rejected.

“No capacity”

9.79 Many submitters²⁴ oppose the inclusion of ‘no capacity’ for a number of activities and oppose the inclusion of ‘no capacity’ ratings in the PA schedules. Some of these have suggested amendments, such as changing to ‘extremely low capacity’ or ‘very low capacity’ or ‘unlikely to have capacity’ as the lowest rating²⁵. Some submissions have also sought amendments to descriptions so that the ‘no landscape capacity’ rating only applies to part of the PA²⁶.

9.80 Concerns raised include:

- (a) none of the Priority Areas have been examined in sufficient detail to justify a rating of 'no capacity';
- (b) the conclusions reached in the schedule to describe the related capacity of potential land uses are too conclusive, and lack sufficient contemplation of potentially suitable future land uses within the PA;
- (c) there are site specific situations where the landscape does have capacity to absorb development, for example through placement and design;

24 For example OS47.2, OS49.2, OS126.7, OS128.4, OS129.6, OS165.7 and others.

25 OS98.7, supported by FS234.47, OS124.5, supported by FS221.30.

26 For example OS189.33.

- (d) no landscape capacity should not apply to existing approved development or where exceptional circumstances and design are presented;
- (e) specifying 'no landscape capacity' effectively seeks to prevent subdivision, use and development, this an inefficient approach where as s7(b) of the RMA requires that particular regard is had to efficient use and development of natural and physical resources;
- (f) the approach unreasonably constrains private property rights and the ability landowners to reasonably subdivide, use and develop their land;
- (g) the justification of the 'no landscape capacity' rating in the s32 is 'overly generous' and no capacity sends a strong signal that the landscape has reach capacity, rather than is nearing capacity, and no further development is allowed;
- (h) the policy framework is to avoid and therefore signalling 'no capacity' is the equivalent of providing for development as a prohibited activity;
- (i) specifying no landscape capacity will render the land incapable of reasonable use and place an unfair and unreasonable burden on landowners under s85(2) of the RMA. If 'no landscape capacity' is used that access be facilitated to s85 of the RMA requiring the acquisition of land that is not capable of reasonable use;
- (j) 'no landscape capacity' closes the door to consent applications, whereas 'very limited' provides an opening. No capacity should mean what it says where that is the case, even if it requires s85 acquisition;
- (k) The restrictions are punitive, unjust and require full compensation to the landowner²⁷;
- (l) the overall rating scale is misleading as it applies to the PA as a whole, but there is often capacity, evidenced by consent applications approved in ONLs;

27 OS3.7 in relation to Schedule 21.22.19 for Mount Alpha.

(m) the four point scale is less absolute than then seven point scale.

- 9.81** I note there are also submissions²⁸ that support the ‘no landscape capacity’ rating and seek that it be retained, for example the rating of *no* landscape capacity for urban expansion other activities in a number of schedules, or that seek for the capacity ratings to be amended to ‘no capacity’, for example in relation to visitor accommodation at Mount Iron, exotic forestry at Hawea South North Grandview and rural living in the elevated areas of the Lake McKay ONL²⁹.
- 9.82** I rely on and adopt the landscape architects’ expert recommendations on the specific points in opposition or support (or seeking amendments) to the ‘no landscape capacity’ rating for specific schedules and activities.
- 9.83** The capacity ratings and explanations will be used to assist with determining whether applications are able to achieve the policy direction set for rural landscapes in Chapters 3 and 6. In this regard the capacity statements are not absolute.
- 9.84** The explanation in the preambles, including a number of recommended amendments, provides important context in understanding what the ‘no landscape capacity’ rating means in practice. As noted above, the role of the PA schedules is to provide guidance to inform the identification and assessment of landscape values and associated capacity, at a PA landscape scale. This does not equate to an avoidance policy direction or prohibited activity status, and no rules are being altered through the variation.
- 9.85** Ms Gilbert and Mr Head have recommended a number of changes to the landscape capacity ratings, including introducing a ‘very limited to no landscape capacity’ rating for a number of activities.

28 For example OS13.7, OS14.7, OS14.8, OS33.10, OS63.1, OS69.4, OS71.4, OS72.4, OS83.4, OS87.4, OS92.4, OS97.2, OS107.4, OS112.4, OS122.4, OS122.7, OS150.4, OS187.4, OS197.4, OS202.4, OS204.4. A number of these points have further submissions, both in support and in opposition.

29 OS54.2, OS67.21, OS67.25.

- 9.86** However, for a number of activities ‘no landscape capacity’ is still recommended by the landscape architects. The overall rationale for this approach from a landscape perspective is set out in Ms Gilbert’s EIC.³⁰
- 9.87** Ms Gilbert goes on to explain that it is important that the capacity is evaluated at a high level rather than site specific level, as it is intended as guidance only. The recommended amendments to the preambles set this out, as well as specifying that site specific landscape assessments will be required for individual proposals, and that this may identify a different capacity rating.
- 9.88** Taking into account the explanation provided by Ms Gilbert, the carefully considered context and basis in which the ‘no landscape capacity’ rating is used, the further explanation recommended to be added to the preambles, and the role of the PA schedules as high level guidance, I accept the recommendation that this rating be retained.
- 9.89** A related point/criticism is that any form of conclusive capacity rating will become outdated³¹. I note that the preamble for Schedule 21.23 notes that the landscape attributes and values, landscape capacity may change over time, and more detailed consideration and assessment is required through consent applications. The PA schedules therefore acknowledge that they represent capacity (at a priority area level) at a point in time. A more up to date assessment of capacity can be made at resource consent stage. On this basis I acknowledge the submitter’s point, but consider that no change is necessary as the PA schedule already makes this clear.
- 9.90** Other submission points³² on the ratings relate to the language used in the rating scale for the schedules (i.e. to the notified four point rating scale) and that this should be clear in the landscape schedules. I note that Ms Gilbert has recommended that the capacity ratings be explained in

30 Bridget Gilbert EIC dated 11 August 2023 paragraphs 9.21-9.24.

31 For example OS169.15 in relation to Schedule 21.23.4 Church Road Shortcut Road.

32 For example OS6.3, OS21.3, OS22.3.

the preamble. While the term 'little capacity' is not included, I consider the descriptions to be included appropriate as they stem from the landscape methodology report that informed the preparation of the PA schedules, other than the additional category recommended to be included (very little to no landscape capacity). I recommend these submission points be accepted in part.

- 9.91** Some submitters³³ have sought that the capacity rating scale be included in the landscape schedules. As noted, Ms Gilbert has recommended including this in the preambles and I therefore recommend these submission points be accepted in part (in that the individual schedules will not include the rating scale, but the preambles will).

Relationship with existing mana whenua provisions in the PDP

- 9.92** Several submissions raise the relationship between the schedules and the existing approach to mana whenua values and Wāhi Tūpuna in Chapter 39 of the PDP³⁴.
- 9.93** As set out above, the role of the PA schedules is to provide guidance for proposals in the Rural Zone, and other rural zones where activities are not provided for. The PA schedules do not seek to change the approach established in Chapter 39 regarding Wāhi Tūpuna and protecting mana whenua values.
- 9.94** Regarding the contention that it is inappropriate to re-assess areas of landscape that stretch beyond identified Wāhi Tūpuna areas, again, this is not the role of the schedules and it is not intended that they apply in this way. Where an application is within the Rural Zone, and within an PA area, regardless of whether the site is also subject to Chapter 39, the schedules assist in setting out (at a high level) statements of mana whenua values. The presence of mana whenua values in the schedules in

33 For example OS22.2, OS129.7, OS130.2 and others.

34 Note also that Chapter 5 Tangata Whenua is also relevant policy context, with Chapter 5 further elaborating on the tangata whenua objectives and policies in Chapter 3.

itself does not trigger a requirement to consult with mana whenua. In many cases there is overlap with mapped Wāhi Tūpuna areas and the Chapter 21 and Chapter 39 provisions will both apply.

Immediate legal effect

- 9.95** Several submitters³⁵ have sought that the PA schedules (including those at Arthurs Point) have immediate legal effect from the date they were publicly notified.
- 9.96** The RMA addresses the legal effect of “rules” in sections 86A to 86G. Section 86A(2) specifies: *Except to the extent that subsection (1) applies, sections 86B to 86G (being provisions that set out when rules have immediate legal effect) do not limit or affect the weight that a consent authority gives to objectives, policies, and other issues, reasons, or methods in plans before the plan becomes operative.*
- 9.97** Section 86B is specific to ‘rules’, but this variation does not propose any new rules or changes to rules. It is also not for the decision-maker on this variation to decide whether the PA schedules, or any rules (if the variation included any), could have legal effect. Whether rules will have legal effect is a matter of law (under sections 86B to 86G), or will be resolved after an application seeking for rules to have immediate legal effect (or declaration proceedings). As a result, this relief cannot be granted, and I recommend that the submissions are rejected.
- 9.98** In relation to weighting, and to the extent that it is relevant to these submissions, given the stage of the process that the PA schedules are currently at, it is possible that they would be afforded little weight at present.

35 For example OS13.11, OS14.11, OS63.4, OS69.10, OS71.10, OS72.10, OS83.10, OS87.10, OS92.10, OS107.10, OS112.10, OS131.10, OS136.7, OS150.10, OS187.10, OS197.10, OS202.10, OS204.10.

Weighting

9.99 Several submitters have sought clarification as to the weight the PA schedules should be given and their use for resource consents, including the following points:

- (a) that site specific assessments should be given more weight than the schedules³⁶;
- (b) that use of assessment matters for the schedules should be clarified to prevent interpretation and weighting and resource consent stage³⁷; and
- (c) that landscape capacity conclusions should be assessed on a case by case basis during a consent process and not within the landscape schedules, and should the schedules be upheld, the wording should be suitably considered for resource consents³⁸.

9.100 Assessment matters are widely used in the PDP. As described in section 21.21.1 and 21.21.2, the assessment matters have been derived from a series of Chapter 3, 6 and 21 policies that are focussed on protecting the landscape values of the ONFs and ONLs, and maintaining the landscape character and maintain or enhancing visual amenity values in RCLs.

9.101 There is nothing in the relevant policies that directs that the PA schedules must be afforded more or less weight than other methods such as assessment matter. The schedules will need to be considered as part of a package of provisions that provide guidance for landscape assessments, taking into account the particular context and circumstances of each proposal.

9.102 In terms of site specific assessments, these will also need to be considered in the context of each proposal. The PA schedules will provide

36 OS167.1, OS181.2, OS172.2, OS173.2.

37 OS76.6, OS78.6, OS79.6, OS82.6, OS84.6, OS85.6, OS113.6, OS114.6, OS118.6; OS174.6.

38 OS152.4.

guidance or a starting point with respect to identified values, attributes and capacity that site specific assessments can build on.

9.103 Given that the PA schedules have been prepared at a PA scale, site specific assessments may be afforded more weight during processing a resource consent or plan change proposal. I do not consider that specific amendments are required within the PA schedules to state what weight they should be afforded or that site specific assessments should be given more weight, as weighting is a matter for decision-makers to evaluate. These submission points are recommended to be rejected. I note that the amendments to the preambles and detail on the role of the schedules outlined above may broadly address some of these submitters' concerns.

10. TOPIC 2: TERMINOLOGY AND DEFINITIONS

10.1 Several submitters have sought clarity regarding terminology and definitions, which includes a preference for use of PDP definitions in the PA schedules³⁹.

10.2 SP 3.3.38 (for the ONF and ONL PAs) and SP 3.3.41 (for RCL PAs) list the activities that the schedules must specify landscape capacity for. I note that the policy direction is that capacity must be specified for these activities, but that the list is not exhaustive as the wording is 'including but not limited to'.

10.3 I understand that this list of activities was the product of expert planning conferencing on the VIF provisions, involving planning experts participating in the Topic 2 appeals. The 29 October 2020 JWS included the list of activities that should be considered and eventually formed part of the Topic 2 decisions that confirmed the final wording for SP 3.3.38 and 3.3.41.

39 For example OS42.8, OS129.12, OS153.15.

- 10.4** I agree that alignment with existing PDP terminology is important for the specified activities. There are a number of listed activities that are not defined in Chapter 2 (or elsewhere in the PDP). It would be preferable if the activities listed in SPs 3.3.38 and 3.3.41 used existing PDP definitions. However, as amending these policies is not in scope of this variation (which is limited to the content of the schedules only), there is no scope to amend these two policies.
- 10.5** An alternative to amending the preambles that I have considered is amending / adding to the definitions in Chapter 2. I note that adding to or amending the definitions in Chapter 2 may have unintended consequences elsewhere in the PDP, if a new or amended term is used outside of the PA schedule context.
- 10.6** To address the issues raised by submitters, I recommend amendments to the PA schedule preambles to provide a section of relevant activities and definitions. The purpose of this is to provide guidance/clarity around the meaning of the listed activities. For completeness I address each activity in turn below.
- 10.7** A number of the listed activities are already defined in Chapter 2⁴⁰. I recommend adding the following text to the preambles to make it clear that where these activities there are defined in Chapter 2, the same meaning is to be used:

Activities listed in Policy 3.3.38 / Policy 3.3.41 [selecting the policy reference for Schedule 21.22 and 21.23 respectively and deleting the other policy reference]

40 Commercial recreational activities, visitor accommodation, earthworks, farm buildings, transport infrastructure, utilities and regionally significant infrastructure.

Activities listed have the same meaning as their defined term in Chapter 2. Where an activity is not defined by Chapter 2, the following meanings apply:

...

Commercial recreational activities

- 10.8** This term is defined in Chapter 2. Ms Gilbert has confirmed that this term aligns reasonably well with the understanding of this activity when the landscape schedules were prepared. No additional clarification is considered necessary for this activity.

Visitor accommodation and tourism related activities

- 10.9** Visitor accommodation is defined in Chapter 2. Ms Gilbert has confirmed that use of the PDP definition is appropriate as the capacity statements for this activity are qualified with respect to scale. No additional clarification is considered necessary for this activity.
- 10.10** Tourism related activities are not defined in Chapter 2. The Landscape Methodology Statement describes at paragraph 3.5 that while the majority of land uses are described in Chapter 2, the exception to this is tourism related activities. The authors note that they understand this land use to relate to resorts.
- 10.11** Taking this into account, and having confirmed with Ms Gilbert that the reference to resorts in the methodology statement is consistent with the PDP definition of resort, I recommend the following be added to the recommended amendments to the preambles:

Tourism related activities: has the same meaning as 'Resort' in Chapter 2.

Urban expansions

10.12 Urban expansions is not defined in Chapter 2. I understand from discussing with Ms Gilbert that urban expansions were considered to be rezoning to an urban zone, or a resource consent application for urban development. This is apparent in their relatively restrictive capacity rating for most Schedule 21.22 PAs and most Schedule 21.23 PAs.

10.13 Urban development is defined in Chapter 2⁴¹. To provide clarity on the meaning of urban expansion, I recommend the following be added to the recommended amendments to the preambles:

Urban expansions means:

- a change from a rural activity to urban development; or
- a change (including any proposed change) in zoning to an urban zone, including any change to the urban growth boundary or any other zone changes (or proposed changes) that would provide for urban development.

Intensive agriculture

10.14 Intensive agriculture is not defined in Chapter 2 and has been the subject of many submission points⁴². I understand from speaking to Ms Gilbert that the most appropriate equivalent PDP definition is ‘factory farming’.

10.15 Ms Gilbert has confirmed that capacity statements (including any recommended amendments) have been checked in terms of their

41 In Chapter 2 of the PDP, *Urban Development means development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development, nor does the provision of regionally significant infrastructure within rural areas.*

42 For example OS188.1 and others.

statements for intensive agriculture/factory farming. I recommend the following be added to the recommended amendments to the preambles:

Intensive agriculture: has the same meaning as 'Factory Farming' in Chapter 2.

Earthworks

- 10.16** This term is defined in Chapter 2. Ms Gilbert has confirmed that this term aligns well with the understanding when the landscape schedules were prepared. No additional clarification is considered necessary for this activity.

Farm buildings

- 10.17** This term is defined in Chapter 2. Ms Gilbert has confirmed that this term aligns well with the understanding of this activity when the notified PA schedules were prepared. No additional clarification is considered necessary for this activity.

Mineral extraction

- 10.18** This term is included in Chapter 2 under the definition of mining activity where it states that *Mineral extraction, extraction or extractive activities shall have the same meaning*. Ms Gilbert has confirmed that this term aligns well with the understanding of this activity when the notified PA schedules were prepared. For completeness given that mineral extraction is not a listed definition in Chapter 2, I recommend the following addition to the preambles:

Mineral extraction: has the same meaning as 'Mining Activity' in Chapter 2.

10.19 In relation to mineral extraction activities, a number of the schedules also refer to ‘farm scale quarries’. I have discussed this with Ms Gilbert and Mr Head and understand that the capacity statements have assumed this to be for mining aggregate for use within a farm. I note that mining of aggregate for farming activities is permitted where it is less than 1,000m³ per year and not on an ONF (Rule 21.4.32).

10.20 For clarity, to cover circumstances where a consent is applied for that does not comply with Rule 21.4.32, I recommend the following addition to the preambles:

Farm scale quarries: means mining of aggregate for farming activities on the same site.

10.21 Also, in relation to mineral extraction activities, a number of the notified schedules refer to ‘riverbed gravel extraction’. My understanding is that as a district plan the PDP does not have jurisdiction over this activity (to disturb the bed of the river), which is managed by the regional council. In addition, I am not aware of any rules relating to this activity in Chapter 21.

10.22 However, there are no submissions requesting that this be amended. Retaining this description is unlikely to result in any PDP implementation issues as the schedules are only engaged with when a consent is required (and in this case no such activity can be applied for). Given it is not an activity managed by the PDP I do not consider that any clarification of this activity is required in the preambles.

Transport infrastructure

10.23 This term is defined in Chapter 2. Ms Gilbert has confirmed that this term aligns well with the understanding of this activity when the PA schedules were prepared. No additional clarification is considered necessary for this activity. I discuss the terminology relevant to gondolas below.

Utilities and regionally significant infrastructure

10.24 Both these terms are defined in Chapter 2. Ms Gilbert has confirmed that the respective definitions align well with the understanding of this activity when the PA schedules were prepared, other than for renewable energy undertaken by an electricity operator which is captured separately under 'renewable energy'. No additional clarification is considered necessary for this activity.

Renewable energy generation

10.25 This term is defined in Chapter 2, along with 'Renewable Energy Generation Activities'. Ms Gilbert has confirmed that these terms align well with the understanding of this activity when the PA schedules were prepared.

10.26 I note that there is a submission⁴³ seeking that the defined term small and community scale renewable energy generation be used instead of small scale renewable energy in Schedule 21.23.5.x. I have discussed this with Ms Gilbert who considered that community scale may not be helpful in terms of the capacity ratings because this could still include substantial infrastructure. For completeness I recommend adding the following to the preambles:

Renewable energy generation: has the same meaning as Renewable Electricity Generation and Renewable Electricity Generation Activities in Chapter 2.

Forestry

10.27 While 'forestry' is not defined, 'Forestry Activity' is defined in Chapter 2. The notified schedules refer to 'production forestry'. I understand from

43 OS42.21

discussing with Ms Gilbert that that landscape architects had in mind exotic monoculture forestry for the purposes of harvesting timber when determining capacity ratings for production forestry. This aligns with the Chapter 2 definition of forestry activity and I therefore recommend the following addition for clarity:

Forestry: has the same meaning as 'Forestry Activity' in Chapter 2.

10.28 I note that Ms Gilbert and Mr Head have changed the reference to 'production forestry' to 'forestry' to align with the terminology used in SP 3.3.38 and 3.3.41 and I recommend that this change be accepted.

10.29 In reviewing this term I have taken into consideration changes signalled to the NES-PF by the Ministry for Primary Industry. This includes expanding the NES-PF to include carbon forests and manage their environmental effects as if they are plantation forests; enable councils to develop local rules and policies to manage the location of new exotic continuous cover and plantation forests; and make operational changes to better manage environmental effects of forestry. The Ministry's website states that these regulatory changes are planned to be enacted by October 2023. As these changes have not yet taken effect the PA schedules have not been reviewed to determine if any amendments are required in relation to capacity for forestry activities in order for the PDP to accord with this regulation. I understand from discussing with Ms Gilbert that the capacity rating for carbon forestry may be different to forestry for harvest, particularly for native carbon forestry. I note that the Council may choose to, or be required to do a future plan change depending on changes to the NES-PF, including to manage carbon farming. The PA schedules can be reviewed as part of a future plan change to address carbon farming if appropriate.

Rural living

10.30 Rural living is not defined in Chapter 2, but is defined in Chapter 3 in section 3.1B.5. Ms Gilbert has confirmed this description aligns well with the drafting of the PA schedules. As the origin of the PA schedules is also set out in Chapter 3 I consider using this Chapter 3 definition appropriate. I therefore recommend the following addition to the preambles:

Rural living: has the same meaning as ‘rural living’ in Chapter 3 section 3.1B.5.

Gondolas

10.31 Gondolas are referred to in several schedules but are not defined in the PDP. Chapter 2 has a definition for ‘Passenger Lift System’ which includes gondolas. I have discussed this definition with Ms Gilbert and Mr Head who have confirmed that passenger lift system encompasses the type of gondola/gondola infrastructure anticipated by the schedules. I note that the definition is limited to transporting passengers and goods within or to a SASZ, which I understand is generally appropriate in the context of the schedules, as where capacity for gondolas is included, this is typically in relation to PAs where there is a SASZ in proximity. The term gondola is not one of the activities listed in SP 3.3.38 and SP 3.3.41. To align with existing PDP terminology I recommend that the reference to gondolas is changed to passenger lift systems. Ms Gilbert and Mr Head have made these recommended changes to the schedules.

Jetties, boatsheds, structures and moorings

10.32 These terms are used in the PDP but specifically defined in the PDP. They are used in a number of the PA schedules. Jetties and moorings are used in a number of rules in Chapter 21 without definition⁴⁴. Boatsheds are likely to be captured under the Chapter 2 definition ‘Accessory Building’

44 For example Rules 21.15.4, 21.15.7, 21.15.8, 21.15.9, 21.16.2 and others.

and/or 'Structure'. Lake structures are likely to be captured under 'Structure' if fixed to land. As these terms are already used in the PDP and/or could take their common meaning for the purposes of interpreting the PA schedules, I do not consider that any additional clarity is required in the preambles.

Rural Industrial Activity

10.33 Ms Gilbert considers it appropriate to capture this activity for Schedule 21.23.4 Church Road Shortcut Road due to the existing Rural Industry Zone near Luggate. This is an existing PDP definition and no additional clarity in the preambles is required.

TOPIC 3: PREPARATION OF THE VARIATION

10.34 A number of submitters⁴⁵ have raised concerns with the public engagement/consultation associated with the variation, submitting that this was inadequate and that the VIF should be subject to proper community consultation to inform the variation. Concern has been raised that the April 2022 engagement sought input on landscape values, but did not provide opportunities to consider landscape capacity ratings.

10.35 The s32 report provides a summary of consultation undertaken as part of preparing the variation (in section 5). This included:

- (a) Engagement with iwi;
- (b) Online consultation during March and April 2022 seeking feedback on the values people associate with the 29 PAs;
- (c) Letters to landowners of properties in the PAs, use of a Let's Talk webpage and advertising the consultation via local newspapers, radio and social media.

45 For example OS88.1, OS88.4, OS109.2, OS110.2, OS111.2, OS130.4, OS176, OS178, OS190.7, OS208.8.

- 10.36** 196 responses were received and the authors schedules used the feedback to inform the content of the notified PA schedules.
- 10.37** The Council did not specifically engage on the capacity component of the PA schedules. I understand that the landscape capacity component is informed by the identified landscape values, for which public feedback was sought (emphasis added).
- 10.38** As noted earlier, landscape capacity is defined in section 3.1B.5b. The definition includes a requirement to determine the capacity of the landscape to accommodate subdivision and development without compromising its identified landscape values, or landscape character and maintenance and maintenance of visual amenity values in the case of RCLs. I have discussed this with Ms Gilbert who notes that this assessment requires input from an expert landscape architect. The schedules have been prepared in this way.
- 10.39** The notification stage of the process, including the further submissions period, presents an opportunity for the public to provide feedback on the schedules in their entirety, including the capacity ratings. I note there are extensive submissions on the landscape capacity ratings which have been evaluated by the Council's landscape architects in their evidence filed as part of this process.
- 10.40** A number of submissions⁴⁶ consider that the s32 evaluation for the variation is deficient and the methodology should be reconsidered (related to the above points regarding consultation). This criticism includes that they should not be based on the Environment Court decisions as a reason for the variation; that there is no evaluation of options for how the schedules are to be implemented; and that the founding methodology and assessment is broad and lacks meaningful detail.

46 For example OS130.3, OS152.1, OS170.5, OS190.6, OS208.7.

- 10.41** In terms of implementation, this point has been addressed throughout this report, in terms of how the PA schedules will apply.
- 10.42** Turning to the submissions that the s32 should include robust and comprehensive analysis, rather than being based on the Environment Court decisions, I note that the Chapter 3 policies are very directive in terms of what is required by this variation, including that PA schedules be prepared, and that they describe at an appropriate landscape scale the landscape attributes, landscape values and related landscape capacity. Given this direction in Chapter 3 (and the requirement to include schedules in Chapter 21), there are limited options for how this can be achieved. In this regard I generally agree with the s32 report that in terms of preparing and including the schedules in the PDP there are no other reasonably practicable options.

11. TOPIC 4: MAPPING

- 11.1** Many submitters have sought changes to the landscape classification boundaries (for the ONF/L) and/or PA boundaries, and in some cases zoning changes. As outlined in section 7 above, these submissions are out of scope of this variation and recommended to be rejected.
- 11.2** I note that in some cases the mapping requests, particularly those requesting that the PA boundaries be amended to exclude zones that are not the Chapter 21 Rural Zone,⁴⁷ are related to the policy context which directs that the PA schedules only apply to the Rural Zone. The recommended amendment to the preambles to clarify how and where the PA schedules apply may assist with these concerns.
- 11.3** Ms Gilbert has recommended a name change to the Kimiākau (Shotover River) PA ONF mapping and schedule. I consider this to be an efficient solution to reflect the Council's decision on the ONL in this area,

47 For example OS86.1 in relation to land near Queenstown Airport.

particularly given the interconnectedness of the ONL and ONF in this area as described by Ms Gilbert⁴⁸.

12. TOPIC 5: PARTICULAR ACTIVITIES

12.1 Submitters have sought clarification regarding the application of the PA schedules to particular activities. Most of these points have been addressed by the landscape architects. In terms of the residual planning related matters, I note the following.

12.2 In relation to intensive agriculture, submitters have sought clarity on how the landscape effects of intensive agriculture will be managed by the PDP⁴⁹. As noted above in the discussion on definitions, intensive agriculture has the same meaning as 'Factory Farming' in the PDP. Factory farming is a defined term and is managed by the provisions of the Rural Zone. This will continue to be the case, and the PA schedules will be engaged for any activity requiring consent in the Rural Zone (as relevant), where the activity is within a PA.

12.3 In relation to transmission lines Transpower New Zealand Limited⁵⁰ has sought that the PA schedules be amended to give effect to the NPS-ET and the Otago RPS. Ms Gilbert and Mr Head have recommended changes to the PA schedules to reflect the functional and operational need for this type of infrastructure. The recommended amendments are considered to give effect to the NPS-ET, and also align with the policy approach in Chapter 30 and in particular new Policy 30.2.8.2.B,⁵¹ which has recently

48 Ms Gilbert EIC dated 11 August 2023 at paragraph 5.1-5.5.

49 OS77.9, OS188.12.

50 OS70.

51 Policy 30.2.8.2B: *When considering the environmental effects of upgrading, (other than minor upgrading), and or development of the National Grid regard is to be given to the following matters:*

- a. the extent to which adverse effects have been avoided as a priority;*
- b. the extent to which the functional needs and operational needs of the National Grid constrain the ability to avoid, or impose restrictions on remedying or mitigating, adverse effects;*
- c. the extent to which adverse effects have been avoided, remedied or mitigated, including by the route, site or method selection;*
- d. when the structures, lines and other network infrastructure of the National Grid are to be located on an Outstanding Natural Feature or in an Outstanding Natural Landscape or Rural Character Landscape, the landscape capacity of those areas to accommodate the upgrading or development of the National Grid;*

been endorsed by the Environment Court. As per clause d. of the new policy, the Chapter 30 approach will work in tandem with an assessment of landscape capacity which the PA schedules provide guidance for.

12.4 Submitters⁵² have requested that no landscape capacity be identified for jetties and moorings until the legality or otherwise of all existing jetties and moorings be established.

12.5 The legality or otherwise of jetties and moorings (or any other activity) is not the subject of this variation and would involve a separate council compliance process, or declaration application. As activities that can, or already, exist in the PAs, and which Council is required to manage, it is appropriate to include commentary on capacity in the PAs where there is either existing examples, or development pressure for such activities in certain locations. Ms Gilbert and Mr Head have, in their assessment, considered how best to describe these activities where they exist now, and have also addressed capacity for these activities in relevant PA schedules. The lawfulness of any existing activities has not been considered by Ms Gilbert and Mr Head, as neither they nor I have received any information to discern any unlawfulness. I recommend these submission points are rejected.

12.6 Waka Kotahi⁵³ have sought that landscape schedule 21.22 be amended to take into consideration activities undertaken by Waka Kotahi that are not a permitted activity under the PDP or covered by an existing state highway designation. I note that there are a range of provisions within chapters 3 and 6 addressing the key importance of regionally significant infrastructure which would be considered alongside the policies relating

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- e. opportunities to reduce existing effects on sensitive activities;*
 - f. offsetting of residual adverse effects on indigenous biological diversity; and*
 - g. the need for environmental compensation to address any more than minor residual adverse effects on indigenous biological diversity.*
 - x. when the structures, lines and other network infrastructure of the National Grid are to be located in the Gibbston Character Zone or Wakatipu Basin Rural Amenity Zone, the extent to which effects are minimised, including under Policy 24.2.1.8, by the choice of method, location and design of the National Grid and that residual effects may remain.*

52 OS77.29, OS188.30.

53 OS64.

to ONL's and ONF's, which the schedules are intended to guide. In addition, the examples cited in the submission such as minor road widenings and safety barriers, are considered better to be addressed through a resource consent or designation process. I recommend rejecting these submission points. The submitter may be able to provide more specific examples of how the schedules do take into consideration Waka Kotahi activities.

13. TOPIC 6: MISCELLANEOUS POINTS AND 'CATCH ALL' OR BROAD POINTS

Miscellaneous points

- 13.1** A submitter⁵⁴ has suggested that the Council sight a letter dated 21 October 1992 relating to Remarkable Park Village Limited. They note that there is nothing that shows the C3/93 agreement. The Council records team has spent time looking for the letter referred to in this submission, checking both digital and physical records but has been unable to find a copy. The submitter is invited to produce a copy for the Council and Hearings Panel to review as part of this process, but I note that any agreement entered into in 1992 may now have been overtaken by the PDP directions.
- 13.2** A submitter⁵⁵ has requested that the schedules be rejected or amended to address potential compliance costs, climate change, enable restoration and sustainable use of the land. As outlined above, the PA schedules provide guidance for landscape assessment purposes, and are part of a package of PDP provisions associated with managing development in ONF, ONL and RCL areas.
- 13.3** The PA schedules themselves will not give rise to any compliance costs as they do not introduce any new rules, and will not have regulatory effect (other than informing landscape assessments). There is nothing in the PA

54 OS203.3.

55 OS53.

schedules that prevents consideration of climate change or restoration of land, so long as that is provided for under the RMA and the PDP framework. Given that a number of amendments to the PA schedules are recommended to better achieve the purpose of the RMA, this point is recommended to be accepted in part.

13.4 A submitter⁵⁶ has requested that they be kept in the loop regarding the Church Road Shortcut Road PA schedule and the potential effects on their property. The Council will continue to keep the public and submitters updated on this variation process, including advising of opportunities to submit evidence and appear at the hearing, and submitters will be notified when a decision is made. This point is therefore recommended to be accepted.

13.5 A submitter has requested that Schedule 21.23.5 Maungawera Valley is rejected and the Council focus on international buyers pushing out local families and individuals whose lives are intertwined with the area. The latter part of this point is considered beyond the scope of this plan change and is recommended to be rejected.

'Catch all' or broad points

13.6 There are many submission points⁵⁷ that seek catch-all type relief, request consequential amendments, and/or cover broad issues such as:

- That a number of ONLs and ONFs are protected from inappropriate subdivision, use and development in accordance with s6 of the RMA;
- General support and general opposition to the schedules;
- Requests that the variation be rejected;
- Requests that the schedules are rejected and withdrawn if the relief sought in the submission is not granted;

⁵⁶ OS201.1.

⁵⁷ For example OS13.5, OS24.2, OS33.7, OS42.3, OS65.1, OS73.21, OS94.3, OS125.1, OS129.14, OS130.8, OS130.9, OS133.24, OS141.16, OS147.3, OS151.1, OS159.2, OS153.2, OS178.4, OS178.16, OS196.2, OS203.1.

- That certain schedules should be deferred until the methodology is reassessed;
- Requests that the schedules are not implemented; and
- Additional and/or consequential changes to achieve the relief sought in the submission.

13.7 The recommendations on these broad or catch all points is included in the Accept / Reject Table and is directly linked to whether changes are recommended or not in relation to each schedule and/or the variation as a whole.

14. RECOMMENED CHANGES AND SECTION 32AA OF THE RMA

14.1 Recommended changes to the variation are:

- (a) That the preambles to the PA schedules be amended to provide clarity with respect to the purpose of the schedules, how the schedules apply with respect to zones, landscape attributes and values, landscape capacity (including an explanation of the rating scale) and an explanation of the meanings of different activities;
- (b) Changes to the content of the PA schedules relating to general descriptions of the PA areas, landscape attributes and values and landscape capacity;
- (c) One update to the mapping and schedule for the Kimiākau (Shotover River) PA to reflect the Council's recent decision on Stage 1 of the PDP that part of the land subject to the PA is an ONL.

14.2 s32AA of the RMA requires a further evaluation of recommended changes.

14.3 In terms of the recommended changes to the preambles, there were extensive submission points relating to how the schedules apply, which

zones they do or do not apply in, landscape capacity ratings and use of definitions. The recommended amendments to address these concerns are considered to improve effectiveness with regard to the implementation of the schedules and achieving the directions of Chapter 3. Overall the amendment to the preamble will also be more efficient in terms of providing clarity with respect to where and how they apply within the broader context of the PDP. Overall the recommended amendments result in a better overall approach to achieving the Objectives of the Chapter 3 and the purpose of the RMA.

14.4 Ms Gilbert and Mr Head have recommended a number of changes to the text of individual schedules. These changes are typically to include additional information provided by submitters in order to better reflect the local context with respect to attributes and values. Changes to capacity ratings are also recommended, for the most part only shifting one category in either direction, i.e. recommending that 'no capacity' changes to 'no to very limited landscape capacity'. There are no significant or wholesale changes recommended. The recommended changes to the notified proposal are therefore considered to be more efficient and effective at achieving the relevant objectives of Chapter 3, and the purpose of the RMA, and in the case of the amendments to provide for the National Grid, give effect to the NPS-ET.

14.5 Finally in relation to the mapping at Arthurs Point, this change improves overall efficiency and effectiveness of implementing the PDP and achieving the purpose of the RMA because it aligns with ONL mapping recently decided by the Council in this location. It is more efficient and effective to include the ONL within the Kimiākau (Shotover River) schedule as opposed to developing a new schedule or leaving the mapping as is and creating a mismatch with the landscape classification lines.

15. CONCLUSION

15.1 On the basis of the analysis set out in this report, I recommend that the changes set out in **Appendix 1** be accepted by the Hearings Panel, and that submission points are accepted or rejected by the Hearings Panel as set out in **Appendix 2**.

15.2 The recommend changes will give better effect to strategic objectives and policies of the PDP and are considered the most appropriate to achieve the purpose of the RMA.

Ruth Evans

Date: 11 August 2023