

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on the Proposed District Plan

Report 16.15

Report and Recommendations of Independent Commissioners
Regarding Upper Clutha Planning Maps
Sticky Forest

Commissioners

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MICHAEL BERESFORD (149)

1. SUMMARY OF RECOMMENDATIONS

1.1. Overall Recommendation

1. We recommend Mr Beresford's submission seeking rezoning of the site be rejected.

1.2. Summary of Reasons for Recommendation

2. Although there is merit in the submitter's contention that some parts of the site are suitable for urban development, in the absence of any clarity as to the nature and location of legal rights of access to the site, it is not possible to determine where and how urban development should be provided for. The submission is premature. In the interim, the Rural Zone is the most appropriate way to achieve the objectives of the PDP

2. PRELIMINARY MATTERS

2.1. Subject of Submission

3. This submission relates to Section 2 of 5 Block XIV Lower Wanaka Survey District (CT OT18C/473), a 50.67 hectare landlocked site with a frontage to Lake Wanaka near its outlet to the Clutha River.

2.2. Outline of Relief Sought

4. Mr Beresford's submission sought rezoning of the site from Rural as shown on Planning Maps 19 and 20 to Low Density Residential.
5. As part of the submitter's case presented to us at the hearing, a revised package of relief was tabled incorporating:
 - a. Rezoning part of the site Low Density Residential;
 - b. Rezoning another part of the site Large Lot Residential;
 - c. Retaining the balance of the site (comprising approximately 31 hectares) as Rural on the basis that it would be made available to the public for recreational purposes;
 - d. Shifting both the ONL and UGB boundaries to coincide with the edge of the proposed Large Lot Residential Zone.
 - e. Associated changes to Chapters 6 (Landscape), 7 (Low Density Residential Zone), 11 (Large Lot Residential Zone) and 27 (Subdivision).
6. It was emphasised to us that this was a package and that provision of the public recreation rights, as above, relied on the availability of residential development opportunities as sought.
7. In the alternative, the submitter sought amendments to Rule 21.4.21 to make forest, harvesting and replanting with species not subject to Chapter 34 except for *Pinus radiata* and Douglas fir a permitted activity, together with removal of the ONL overlay.

2.3. Description of the Site and Environs

8. The site is located on a hilltop above Wanaka township. The property is rectangular in shape and currently landlocked – there are no legal rights of access to it other than by boat to its northern side, where it is bounded by the marginal strip adjoining Lake Wanaka. On the other three sides, residential development or land zoned to enable same surrounds it. There is, however, a buffer on each side so that except at one specific location within the Northlake Development (east of the site), residential housing cannot be built right up to the boundary.

9. There is one house located on the site, but this is not readily visible from beyond the site boundary, because of the exotic forest plantation that covers much of the site.
10. The established exotic trees on the site, combined with its hilltop aspect, mean that a significant proportion of the site is readily visible from outlooks around Wanaka as part of the backdrop to the expanding residential areas in the northern part of Wanaka township.
11. There is a ridgeline about two thirds the way up the property (from the south). North of that ridgeline, the site slopes down to the edge of the lake, where it starts to narrow into its outlet (the Clutha River).
12. There is no residential development on the northern side of the ridgeline east and west of the site although there is a Council camping ground on the shores of Lake Wanaka/Clutha River (appropriately named the Outlet camp). From the ridgeline, if not obscured by the existing trees, the site would look out over Dublin Bay and Stevenson's Arm, and the rural areas south of that part of the lake.
13. The site was formerly (until 1998) a Council reserve and there is an extensive network of mountain bike trails on it, which continue to be used by members of the public.
14. The land is now beneficially owned by the descendants of 57 specific individuals who were to have had land transferred to them in settlement of a claim under the South Island Landless Natives Act 1906. The land originally supposed to have been transferred was located at the Neck (at the narrowest point between Lakes Wanaka and Hawea), but the site was nominated in substitution for the original land as part of the Crown's Treaty settlement with Ngāi Tahu implemented through the Ngāi Tahu Claims Settlement Act 1998. The site remains in Crown ownership currently while all of the relevant descendants are located. We were advised that in excess of 1000 beneficiaries have already been identified and that the process of identifying the remainder is ongoing. Mr Beresford is one of those beneficiaries. While his submission seeks to benefit his fellow beneficiaries, Mr Beresford made it clear that he had no authority to speak for them.
15. As above, the site is landlocked, apparently because, when the Kirimoko block to the south of the site was subdivided off from it, this occurred pursuant to the Ngāi Tahu Claims Settlement Act. It was accordingly not the subject of normal processes under the Act which would have identified the issue and required that it be resolved before the subdivision occurred. We were told that negotiations are continuing to resolve the position with the most likely option being access through the adjacent Northlake properties. No resolution had, however, been reached as at the date of hearing.

2.4. The Case for Rezoning

16. To the extent that Mr Beresford now seeks that the ONL line be shifted, that aspect of his submission has been addressed in our Report 16.1, which recommends that the relief sought be granted in part¹.
17. As regards rezoning issues, Counsel for Mr Beresford, Ms Prue Steven QC emphasised the historical background summarised above and submitted that sections 5 and 8 of the Act have particular relevance to this submission. The argument, in summary, was that having acquired rights to the site in compensation for a breach of the Treaty of Waitangi, the benefits of that settlement should not be rendered illusory through constraints on the beneficiaries' ability to

¹ Report 16.1 at Section 2.6

utilise the land granted in substitution for the land they should have received under the 1906 Act.

18. The submitters' case is unusual because the site is of no cultural significance either to the beneficiaries or more broadly, to Ngāi Tahu as an iwi.
19. Its sole value to the beneficiaries is by reason of the potential for its use to provide economic benefits to them. Ms Steven cited the decision of the Environment Court in *Buchanan v Northland Regional Council*² as supporting reliance on Section 8 in a case where the iwi sought to construct a mussel spat farm. The Court found there that the principles of the Treaty should not be approached narrowly and require active protection of Maori economic interests.
20. Ms Steven submitted to us also that the Supreme Court's decision in the *King Salmon* litigation³ did not preclude an overall balancing approach in this situation. In any event, she argued that Mr Beresford's submission might be supported by a reference to provisions in the Proposed RPS, and in Chapters 3 and 5 of the PDP.
21. Ms Steven's legal submissions were supported by evidence from:
 - a. The submitter, Mr Michael Beresford, who provided us with the historical background summarised above, the potential land use options available to the beneficiaries once they finally take title of the property and the reasons why Mr Beresford lodged his submission;
 - b. Mr Michael Copeland provided expert economic evidence that the revised relief sought by Mr Beresford would provide economic and social benefits to the beneficiaries and to the public, as well as increasing the supply of residential sections consistent with the NPSUDC.
 - c. Ms Natalie Hampson provided expert economic evidence directed specifically at the residential land and housing market in the Wanaka area and on the Council's case in relation to the NPSUDC. We have already addressed Ms Hampson's evidence in our Report 16⁴ and refer to that discussion.
 - d. Mr William Field provided expert landscape evidence in relation to the submission. Again, we have already discussed Mr Field's evidence in the context of our Report 16.1. Importantly, Mr Field provided evidence of his analysis of the site, dividing it into areas that would be suitable for residential development at different densities, that provided the basis for the revised relief sought for Mr Beresford. We have set out a copy of Mr Field's graphical description of the capacity of the site to absorb development in Appendix 1 to this report.
 - e. Mr Field identified that some carefully controlled residential development might occur within the ONL he had recommended (which we have recommended in Report 16.1 be accepted) by reason of its low visibility from off the site, and in particular from the lake, provided it is carefully mitigated through design controls.
 - f. Mr Andrew Metherell provided expert traffic engineering evidence supporting the proposed Large Lot and Low Density Residential rezoning for part of the site from a transportation perspective. Mr Metherell identified potential road connections into Sticky Forest, and supported a more detailed assessment of local road network form and impacts once practical road access is confirmed. As above, Mr Metherell was of the view that the route through the Northlake development would be the most efficient option.
 - g. Mr John McCarthy provided expert engineering advice on infrastructure matters, confirming that, with the reduced density of the proposed development (compared to

² A66/2002

³ [2014] NZSC38

⁴ Report 16 at Section 2.9

Low Density Residential over the whole site), infrastructure matters could be resolved. We took Mr McCarthy's evidence as read as we determined that we did not need to hear from him in person, given the revised position of Mr Glasner, withdrawing his opposition to the proposal on infrastructure capacity grounds.

- h. Mr Robert Greenaway provided expert evidence on recreation matters. The thrust of Mr Greenaway's evidence was that the loss of public access to Sticky Forest would be a significant loss to recreational values in Wanaka. He was of the view that there was no realistic prospect of using the site as a commercial recreation facility and that ongoing management of the site as a commercial forest would have significant adverse effects on use of the land for recreation purposes, depending on where in the cycle of harvesting and planting it was at any given time. He supported the option proffered by Mr Beresford as a means to secure Sticky Forest as a public recreation facility.
- i. Mr Dean Crystal provided expert planning evidence supporting the revised relief sought for Mr Beresford including detailed plan provisions. If accepted, these provisions would in his view ensure that in tandem with provision of the recreation benefits the value of which Mr Greenway emphasised to us, appropriate development would occur in accordance with a Structure Plan, the form of which would be resolved through a future restricted discretionary activity application under Chapter 27. Mr Crystal also addressed the provisions required to permit clearance of the existing forest. He was of the opinion that this should be a controlled activity.

2.5. The Case for Council

- 22. Following revision of the relief sought for the submitter, the principal areas of contention were in relation to landscape, traffic management and planning. In relation to landscape matters, Ms Mellsop emphasised the visibility of the proposed Low Density Residential Zone from areas within the Northlake development, from Mount Iron and potentially from the Three Parks Zone. She also considered, based on the analysis Mr Field had produced, that the proposed Large Lot Residential Zone would potentially be visible from the surface of the lake, urban Wanaka to the west and south, Northlake and Mt Iron. Ms Mellsop agreed with the areas identified by Mr Field as potentially suitable for development, but was of the view that the proposed objectives, policies and rules proffered by Mr Crystal would not achieve an acceptable outcome in the area identified for Large Lot development and that a lower density of development would be required to avoid significant adverse effects on the integrity of the land and the visual coherence of the landscape. As regards the suggested Low Density Residential development, Ms Mellsop agreed with Mr Field that there is potential capacity to absorb a small area of such development (but somewhat smaller than is sought by Mr Beresford) in the south-eastern part of the site.
- 23. Ms Mellsop also drew our attention to the complications posed by the open space buffers to the site on the three sides of the site adjoining residential development. She considered that a significant vegetative buffer would be required on the eastern boundary of the proposed low density residential development area in order to maintain the landscape function of the existing buffers.
- 24. In relation to traffic issues, Ms Banks disagreed with Mr Metherell's view that road layouts can be developed during later planning processes. She was of the opinion that the most appropriate zoning is Rural, based on the uncertainties around obtaining legal access to the site. Even assuming access is through Northlake, her view was that there was potential for some adverse effects on the road network through the residential areas of Northlake.

25. At a planning level, Mr Barr acknowledged the factual circumstances underlying Mr Beresford's submission as being unique, but expressed concern that the vehicle to achieve his aspirations is perhaps not the most appropriate one, bearing in mind the interests of the balance of the community. Mr Barr agreed with Mr Crystal's view that the location and characteristics of the site did not lend themselves favourably to the continuation of forestry, but expressed the view that commercial recreation might be a viable option. Overall, Mr Barr considered that the proposal presented in the evidence for Mr Beresford did not have appropriate regard to the surrounding environment.
26. As regards the specific provisions recommended by Mr Crystal, Mr Barr took issue with the failure to provide for recreational cycling access through the rezoned areas.
27. Ultimately, however, Mr Barr recommended Mr Beresford's submission be rejected other than in relation to the ONL boundary discussed in Report 16.1, but if we took a different view, he recommended that the urban zoning and extension of the Wanaka UGB be limited to the reduced area recommended by Ms Mellsop *"and the remainder of the site is zoned Rural with that Rural Zone land vested in the Council"*.
28. In his reply evidence, Mr Barr addressed the question which we had posed on the appropriate activity status for clearing of the trees currently on Sticky Forest. Mr Barr disagreed with Mr Crystal that controlled activity status was appropriate. He recommended restricted discretionary activity status.

2.6. Discussion of Planning Framework

29. In Report 16⁵ we summarised the key strategic and other provisions recommended in other chapters of the PDP, so as to provide a reference point for the subsequent site-specific reports. We refer the reader to that report and the discussion therein for the detail.
30. Although zoned Rural, Sticky Forest is not part of a rural area in any meaningful sense, being surrounded on three sides by residential development (or by land zoned for residential development), and by the lake on the fourth side. This is much more a case of possible development at the urban fringe. Accordingly, reference might be made to recommended Objective 3.2.2.1 in its focus on a compact, well designed and integrated urban form.
31. Given the identification of part of the site as ONL, the need to protect that part from more than minor adverse effects, as per recommended Objective 3.2.5.1, together with the related Policy 3.3.30, is of obvious importance. Looking at the policies in the balance of Chapter 3, recommended Policy 3.3.28 is of relevance given that the submitter proffers an opportunity to provide public access to the natural environment.
32. As regards the UGB aspect of the submission, Recommended Objective 4.2.1 requires consideration as to whether the UGB in its current location, excluding the site, provides a defensible urban edge.
33. Policy 4.2.1.4 is also of relevance given its acknowledgement that UGBs need to take account of the constraints on development of the land such as its topography and landscape significance. Recommended Policy 4.2.2.2, suggesting land allocation within UGBs into zones reflecting, among other things, topography and landscape significance, is similarly of relevance as is recommended Policy 4.2.2.12, seeking to ensure that any transition to rural areas is contained within the UGB.

⁵ Report 16 at Section 4

34. As the Introductory Report notes, Chapter 5 is recommended to be amended to make it clear that the chapter relates to Ngāi Tahu's cultural interests only, with the language of Chapter 5 consistently referring to Ngāi Tahu's values, interests and customary resources. Chapter 5 sits generally under the framework of the goal and objectives in Section 3.2.7. We will discuss that and the objectives and policies of Chapter 5 below.
35. As regards the submitter's proposal that land within the recommended ONL be the subject of an urban zoning, recommended Policy 6.3.12 is relevant given its statement that successful applications for subdivision and development of such land is inappropriate in almost all locations, and that successful applications will be exceptional cases where the landscape can absorb the change and where buildings and associated roading and boundary changes will be reasonably difficult to see from beyond the boundary of the site.
36. Those planning provisions need to be read against a background where the submitter argued and counsel for the Council accepted that Part 2 was of relevance, including but not limited to Section 8.

3. ISSUES

37. We have identified that the following issues need to be addressed in order to inform our ultimate recommendation:
 - a. Are all aspects of the revised relief sought by the submitter within scope?
 - b. What relevance do recommended Objective 3.2.7 and Chapter 5 of the PDP have to consideration of the submission?
 - c. What relevance do Section 8 of the Act (and the balance of Part 2) have to our consideration of the submission?
 - d. What if any relevance does Section 85 of the Act have to our consideration of this submission?
 - e. What is the appropriate zoning for the land within the site over which the submitter seeks relief having regard to the effects of clearing the existing forest and/or undertaking residential development and/or potentially enhancing recreational opportunities for the public?
 - f. Assuming we have scope to do so, should we recommend amendment to Chapter 21 sought in the alternative?

4. DISCUSSION OF ISSUES AND CONCLUSIONS

4.1. Scope Issues

38. As above, the submission sought that the whole site be rezoned Low Density Residential. That means that intermediate positions (such as rezoning Low Density Residential in part) are clearly within scope. Consequential changes necessarily flowing from acceptance of the submission are likewise within scope. In this case, the most obvious example is that if we recommend rezoning land to an urban zone, it would necessarily follow that the UGB should be redrawn to include that urban zoning given recommended Policy 3.3.14 states that urban development outside of a UGB should be avoided.
39. The scope for other aspects of the relief sought by the submitter are not, however, quite so obvious.
40. Within the Low Density Residential Zone, forestry activities are prohibited, both in the zone as notified, and in the zone provisions recommended by the Stream 6 Hearing Panel. Mr

Crystal identified that this was a problem, given the site is covered in mature exotic trees and in his Evidence in Chief, he recommended an amendment to the Low Density Zone rules specific to Sticky Forest so that they would be “Permitted”. As regards the revised relief sought, seeking that part of the site be zoned Low Density Residential, he also recommended that forestry activities specific to Sticky Forest be Permitted in that zone also (rather than non-complying as per both the notified and the recommended zone provisions).

41. Given that the Beresford submission made no reference to permitting forest clearance, we asked Ms Steven what the scope was for that change. She suggested that it was a consequential change because, if the forest was unable to be harvested, that would frustrate the rezoning sought. We agree with Ms Steven, but only to a point. We do not think that the rezoning sought could be frustrated (as it would be if forest harvesting remained a prohibited activity), but that is a long way from finding that the relief sought suggested by Mr Crystal in his Evidence in Chief (that forest harvesting be permitted) is within scope.
42. We discussed with various witnesses the adverse effects that would accompany forest harvesting. Unless they were going to be flown out by helicopter, or floated down the river, both of which would be problematic to say the least, the logs would necessarily have to be trucked through residential areas. Even acknowledging that this would be a one-off forest clearance, one might imagine that the neighbours of Sticky Forest might have a legitimate interest in whether such forest clearance goes ahead, and if so, on what basis. When we asked Ms Steven whether she thought permitted activity was appropriate, she agreed that that might be a bridge too far, but emphasised that Mr Beresford would not want the prospect of an application being declined. She thought that controlled activity status might possibly be appropriate, and this is what Mr Crystal ultimately recommended.
43. Even that, however, is questionable to our mind. While we can understand that Mr Beresford would not wish to have the risk of consent being refused, equally, we do not think that his neighbours could have anticipated there being no circumstances in which consents might be refused.
44. Stepping back from the issue, any position between the relief as sought (Low Density Residential) and the status quo (Rural) is within scope. Forestry activities are discretionary activities in the Rural Zone. On that basis, we think it could properly be contended that discretionary activity status is within scope as a consequential site-specific change to the Low Density Residential and Large Lot Residential Rules, should we recommend rezoning as sought.
45. The other aspect of the requested relief for Mr Beresford that we found problematic on jurisdiction grounds was the alternative relief of providing for forest harvesting and replanting on Sticky Forest as a permitted activity, should the land remain in the Rural Zone. As far as we could identify, Mr Crystal did not discuss this alternative relief and neither he nor Ms Steven (again as far as we can identify), provided us with any explanation as to how it might be considered within scope. Put simply, we do not see how it can be. As above, the scope we have to recommend changes to the PDP lies between Low Density Residential (where forestry would be prohibited) and Rural (where it is discretionary)⁶. We do not consider that amendment to the status quo, to make forest harvesting any less than fully discretionary is consequential on the relief sought, or within scope.

⁶ It is a non-complying activity in the only intermediate urban zone (Large Lot Residential)

4.2. Relevance of Objective 3.2.7 and Chapter 5 of PDP

46. Recommended Objective 3.2.7 provides the framework within which recognition of the principles of the Treaty occurs. The overall goal is that the partnership between the Council and Ngāi Tahu is nurtured. More specific strategic objectives are that Ngāi Tahu values, interests and customary resources are protected and that the expression of kaitiakitanga is enabled by providing for meaningful collaboration with Ngāi Tahu in resource management decision-making and implementation.
47. The recommended policies in Chapter 3 are specific to wāhi tupuna and so we do not think bear upon the matters raised by Mr Beresford's submission.
48. The provisions of Chapter 5 are similarly of potential relevance although, as already noted, they are recommended to include recognition that Ngāi Tahu's values, interests and customary resources do not extend to the commercial interests of companies owned or controlled by Ngāi Tahu.
49. Of the more detailed objectives, we consider the recommended Objective 5.4.4 targeting the sustainable use of Maori land and the related policy in 5.4.4.1 seeking to enable Ngāi Tahu to protect, develop and use Maori land in a way that is consistent with Ngāi Tahu culture and traditions and, among other things, its economic aspirations, is of potential relevance.
50. The balance of the objectives and policies in Chapter 5 focus on consultation with tangata whenua, taonga species and their habitats and wāhi tupuna. We do not consider them relevant to the issues before us.
51. In our view, these provisions collectively are of limited relevance to the matters that Mr Beresford's submission raised. The site is not ancestral Maori land and has, as Mr Beresford advised, no particular cultural significance either to the beneficiaries or to Ngāi Tahu more widely. Recommended Policy 5.4.4.1 comes closest to the point at issue, but we do not think it is directed at any land that any members of Ngāi Tahu may happen to own from time to time. Report 2 notes one of the kaumatua of Ngāi Tahu who appeared before the Stream 1A Hearing Panel as observing that cultural and commercial interests might overlap in areas of cultural sensitivity⁷, and we think this is much more likely to be its focus.
52. We think that, because of the unique circumstances surrounding this land, Mr Beresford was on much stronger ground relying on Section 8 of the Act, to which we now turn.

4.3. Relevance of Section 8

53. As above, Ms Steven contended, and Ms Scott for Council accepted, that section 8 is relevant to our consideration of Mr Beresford's submission. We agree. We have found, as above, that the Proposed Plan provisions do not bear directly on consideration of Mr Beresford's submission. It follows that this is a true exception where, to properly consider the submission on its merits, we need to have regard to Section 8.
54. The question that we have to consider however, is what that means in practice. Section 8 of course tells us that we are required to take into account the principles of the Treaty of Waitangi.

⁷ Report 2 at Section 3.3

55. This is not the same thing as making us, as the Council’s delegates, responsible for ensuring that the substantive commitments to tangata whenua in the Treaty of Waitangi are complied with. However, Ms Steven submitted to us that the High Court’s decision in *Ngati Maru ki Hauraki Inc v Kruithof*⁸, supports the view that the Council has a responsibility for delivering on the Treaty’s Article 2 promise.
56. Counsel for the Council submitted to us in her reply submissions that the Judge’s comment that Ms Steven relies upon was in the context of an interim judgment regarding an application for leave to appeal out of time. In the substantive decision on leave⁹, the Judge dismissed the application. Ms Scott cited to us Baragwanath J’s statement that the provisions in Part 2 recognising Maori values “do not give them the status of trumps”. In the words of the Judge “they are to be evaluated by the decision maker”¹⁰. Ms Scott also cited to us a more recent Environment Court authority that the Council is not the Crown and not subject to the Crown’s obligations under the Treaty¹¹.
57. We accept the submissions of counsel for the Council on the point.
58. As already noted, Ms Steven cited the *Buchanan* decision as supporting a reading of Section 8 that would give it a positive purpose and not just a protective role.
59. We accept the point that Ms Steven was making, but we consider that it needs to be borne in mind both that *Buchanan* case involved use of natural resources of cultural significance to the iwi and it was the actions of the Department of Conservation that were in issue. The Department being an arm of the Crown means that Treaty issues come more clearly into focus.
60. We also consider that the *Buchanan* decision is not authority for the proposition that the principles of the Treaty prevail over all other issues. They are important, and they do need to be had regard to, but where that takes us is, as Baragwanath J observed in the passage noted above, a matter of evaluation that also has to factor in the other elements of Part 2 of the Act. We have discussed the application of section 6(b) of the Act in the context of Report 3. The provisions of Section 7 also need to be given particular regard, including the maintenance and enhancement of amenity values and the maintenance and enhancement of the quality of the environment. All these matters arise in the context of seeking to achieve the purpose of the Act, although we take on board the clear message from the Supreme Court that Section 5 should not be treated as the primary operative decision-making provision in the Act¹².

4.4. Relevance of Section 85 in the Act

61. We raised this as an issue during the course of our hearing of the Council case because it seemed to us that the Council response to Mr Beresford’s submission ran the risk of depriving Mr Beresford and his fellow beneficiaries (once they finally get title to the site) of the ability to make any reasonable use of their land. Mr Barr mooted the possibility of a commercial recreation opportunity and returned to that in reply. Quite frankly, we were dubious about that prospect – after so many years of using the site for free, we rather doubted that the mountain-biking community would be receptive to paying for the privilege of entering the site and there were no other commercial recreation opportunities suggested to us as realistic alternatives. That also accords with Mr Greenaway’s evidence. We consider Mr Greenaway

⁸ High Court Hamilton CIV-2004-484-330, Baragwanath J

⁹ Reported at [2005] NZRMA1

¹⁰ Ibid at [83]

¹¹ *Te Puna Matauranga o Whanangui v Wanganui District Council* [2013] NZ EnvC110 at [114]

¹² [2014] NZSC 38 at [130]

is rather better placed than Mr Barr to comment on the viability of commercial recreational activities.

62. Section 85 of the Act is of potential relevance because it confers on the Environment Court a discretion, where it concludes that the provisions of a plan or proposed plan renders any land incapable of reasonable use and places an unfair and unreasonable burden on any person having an interest in the land, to direct the relevant local authority to modify, delete or replace the provision.
63. We observe at the outset that section 85 cannot be directly relevant to us given that, to state the obvious, we are not the Environment Court. Nor did Mr Beresford challenge the provisions of the Plan on this basis in his submission, so as to provide jurisdiction for the Court to exercise the discretion it provides. Moreover, as counsel for the Council reminded us in her submissions in reply, the test to be inferred from Section 85 is not whether a proposed zoning is unreasonable to the owner, but rather whether it serves the statutory purpose¹³.
64. The reason we raised the potential application of section 85 was not because we considered its provisions to be directly relevant, but rather because think that the preconditions contained in the section are instructive. If we consider that the existing PDP provisions render the land incapable of reasonable use this suggests to us that we ought to take particular care to satisfy ourselves that the end result is consistent with our legal obligation to identify the most appropriate zoning to give effect to the objectives of the PDP and, more generally, achieve the purpose of the Act, having appropriate regard to the provisions of Sections 6-8.

4.5. Most Appropriate Zoning?

65. It appeared to be common ground as between the witnesses for the submitter Mr Beresford, and the Council that at least some of the site is suitable for urban development. There also appeared to be a consensus as between the landscape architects that Mr Field's diagram attached our Report as Appendix 1, correctly identifies the areas of the site able to absorb residential development. The difficulty we had was that the area suggested to be rezoned by the witnesses for Mr Beresford expanded beyond those areas identified in Mr Field's diagram for reasons that we remained unclear about. We also found it difficult to visualise what urban development on this site might look like because the topography is completely obscured by the existing exotic forest. To the extent the submitter suggested rezoning some of the ONL, Mr Field's evidence suggested that large parts of the area concerned would not meet the "reasonably difficult to see from beyond the boundary of the site" test in recommended policy 6.3.12.
66. If Mr Field's diagram suggested that we should perhaps lean more towards Ms Mellsop's view of the area able to be rezoned, we found her emphasis on the need to buffer the adjacent sites through new planting problematic. It seemed to us that decisions have been made on establishing buffers between the adjacent Residential Zoned land and Sticky Forest (particularly on its southern and eastern sides) on the basis that, in part at least, the forest will remain. We wonder whether those decisions would have been made had parts of Sticky Forest already been zoned for Urban Development.
67. We also wondered about Ms Mellsop's reliance on effects on views from existing residential areas. We do not consider the owners of Sticky Forest have an obligation to maintain their land as an island of forested rural land in the middle of developed urban areas in order to preserve the urban amenity of those areas. Any restrictions on the land need to be based

¹³ Refer *Hastings v Auckland City Council* A068/01 at [98]

more generally on the landscape significance of the land, in line with recommended policy 4.2.2.2.

68. We also found Mr Barr's reasoning somewhat troubling because he seemed to be proceeding on the basis that the owners of Sticky Forest had some obligation to perpetuate public recreational use of the site. We do not agree that that is the case. Still less do we agree that, as Mr Barr seemed to be suggesting, transfer of a substantial part of the site to Council ownership was a potential outcome from consideration of Mr Beresford's submission. If Council wants to own the Sticky Forest land in order to preserve access to it for public recreation purposes, it needs to purchase it from the beneficial owners at a fair value.
69. While the current recreational use of the site is of considerable value to the Wanaka community, it is available to that community entirely at the discretion of the landowners who would be perfectly entitled to erect fences at the boundary and to exclude the public from it. Any continued recreational use of the site is, accordingly, a benefit to the community that might accompany development of the site, at the option of the landowner. To the extent that the landowner proffers such continued access, we think that this is a collateral benefit that ought to be taken into account in determining what if any residential development is permitted on the land, rather than its withdrawal being seen as an adverse effect of development of the site.
70. Put simply, continued access to the land might operate as environmental compensation justifying a greater level of residential development than might otherwise be the case. We do not consider that such environmental compensation would justify a failure to protect the ONL defined as including part of the property, for the reasons discussed in our report related to the Allenby submission¹⁴. Much of the site, however, is not defined as an ONL and those same reasoning, while relevant, does not have the same force (because of the difference of between the instructions to us in Section 6 and 7 respectively). Last, but not least, we have to factor in the Section 8 issues that Ms Steven QC emphasised in her submissions.
71. We consider, however, that the case for Mr Beresford faced a significant difficulty because of the lack of certainty as to what shape legal access to the site would take. Without that knowledge, we cannot evaluate the effects of clearing the site of the trees, which are inevitable corollary of any decision to approve an urban zoning, or identify where on the site urban development might be located. Mr Crystal exercised considerable ingenuity in endeavouring to overcome this obstacle, but ultimately, we consider it insuperable.
72. While discussing the conundrum provided by the unique set of circumstances surrounding this land, Mr Barr suggested to us that the situation might be a case for a deferred zoning, because there is a need to understand the shape of the roading access before we can be satisfied that it is appropriate to develop the land in any particular manner. We discussed the point at some length also with Ms Steven. She also commented that a deferred zone might be appropriate, but for a slightly different reason. As already noted, Mr Beresford did not purport to represent his fellow beneficiaries. While he had advised the working group of beneficiaries that had been formed of what he was doing, he made it clear to us that he did not speak for all of the beneficiaries who might, ultimately, decide that they did not wish to develop the land for residential purposes (which would necessarily involve subdividing and selling it off in order to maximise the value accrued). The beneficiaries might for instance prefer to retain ownership and continue to run it as a forestry block, notwithstanding the obvious difficulties of doing so

¹⁴ Refer Report 16.14 at Section 4.3

surrounded on three sides by an urban environment, and an urban zoning might impede their pursuing that option.

73. We have given serious consideration to a deferred zoning but there are two difficulties with it. First as Mr Barr commented to us more generally, a deferred zoning requires a framework of plan provisions within which it might sit if it is going to be effective. The PDP does not currently provide such a framework and we had no evidence that would enable us to recommend the form that provisions around a deferred zoning might take.
74. Secondly, the uncertainties around access influence what zoning might be appropriate in future. Depending on where that access is, urban development of greater or lesser density in different parts of the site might be appropriate. Ultimately, we have concluded that we cannot identify with sufficient certainty what might be appropriate in future, even on a deferred basis.
75. While we perfectly understand Mr Beresford's motivation in seizing the opportunity to raise the issue when the PDP was publicly notified, we consider that his submission is premature.
76. In summary, we recommend that Mr Beresford's submission be rejected at this point in time. We record that we have arrived at this conclusion notwithstanding our belief that some form of urban development is likely to be appropriate on the site in future, should the beneficial owners determine to pursue that option, but we cannot make an informed decision as to what the PDP might signal at this time.
77. The lack of clarity regarding the shape of any urban development of the site similarly means that it is not appropriate to recommend alteration of the UGB. Any such alteration is necessarily consequential on our principal recommendation which is that, at this point in time, the Rural Zone is the most appropriate zone to achieve the objectives of the PDP.

4.6. Alternative Relief

78. We can deal with this final issue briefly. Given that our finding that we do not have jurisdiction to consider the alternative relief sought on Mr Beresford's behalf by Mr Crystal, there is no utility in our embarking on a consideration of its merits. We merely observe that it would have faced some formidable difficulties had we had scope to examine those merits.

5. OVERALL CONCLUSIONS AND RECOMMENDATIONS

79. We recommend to the Council that Mr Beresford's submission be rejected, save for the suggested shift in the location of the ONL line discussed and the subject of recommendation in Report 16.1.
80. This is expressly on the basis that in our view the submission is premature. We record, however, that had the issue of legal access been resolved, it was likely that we would have found an urban zoning of at least part of the site to be appropriate

For the Hearing Panel

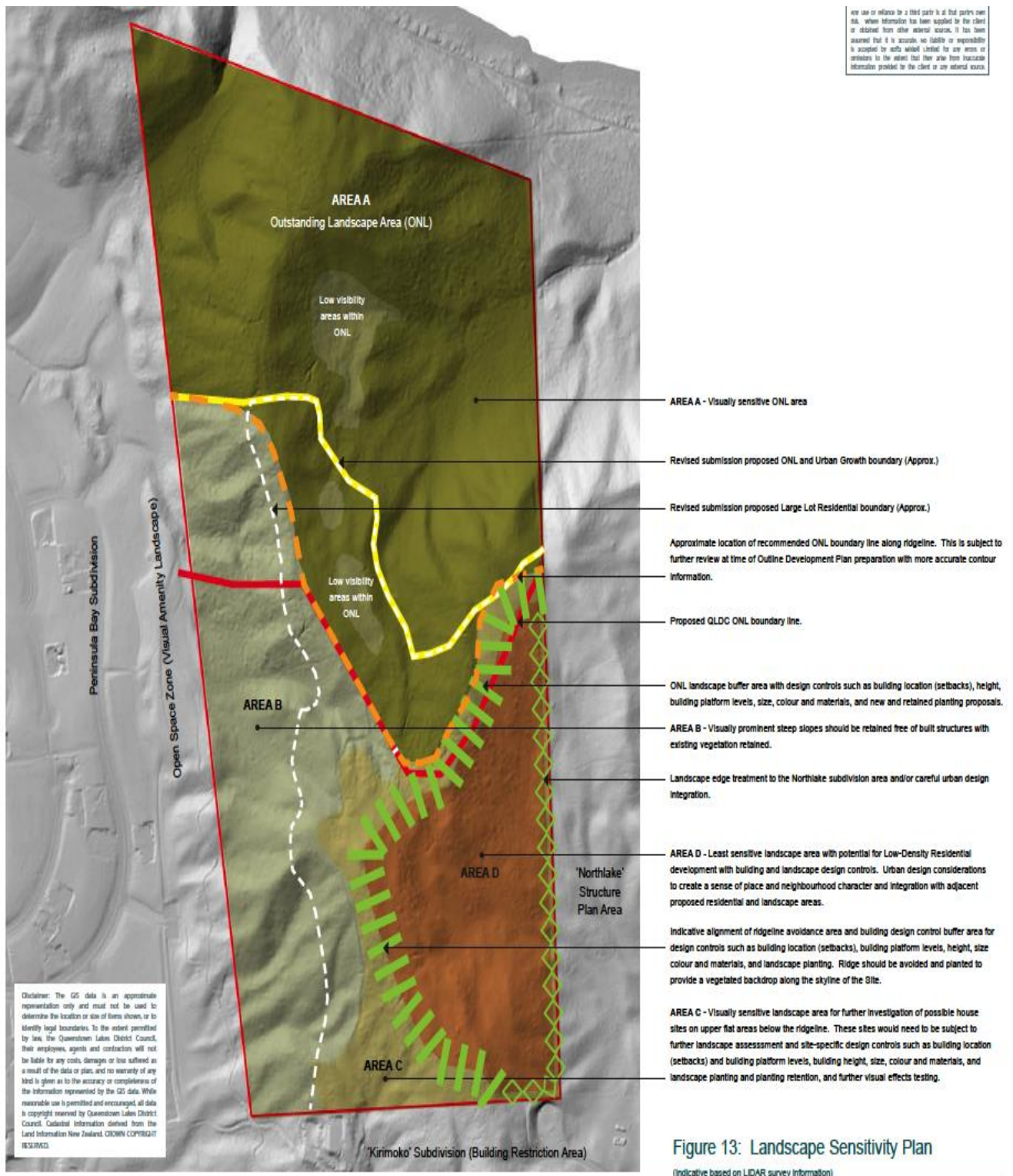


Trevor Robinson, Chair
Dated: 27 March 2018

Attachments

Appendix 1- Plan of Landscape sensitivity of Sticky Forest Site

Appendix 1- Plan of Landscape sensitivity of Sticky Forest Site(source William Field Evidence)



QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Proposed District Plan

Report 16.1

Report and Recommendations of Independent Commissioners
Regarding Upper Clutha Planning Maps

Outstanding Natural Landscapes, Outstanding Natural Features and Significant
Natural Areas

Commissioners

Trevor Robinson (Chair)

Jenny Hudson (Part)

Calum MacLeod

Ian Munro (Part)

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1. PRELIMINARY MATTERS

1.1 Introduction

1. This report is intended to be read in conjunction with Report 16 which sets out the background to the hearing of submissions and further submissions on the Upper Clutha Planning Maps heard in Lake Hawea and Wanaka between 15 May 2017 and 14 June 2017. The specific purpose of this report is to consider the submissions and further submissions the Hearing Panel heard in relation to the location of ONL, ONF and SNA lines on the planning maps in the Upper Clutha area.
2. Commissioners Munro and Hudson have contributed to different parts of this Report, in accordance with Section 1.3 of Report 16. Specifically, Commissioner Munro contributed to our decisions on Lake Wanaka Margins, Hikuwai Conservation Area, Maungawera Valley, Clutha River at Albert Town Bridge, Mount Alpha Fan, Lake McKay Station ONL Line, Lake Hawea Foreshore and Lake McKay Station SNAs. Commissioner Hudson contributed to our decisions on all matters except the Mt Alpha Fan. The Chair and Commissioner MacLeod participated in decisions on all aspects of this report.
3. The format of this report is that we will canvas some preliminary issues before addressing submissions related to the location of ONL, ONF and SNA lines generally, followed by submissions focussing on ONL/ONF or SNA lines at particular locations.
4. Our general approach to consideration of submissions and further submissions reflects the approach outlined in Report 16. Accordingly, where a submitter did not appear and provide us with the material we might use to undertake the analysis required of any changes we recommend to the notified planning maps under Section 32AA of the Act¹, we have necessarily recommended rejection of that submission unless the Council's evidence provides us with an alternative evidential foundation for the required analysis. In addition, and as outlined in Report 16, we have not undertaken a separate Section 32AA analysis. Rather, our analysis in terms of the requirements of that section is set out in the body of our Report where we discuss recommended changes.

1.2 ONL and ONF lines on land not the subject of the PDP:

5. As outlined in our Introductory Report on Stage 1 of the District Plan Review², the PDP review process is proceeding in stages. Some zones have been specifically earmarked for subsequent stages of the District Plan review process and the planning maps show them as the subject to operative zonings. Our understanding is that some operative zonings will not be reviewed at all, in most cases because they have been the subject of relatively recent plan changes.
6. The Council's intention that these areas the subject of recent plan changes not be part of the PDP process has been reinforced by Council resolutions withdrawing the land in question from the PDP. Relevantly to our hearing, the Council resolved on 16 March 2017 to withdraw the land the subject of Plan Change 45: Northlake Special Zone, Plan Change 46: Ballantyne Road Industrial and Residential Extension and Plan Change 51: Peninsula Bay North from the PDP on 16 March 2017. This resolution was subsequently confirmed by a further resolution of Council on 25 May 2017, which also resolved to withdraw the land the subject of Plan Change 50 (Mt Cardrona Station) from the PDP. The Peninsula Bay North and Northlake properties both have ONL lines across them in the planning maps (refer planning maps 18 and 19) and thus we have to consider the implications of the Council's resolutions.

¹ E.g. Glendhu Bay Trustees Ltd (#583), Glen Dene Ltd and Glen Dene Holdings Ltd(#384).

² Report 1

7. The Hearing Panel's preliminary view was that if the land the subject of an ONL or ONF notation was never part of the PDP and was only shown on the planning maps for information, it followed that it could not be the subject of a PDP notation. That followed even more strongly if that land was specifically withdrawn from the PDP. The Hearing Panel's view was conveyed to Council in the Chair's Minute dated 12 June 2017. That minute indicated that the Hearing Panel would not hear submissions or evidence in relation to notations on the maps applied to Operative Zones and the geographic areas withdrawn by resolution of Council in the absence of an Environment Court declaration that those matters are properly before us. In addition, it stated that we would recommend that the Council not show ODP zonings or other notations over ODP zoned land on the plan maps.
8. By a memorandum of counsel dated 30 June 2017, the Council advised that it accepted the approach the Hearing Panel proposed to take.
9. We have therefore proceeded on that basis and the recommended planning maps do not show landscape notations on land the subject of operative zones or which has been withdrawn from the PDP.
10. We should, however, address the one exception to this general approach. As notified, Planning Maps 11a, 17, 18, 18a and 24b showed ONL and ONF notations superimposed over the Hydro Generation Zone. This is identified on the planning maps as an Operative Zone. The location of ONL notations on the Hydro Generation Zone was the subject of submission by Contact Energy Limited³ which sought that that notation be removed. Mr Barr's initial recommendation⁴ was that this submission was out of scope. That recommendation would be consistent with the general position the Hearing Panel has adopted, as above.
11. We discussed this aspect when Mr Barr gave evidence and he advised us that the view he had taken in the Section 42A Report was incorrect on the basis that unlike other operative zones, the Hydro Generation Zone operates as an overlay. Therefore, in his view, it was important that the ONL notation be retained, to ensure non-hydro generation activities be appropriately controlled. Mr Barr set out his reasoning in greater detail in his evidence in reply⁵.
12. We have concluded that the view set out in Mr Barr's reply evidence is correct. As he observes, the objectives, policies and rules of the Hydro Generation Zone provide an enabling plan framework for hydro generation activities and Section 12.13.3 of the ODP states that any activity not defined as a hydro generation activity is subject to the Rural General Zone provisions in Part 5 of the ODP. Describing the Hydro Generation Zone as an overlay is therefore, in our view, an apt description of how the provisions are intended to work.
13. The fact that the underlying zone is stated to be Rural General might perhaps support an argument that the ONL notation does not apply, because that too is an operative zone. However, the PDP plan maps clearly show the Hydro Generation Zone as superimposed on Rural Zone land under the PDP. At one location near Luggate⁶, it is also superimposed on Rural Residential Zone land.
14. We conclude, therefore, that the best interpretation of the position is as follows:

³ Submission 580

⁴ Refer Strategic Overview and Common Themes Section 42A Report at paragraph 4.1

⁵ At 4.3-4.7

⁶ Refer Plan Map 11a

- a. As regards hydro generation activities within the Hydro Generation Zone, the ONL/ONF notations do not apply⁷;
 - b. As regards activities considered under the Rural Zone provisions that underlie the Hydro Generation Zone provisions, the ONL or ONF notation (as applicable) will apply and be relevant to consideration of any applications related to non-hydro generation activities occurring on that land⁸.
15. It follows that the ONL and ONF notations should remain on the relevant planning maps, where they are currently shown as coinciding with the Hydro Generation Zone.
 16. It also follows that we accept Mr Barr's revised reasoning that the Contact Energy submission is in scope and we therefore need to form a view on it.
 17. The Contact Energy submission focusses solely on the potential for the landscape classification shown on the PDP maps to impact on its hydro generation activities. Given our reasoning above, this will not occur. Accordingly, we think that the submitters' point needs to be reconsidered when the Hydro Generation Zone is reviewed, as part of a later stage of the PDP review process. We therefore recommend that the submission be rejected. We note that even if we had considered hydro generation activities to be affected by the ONL notation, we would still have recommended the submission be rejected, for the reasons set out in the next section of our report.

1.3 General approach to identifying ONLs and ONFs - Relevance to non-Rural Zoned Land:

18. The policy framework for identification of ONLs and ONFs is set out in Chapter 6 of the PDP. The provisions amended for that chapter are summarised in Report 16⁹. This position reflects the conclusion of the Hearing Panel considering Chapter 6 that notified policy 6.3.1.2 provides that the landscape classifications, including ONL and ONF notations, apply to land zoned Rural, that there is no submission providing jurisdiction to alter that position so as to extend the ambit of those notations to non-Rural zoned land, and that to the extent the planning maps show ONL or ONF lines across non-rural zoned land, that is anomalous and needs to be addressed (if there is scope to do so) in the mapping hearings. We note that to the extent that the Stage 2 Variations notified on 23 November 2017 deletes some of the notified provisions that would have supported that conclusion, and amends notified rule 6.4.1.2 to provide that Chapter 6 (and the Strategic Chapters more generally) apply in all zones where landscape values are in issue, we do not read those changes as necessarily inconsistent with that conclusion, but whether this is so will necessarily be something for the decision-makers on those Variations to address.
19. In his Section 42A Report, Mr Barr identified three specific locations in the Upper Clutha area where ONL or ONF lines crossed or covered zones other than the Rural Zone¹⁰.
20. The first is a substantial area of land at Makarora zoned Rural Lifestyle. Mr Barr's view was that because this particular land does not have a minimum lot size¹¹, it does not convey the

⁷ That position may change when the Hydro Generation Zone is reviewed as part of the next stage of the District Plan review, but that is a matter for another day.

⁸ We discuss the relevance of ONL and ONF notations to land zoned Rural Residential (and Rural Lifestyle) in the next section of our Report

⁹ Report 16 at Section 4

¹⁰ Refer Section 42A Report (Strategic Overview and Common Themes) at Section 20

¹¹ Under notified Section 27.5

same implied development right as would land zoned Rural Lifestyle otherwise. Thus, in his view, the zoning of this particular land was not inconsistent with an ONL notation.

21. The first of the other two areas Mr Barr identified is an area shown on Planning Map 21 where the Mount Iron ONF boundary encroaches onto land zoned Low Density Residential, on the western side of the feature. The second area is on Planning Map 22 where the ONL line encroaches onto an area of Rural Lifestyle zoned land just to the west of the Wanaka Urban Growth Boundary, along the Wanaka/Mount Aspiring Road. Mr Barr's view was that the LDR Zoning was inconsistent with the ONF notation because it would allow development as a permitted activity without reference to the ONF.
22. In the case of the Rural Lifestyle Zoned land, Mr Barr's view was that while the existence of the ONL line might be helpful in the context of the exercise of restricted discretionary rules governing development there, there are no specific rules that would bring it into play.
23. Mr Barr identified a general submission¹² seeking that ONL lines are only shown on land that is zoned Rural. Mr Barr recommended that the two areas on Planning Maps 21 and 22 be amended to shift the ONF and ONL boundary so that it is located on Rural Zoned land in accordance with this submission.
24. When Mr Barr gave evidence, we discussed the implications of the position he had taken more generally. He confirmed that he was approaching the point as a planning issue. In his view, the residential zones in the PDP seek to achieve an urban form which just promotes confusion if overlaid with an ONL. Similarly, ONFs. Nor was this view limited to areas that had already been developed. In Mr Barr's view, it applied both to developed urban areas and areas that are zoned, but not developed.
25. When Ms Mellsop gave evidence, it appeared to us that she had likewise constrained her review of ONL and ONF lines by excluding proposed urban zoned areas. The area that came most sharply into focus during the course of the hearing was the 'Lower Terrace' at Albert Town. Ms Mellsop recommended that the ONL notation over the Rural Zoned land on the true left bank of the Clutha River be confirmed, principally by reason of the prominence of the terrace escarpment on the northern side of the river, both sides of the Hawea River. She had not considered whether the prominence of the same escarpment on the true right bank suggested that that also should be considered an ONL, notwithstanding the location of urban development within it. Perhaps reinforcing our point, Ms Mellsop advised us that Dr Read had previously expressed the opinion that she thought that the lower terrace on the true right bank was indeed an ONL.
26. We were concerned that the approach taken by Council might have inappropriately constrained the inquiry that was undertaken given the confirmation by the Court of Appeal¹³ that identification of outstanding natural landscapes is a landscape issue, where an opinion needs to be formed as to whether a particular landscape qualifies as such, untainted by the possible implications of that classification on use of the land. In short, the planning consequences flow from the classification as an outstanding natural landscape, not in the reverse direction. We asked that Mr Barr and counsel for the Council consider the point and respond in reply.

¹² Universal Developments Limited: Submitter #177

¹³ In *Man O'War Station Limited v Auckland Council* [2017] NZCA 24

27. The submissions for Council in reply confirm agreement with our interpretation of the effect of the *Man O'War* decision, as above. For his part, Mr Barr reconsidered his recommendation summarised above and concluded that the approach he had suggested (of revising the landscape lines based on the inappropriateness of relevant zones to manage effects on ONLs and ONFs) was inconsistent with what he rather aptly described as the '*top down*' approach mandated by the Court of Appeal and that the Universal Developments submission did not provide jurisdiction for rezoning the land within the ONL or ONF lines (as applicable) Rural.
28. We agree with Mr Barr's conclusion on both counts. The Universal Developments submission seeks relief only in respect of ONL lines and, while seeking that ONL lines be shown only on Rural Zone land, we think it provides a dubious basis to rezone as Rural, the Rural Lifestyle land Mr Barr has highlighted on Planning Map 22. The submission would have supported moving the ONL line to coincide with the zone boundary, but applying *Man O'War*, that would have required landscape evidence we did not have before us. Accordingly, as regards the ONL line on Planning Map 22 at least, notwithstanding the inconsistency with Policy 6.3.1.2 (amended and renumbered 6.3.1 in the Stream 1B's recommended version of Chapter 6), we recommend that the Planning Map remain as notified in the relevant respect.
29. Mr Barr did not return to discuss the situation at Makarora but, in any event, any inconsistency has been resolved by the Hearing Panel's recommendation¹⁴ that the Makarora Rural Lifestyle Zone be deleted from the relevant planning maps and the land in question¹⁵ rezoned Rural.
30. The location of the Mt Iron ONF line needs to take into account at the hearing the submission of Allenby Farms Limited¹⁶ that sought, among other things, the redrawing of the ONF boundary in order to achieve a "*more logical boundary*" that accurately reflects the "*the topography and vegetation significance in particular which contribute to the outstanding feature of Mount Iron*". The effect of the redrawn boundary, if accepted, would be to exclude some land from the ONF on its western and southern margin and to include a significant additional area on its eastern and northern margin that is now occupied by housing. However, when the submitter appeared before us, its counsel Mr Goldsmith advised that while not formally withdrawing the submission, he did not propose to present any evidence to support it.
31. Ms Mellsope did not agree with the suggested amendments to the ONF. As regards the suggested exclusions on the western side of the feature, she was of the view that the open pastoral slopes in question are clearly part of the landform and their proposed exclusion "*appears to be based on vegetation patterns rather than integrity of the landform as a feature*".
32. We note in passing that Ms Mellsope did not address the possibility of granting the Allenby submission in part by aligning the ONF boundary with the boundary of the (now) Lower Density Suburban Residential Zone and in particular, whether the redrawn boundary would more correctly describe the edge of the feature at that point. We therefore find that we lack any evidential basis for recommending that course, agreeing with Mr Barr's revised recommendation in that regard.
33. As regards the suggested exclusion on the southern side of Mount Iron, where the ONF line currently follows the edge of the State Highway, Ms Mellsope agreed that it includes flatter land

¹⁴ Refer Report 16.17#

¹⁵ Shown on Planning Maps 2 and 16

¹⁶ Submission 502 ('Allenby')

outside the feature, but expressed the view that it was more logical to include the reserve land adjoining the highway rather than leaving a small isolated strip of flatter rural land outside the ONF. Her reasoning in this regard seems to trespass into the planning field, thereby falling into the same trap evident in Mr Barr's reasoning in his Section 42A Report from which he recanted; basing landscape lines on planning consequences rather than on the nature and extent of the feature.

34. We are similarly unsure about Ms Mellsop's logic regarding exclusion of residential areas on the basis that the level of modification is such that it could no longer be considered as part of an ONF. It seems to us that applying the principles discussed recently in *Western Bay of Plenty District Council v Bay of Plenty Regional Council*¹⁷, the task is one of first identifying the feature, secondly determining whether it is sufficiently natural so as not to disqualify it on that accord, and thirdly determining whether it is outstanding. Land does not cease to be part of a feature because it is less natural by reason of past development. Indeed, that was essentially Ms Mellsop's reasoning for recommending rejection of the suggested shift of the western boundary of the ONF, summarised above. The issue rather is whether those parts are so unnatural as to detract from the naturalness of the entire feature to the extent that it ceases to be an ONF. Similarly, we do not think that Ms Mellsop's other reason (that the ONF categorisation would be without effect within an urban zone) is valid. Again, that appears to be basing the categorisation on the planning consequence rather than on landscape merit.
35. Although Mr Goldsmith did not call evidence supporting the Allenby submission, he observed that drawing the ONF line to exclude the residential areas on the northern flanks of Mount Iron had an element of artificiality about it. He also observed that it skews assessment of the effects of further development on Mount Iron, because the existing development is then deemed not to be part of the ONF. He put it to us that this is not a 'real-world' analysis and a proper assessment under section 6(b) of the Act would look at the entire feature, from its base and assess the cumulative effects of further development on that basis.
36. We agree with that submission, and have adopted that approach in our assessment of other aspects of Allenby's submission, seeking provision for additional residential development¹⁸.
37. However, Ms Mellsop did not address where the landscape lines should be if she was seeking to capture the outer limits of the feature that is Mount Iron and accordingly, we have no evidential basis on which to redraw those lines ourselves in the absence of any evidence from Allenby supporting its submission.
38. There are specific submissions seeking enlargement of the areas identified as ONL or ONF that we discuss below, but we have no submission (or evidence) that would enable us to undertake a wider scale review to address areas where the Council has failed to consider whether urban zoned areas might properly qualify as an ONL or an ONF. Given the need (for the reasons discussed above) for Council to return to the issue where ONL or ONF lines cross zones not the subject of the PDP, we recommend this be considered at the same time. We will address the point further shortly, but we should discuss first though, the general submission made by UCES seeking that all ONL and ONF lines be deleted from the planning maps, to be replaced by 'indicative' notations.

¹⁷ [2017] NZEnvC 147

¹⁸ See Report 16.14

39. Mr Haworth spoke to this submission, but we can address it relatively briefly because it has already been addressed by the Stream 1B Hearing Panel. That Hearing Panel concludes¹⁹ that there is both an adequate evidential foundation for identifying ONL and ONF lines and good reason to do so. As regards the second point, we note the observation of the Environment Court in *High Country Rosehip Orchards Limited and Mackenzie Lifestyle Limited and Others v Mackenzie District Council*²⁰ that leaving the identification of outstanding natural landscapes for another day is usually an error. The Court cited the leading decision of the Court on the ODP²¹ to the effect that it was mandatory to recognise matters of national importance and that this requires identification of the boundaries of the areas concerned. The Court in its more recent decision on the Mackenzie Basin observed that there will be few exceptions to that principle. We think it is safe to assume that this is not one of them since the authority relied on relates to this District, and the failure to identify ONLs and ONFs in the ODP.
40. We agree also that there is an adequate evidential foundation for identification of ONLs and ONFs, but we consider that the PDP does not go far enough. Quite apart from the apparent problem posed by the Council's advisors constraining the inquiry by excluding the urban areas, recent authority²² indicates not just that ONLs should clearly be identified, but that the attributes of the identified ONLs are clearly identified. The Court has stated that this is necessary so that those attributes can be protected from inappropriate subdivision, use and development. We lack the jurisdiction to undertake a comprehensive amendment of the planning maps to identify the attributes of all of the ONLs and ONFs shown on the face of the Plan although the material we have been provided with both in the form of evidence we heard and the landscape reports supporting the section 32 analysis provides much of the information that would be required to compile such a list of attributes. Past decisions of the Environment Court under the ODP would also provide valuable material on the attributes of particular ONLs and ONFs. We do not anticipate therefore that this would be a particularly onerous task.
41. Although we have identified an apparent defect in the approach taken by the Council when identifying ONLs and ONFs, we do not think that that assists the UCES case, because to the extent the Council's approach might have been flawed, it is because the net was cast too narrowly and some features and landscapes that might potentially qualify as ONFs or ONLs were excluded at the outset because they were the subject of urban zones and/or urban development. Similarly, to the extent that we have identified anomalies in the location of ONLs and ONFs as above, we think that such examples do not undermine the entire approach of the PDP. In our view, it is a case of not throwing the baby out with the bath water.
42. However, what we consider is required is a further review of ONL's and ONF's:
- a. To consider application of the landscape notations to zones not the subject of the PDP where appropriate;
 - b. To consider whether any existing ONL or ONF boundaries should be extended to cover land not within the Rural Zone or (in the case of the instances noted in this report) the existing boundaries over non Rural Zone land are appropriate;
 - c. To identify the attributes of ONLs and ONFs that are identified that contribute to those landscapes and features being outstanding;
 - d. To identify any consequential amendments required to the PDP, including but not limited to Chapters 3 and 6 to reflect the results of the review on the points above.

¹⁹ Report 3 at Section 3.16

²⁰ [2011] NZEnvC387 at [6]

²¹ *Wakatipu Environmental Society Inc v QLDC* C180/99

²² *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZ EnvC147 at [111]

43. We recommend that Council undertake such a review.

2. SITE SPECIFIC LANDSCAPE LINE ISSUES:

44. The background to our consideration of landscape notations at specific locations is that we had available to us the following sources of expert commentary:

- a. The reports supporting the section 32 analysis of Dr Read²³, Ms Steven²⁴ and Mr Smith²⁵.
- b. The evidence of Ms Mellsop and Dr Read for Council.
- c. The evidence of expert landscape architects (and in one case, a geologist) who gave evidence for submitters.

45. We also had the benefit of past Environment Court decisions discussing the categorisation of the District's landscapes. While not determinative, those decisions obviously need to be treated with respect.

46. Lastly, we had to consider the views of lay submitters or experts in other disciplines not of direct relevance to landscape assessment. While lay evidence is not irrelevant to issues of landscape assessment (it can be of particular value for instance when identifying experiential values related to particular landscapes), identification of the boundaries of ONLs and ONFs in particular is a technical issue to be determined on the basis of the cogency of the expert evidence.

2.1 UCES – Waterfall Creek and Dublin Bay:

47. As part of the case presented for UCES, Ms Di Lucas's Statement of Evidence presented as part of the Stream 2 hearing was tabled by UCES. Ms Lucas's evidence included a critique of the approach taken on behalf of the Council to identification of ONL lines and provides two specific examples where, in Ms Lucas's view, land has inappropriately been excluded from the defined ONL. These are at Waterfall Creek, on the north-western margins of Wanaka Township, and at Dublin Bay where Ms Lucas argues that the Maungawera Fan has inappropriately been excluded.

48. Ms Mellsop considered Ms Lucas's evidence on these matters and set out in her rebuttal evidence²⁶ why, in her view, the notified ONL boundaries are appropriate.

49. As noted in our report 16, Ms Lucas did not appear to present her tabled evidence. Mr Haworth offered us the option of providing written questions to Ms Lucas regarding her evidence. However, given the direct conflict between Ms Lucas's expert evidence and that of Ms Mellsop, this would have been an unsatisfactory means to tease out the issues and form a view.

50. More fundamentally, however, UCES did not seek amendment of the ONL lines at these two locations in its submission on the notified PDP. The relief sought by UCES was either that the landscape lines on the PDP maps be excluded altogether or that they are included as dotted lines that are described as guidelines that are "purely indicative". We do not consider that any

²³ "Report to Queenstown Lakes District Council on appropriate landscape classification boundaries within the District, with particular reference to Outstanding Natural Landscapes and Features", Dr Marion Read, 1 April 2014; and Dr Read's companion report dated 16 October 2014, Report to Queenstown Lakes District Council on appropriate landscape classification boundaries within the District: Post review amendments

²⁴ "Peer Review of Landscape Assessment, Outstanding Natural Landscape of the Upper Clutha Part of the Queenstown Lakes District" Anne Steven, June 2014

²⁵ "QLDC Landscape Categorisation Lines", Paul Smith, 20 July 2015

²⁶ At paragraphs 3.46 and 3.47

reasonable reader of the UCES submission would have considered that it could result in the existing ONL lines being shifted at specific locations to include more land within the defined ONL²⁷. Put another way, we do not regard the UCES submission as fairly and reasonably raising the location of the ONL lines at these two locations²⁸. In summary, therefore, we agree with the submissions of counsel for the Council in reply²⁹ that the UCES submission does not provide jurisdiction for enlargement of the ONLs at Waterfall Creek and/or Dublin Bay.

2.2 Lake Wanaka Margins at Wanaka:

51. The submission of Roger Gardiner³⁰, sought that all reserves covered by the Wanaka Lakefront Reserves Management Plan be classified and managed as ONL.
52. The submission noted that this Management Plan stated under its objectives that all use and development of the reserves covered by it be managed “*in accordance with the outstanding natural landscape recognition in the District Plan*”. Mr Gardiner did not appear in support of his submission and on its own, we do not consider that the content of the Management Plan would be sufficient to cause us to revise the ONL lines as sought, in the absence of landscape evidence that suggested that the reserves in question properly form part of an adjoining ONL. However, Ms Mellsoop helpfully reviewed the reserves covered by the Reserves Management Plan. She noted that all but two of the 13 lakefront reserves the subject of the Reserves Management Plan are already classified as part of an ONL (the majority as part of the Lake Wanaka ONL or in the case of Glendhu Bay, as part of the wider west Wanaka ONL). Ms Mellsoop identified the exceptions as being Wanaka Station Park and the central highest part of Eely Point Reserve.
53. Ms Mellsoop’s evidence was that Wanaka Station Park does not form part of the immediate lake margin. She noted that it is a passive recreation reserve that was the site of the original Wanaka Station homestead and is surrounded by residential development on three sides. Ms Mellsoop recommended that the ONL boundary not be revised to include this reserve and we heard no evidence that would cause us to take a different view.
54. By contrast, Ms Mellsoop identified that area of Eely Point Reserve not currently within the ONL as having a similar character to that part of the reserve within the ONL. She considered it formed part of the Lake Wanaka margin and supported the relief sought by the submitter.
55. Again, we have no evidence that would cause us to take a different view and, accordingly, we recommend that the ONL boundary be amended at Eely Point to follow the margin of the reserve and thereby include the higher areas of the point be included.
56. Mr Gardiner’s submission also prompted Ms Mellsoop to consider the boundary of the ONL north of Eely Point where it is located on reserve land at Bremner Bay. Ms Mellsoop thought there was a case to shift the ONL line in this area if it were considered that the Gardiner submission covered it. Because of the somewhat equivocal way in which Ms Mellsoop put her recommendation³¹ we asked that the Council clarify its position on our jurisdiction to recommend the suggested amendment.

²⁷ Applying the test in *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556, 574-575

²⁸ Refer *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145 at 166

²⁹ Reply submissions for Council dated 10 July 2017 at 27.3

³⁰ Submission 260 supported by FS1088

³¹ Refer Mellsoop evidence at 6.19

57. Counsel for the Council reviewed the position in her reply submissions, identifying that the areas of land where Ms Mellsop thought the ONL line might be shifted were not part of the Bremner Bay Reserve defined in the Wanaka Lakefront Reserves Management Plan and accordingly were not the subject of Mr Gardiner’s submission. Counsel therefore concluded that there was no scope to make the amendment suggested by Ms Mellsop. We agree and therefore do not recommend any alteration to the ONL boundary at Bremner Bay.

2.3 Hikuwai Conservation Reserve:

58. We have already addressed the submission of Allenby³² regarding the boundaries of the Mount Iron ONF. The submission also sought, however, relocation of the Clutha River ONF boundary at the Hikuwai conservation area, north of Mount Iron (and as a consequence movement of the UGB line to coincide with the altered ONF line). The basis of the submission is that the ONF boundary shown on planning maps 18 and (in part) 24B is inconsistent insofar as it follows the boundaries of this reserve. Ms Mellsop considered that the submission had a point and took the view that the boundary of the Clutha ONF “*should consistently follow the boundary of the dominant enclosing land form, where this does not have residential zoning*”. We have already noted the issues we have with the qualification related to residential zoning since, by definition, this is not a landscape issue other than to the extent the implementation of the District Plan Zone Rules may have altered landscape quality and character³³.

59. Ms Mellsop went on to discuss where a revised ONF boundary might appropriately be defined. She noted that there were several low terraces within the conservation area which might serve as candidates. She recommended, however, that the ONF boundary follow the crest of the highest terrace escarpment and then the road and township boundaries to join the riverbank adjacent to Albert Town. Allenby did not make submissions or provide expert evidence on this aspect of its submission and, accordingly, Ms Mellsop’s evidence stands unchallenged.

60. We therefore agree with Ms Mellsop’s recommendation that the ONF boundary needs to be revised to relocate it on the crest of the highest terrace of the embankment surrounding the river.

61. We note that this approach introduces an inconsistency because of the failure of the ONF line to follow the same terrace escarpment to the east, where the land is zoned residential, but we have no jurisdiction to consider amendments to the ONF line in that area. Our more general recommendations regarding the need for an overall Council review address the point.

62. Addressing the related relief sought by Allenby, we do not consider it necessarily follows that where land ceases to be within the ONF, the UGB should be altered to include that land. That might be the case in some instances where it is intended that the land in question be used for urban development, but here the land is a Department of Conservation Reserve. While there are numerous examples of reserves within the UGBs shown on the PDP Planning Maps, we see no utility in altering the UGB specifically to take in land that will never be used for urban development.

³² Submission 502

³³ Refer Mellsop Evidence in Chief at 7.48

2.4 Maungawera Valley:

63. The submissions of Tim Burdon³⁴ and Lakes Land Care³⁵ seek that the notified ONL lines on the northern side of the Maungawera Valley, and on the slopes of Mount Brown, on the southern side of the valley, be reviewed. The submission points to the different views of the landscape architects advising Council in relation to the former and apparent inconsistency in reasoning as regards the latter. The submitters did not appear before us to support their submission. We also note that UCES opposed this submission when Mr Haworth appeared before us relying on Ms Lucas's evidence discussed above. However, UCES did not file a further submission on either of the above submissions and in any event, Ms Lucas does not discuss the merits of the submissions in any detail. Accordingly, we consider it inappropriate to take UCES's opposition into account on the substantive questions raised by the submissions
64. Turning to the points raised in the submission, we appreciate that to lay people, it is somewhat perplexing that different landscape architects can recommend different boundaries to the same ONL. In this case, Ms Steven recommended that the boundary follow a higher elevation than did Dr Read. The notified PDP adopted Dr Read's recommendation.
65. Ms Mellsop considered both points of view and recommended an intermediate boundary that in her view included several steep foothills and ridges that are clearly legible as part of the mountain range rather than the valley and which Ms Steven had excluded, and excluded portions of flatter rolling down lands and the lower part of Quartz Creek that are not part of the mountain landscape forming the ONL, that Dr Read had included. We find Ms Mellsop's reasoning convincing and accordingly recommend amendment of the ONL line accordingly.
66. Ms Mellsop also discussed the submitters' point as regards the southern side of the valley. Ms Mellsop explained that the landscape classification on the southern face of Mount Brown had been determined by the Environment Court³⁶ by reason of the relationship of that face to the ONL of Lake Wanaka rather than because of the characteristics of Mount Brown itself. She agreed with the conclusion of the Court that Mount Brown is not sufficiently distinctive to be classified as an ONF. In Ms Mellsop's view, there was no clear boundary between the landscape character of the northern slopes of Mount Brown and that of the valley flats. Accordingly, her opinion was that the boundary on the southern side of the valley (which runs through the peak of Mount Brown) is appropriate and defensible.
67. Again, we found Ms Mellsop's evidence to be convincing in the absence of any expert evidence before us to the contrary.
68. Accordingly, we recommend that the submissions noted above be accepted only in part (as regards the location of the ONL boundary on the northern side of the Maungawera Valley).

2.5 Clutha River at Albert Town Bridge:

69. Alan Cutler³⁷ has sought that the boundary of the Clutha River ONF in the vicinity of the Albert Town Bridge be shifted to take in the riverbank and associated terrace, rather than being defined at the water's edge. Mr Cutler did not appear in support of his submission, which was opposed by a group of 7 Albert Town landowners whose properties would adjoin the revised

³⁴ Submission 791

³⁵ Submission 794

³⁶ In *Upper Clutha Environmental Society Inc v QLDC* C114/2007 at 43

³⁷ Submission 110

ONF boundary sought³⁸. The further submitters did appear, and we will discuss their position shortly.

70. In her evidence in chief³⁹, Ms Mellsop ventured the opinion that the ONF line was intended to include the river margin, but was incorrectly transcribed onto the planning maps. In her view, the revised boundary sought is consistent with that in other parts of the Clutha River ONF where it includes the riverbanks and terrace faces that form an integral part of the feature. She accepted the further submitters' point that the contour of the river escarpment in this area is likely to have been at least partially modified, but in her view, it remains a clearly legible escarpment connecting to unmodified riverbank landforms to the west and east.
71. Having considered the evidence filed for the further submitters of Mr Charles Grant, which we will discuss in a moment, Ms Mellsop revised her recommendation in her rebuttal evidence⁴⁰ so that her recommended line more accurately follows the top of the river escarpment, but otherwise maintained her position.
72. As already noted, evidence was provided for the further submitters by Mr Charles Grant. Mr Grant is a surveyor with experience in project management. He did not purport to give expert landscape evidence and counsel for the further submitters (Ms Baker-Galloway) made it clear when she appeared that Mr Grant's evidence should not be taken as such. Ms Baker-Galloway stated that the purpose of both her submissions and Mr Grant's evidence was to test the argument supporting the recommended ONF line. We have approached the further submitters' case on that basis.
73. Mr Grant's evidence contended:
 - a. The land identified in the extended ONF boundary is Township Zone (operative) reflecting the modified nature of the land and the significant development adjoining it.
 - b. There was evidence to dispute Ms Mellsop's contention that the location of the notified ONF line was an error.
 - c. The revised ONF line is inconsistent with Chapter 6 of the PDP stating that landscape categorisation applies only to the Rural Zone and with Mr Barr's evidential commentary thereon.
 - d. The terrace in question is not natural having been engineered in response to land stability issues.
 - e. Ms Mellsop's recommended revised line (in her Evidence in Chief) is not consistent with Otago Regional Council's identification of the flood hazard line.
74. Had Mr Grant been correct, and the land the subject of the ONF line recommended by Ms Mellsop been within the Township Zone, this would have been a significant point for the reasons discussed above: the Township zoned land is not part of the PDP and in our view, cannot therefore have landscape notations across it as part of the PDP process. The evidence of Mr Barr in rebuttal, however, is that the land over which Ms Mellsop recommends a revised ONF line be placed is legal road and not the subject of the operative Township Zone⁴¹. Mr Barr went on to note that roads are not zoned under Stage 1 of the PDP (or at all). He also noted that there are many unformed roads within the Rural Zone and that it would be impractical to specifically exclude those roads from landscape overlays.

³⁸ Further Submission 1038

³⁹ At 8.116-8.119

⁴⁰ Mellsop Rebuttal Evidence at 4.52

⁴¹ Barr Rebuttal evidence at 28.3-28.4

75. When counsel appeared for the further submitters, she pursued the arguments highlighted in Mr Grant's evidence, emphasising the lack of clarity in Ms Mellsop's reference to other unmodified riverbank forms (as to which forms were being referred to), to the lack of support for Ms Mellsop's evidence as to the notified ONF line being an error, and the inconsistency in applying landscape notations to unzoned legal roads. We discussed with Ms Baker-Galloway the relevance of whether the notified line was an error or not. She agreed that given Mr Cutler's submission clearly puts the location of this particular line in issue, we need to make a decision on the merits, irrespective of what might originally have been intended, and whether the notified line was located where it is in error. We therefore need say no more on that subject.
76. The landscape evidence of Ms Mellsop supports relocating the ONF line to the top of the terrace notwithstanding past modification to that line. We agree with Ms Mellsop's rebuttal evidence that the location of the Regional Council's flood hazard lines are of limited relevance at best to what should be a landscape assessment.
77. The status of the legal road as being unzoned, however, is more problematic. If the land is unzoned, the existence of an ONF line on it is inconsistent with the Chapter 6 provisions discussed above, to the effect that ONL and ONF lines are notations on land zoned Rural. In addition, if the land is in fact unzoned (as Mr Barr advised was the case), that would mean that Section 9 of the Act applies to it and at least as far the use of the land for purposes other than roading, the Council relies on its powers under the Local Government Act to control those land uses. The position under the PDP was made more complicated by a provision in Chapter 37 providing that Council roads in the District are designated. However, that provision was deleted as part of the Stage 2 Variations notified on 23 November 2017 and so we can ignore any complexities it may have introduced (by virtue of Clause 16B(2) of the First Schedule to the Act).
78. We note also that the status of roads under the PDP is the subject of the Stage 2 Variations. As we read the effect of the notified Stage 2 Variations, while not 'zoned', activities within roads are the subject of rules as if they comprised a separate zone. In addition, part of the area of Wicklow Terrace Ms Mellsop recommended be brought within the ONF is zoned 'Informal Recreation as part of the Variations. Because these provisions are part of Stage 2 rather than amending the existing provisions of the PDP, Clause 16B(2) does not apply to them and so we have considered Mr Cutler's submission (and the further submission of the Albert Town residents) without reference to them.
79. Applying the instruction of the Court of Appeal in *Man O'War v Auckland Council*⁴² the decision as to the boundary of an ONF should be a landscape decision, with the planning consequences flowing from that. The unchallenged landscape evidence of Ms Mellsop is that the ONF line should be moved to the top of the escarpment in Albert Town. We therefore recommend that amendment to the relevant planning maps. It follows that to that extent we recommend acceptance of Mr Cutler's submission.
80. We further recommend that the Council consider what consequential changes are required to the PDP to provide for the protection of the ONF to the extent that it is on or over currently unzoned legal road, in accordance with Section 6(b) of the Act, as part of the wider review recommended earlier in this Report.

⁴² [2017] NZCA 24

2.6 Sticky Forest:

81. Sticky Forest is an irregular rectangle of approximately 50.67 hectares of land located between the Northlake and Peninsula Bay developments on the northern margin of Wanaka. Planning Maps 18, 19 and 20 show the Wanaka UGB following the boundary of the Sticky Forest Block, so that the land sits outside the defined urban area with a Rural Zoning. Planning Maps 18 and 19 shows the Lake Wanaka ONL boundary bisecting the Sticky Forest Block.
82. Sticky Forest is in the process of being transferred from Crown ownership to the descendants of 57 beneficial owners who were entitled to have land transferred to them pursuant to the South Island Landless Natives Act 1908. The evidence we heard was that the Crown nominated the Sticky Forest Block in substitution for the land to which the original owners were entitled (at the Neck, at the point where Lakes Wanaka and Hawea are closest to each other). The transaction is occurring pursuant to the Ngai Tahu Claims Settlement Act 1998.
83. One of the descendants with a beneficial interest in the land, Mr Michael Beresford, lodged a submission seeking that the entire block be rezoned low density residential⁴³. Mr Beresford's evidence was that identification of all of the beneficial owners has been a lengthy process that is still continuing, but approximately 1300 owners have now been identified.
84. As part of the evidence for Mr Beresford, the relief sought in his submission was refined with a focus on provision for residential development over part of the Sticky Forest Block combined with relocation of the ONL and UGB boundaries.
85. Because Mr Beresford's submission did not mention a shift in the ONL boundary, there is an obvious question as to whether that relief is within jurisdiction. The case for Mr Beresford was presented (implicitly if not explicitly) on the basis that revision of the ONL line was a necessary consequence of rezoning the land. The evidence and submissions for Council seemed to have accepted that and have considered the case for an amended ONL boundary on the merits.
86. We find that given the terms in which Chapter 6 is expressed, discussed earlier, a submission seeking an urban residential zoning over the entire property necessarily called the existence and location of the ONL boundary on the property into question. Accordingly, while not expressed, we have adopted the same approach as the council witnesses and have considered amendments to the ONL line on their merits.
87. Addressing then those merits, the expert landscape witness for Mr Beresford, Mr William Field, gave evidence that in his view, the location of the ONL on the western side of the site was located too far south and could be moved northwards to align with the more prominent moraine land forms facing the lake rather than being based on inclusion of patches of native kanuka within the ONL. Mr Field's evidence was that these northern-most landforms on the site were more strongly expressive of the geomorphological legibility and aesthetic considerations of the ONL criteria than the remainder of the western slopes of the site⁴⁴.
88. In her rebuttal evidence⁴⁵, Ms Mellsop did not oppose the amended ONL boundary Mr Field had identified. She considered it more accurately followed the enclosing ridgeline on the site than the notified ONL at this location.

⁴³ Submission 149

⁴⁴ Refer Field Evidence in Chef at [55]

⁴⁵ At 3.10

89. Mr Field had identified that further site investigations using detailed topographical survey information should be undertaken before finalising the exact location of the ONL boundary. We can understand his caution given that the land is currently forested (hence its name) and the contours difficult to determine with precision. However, Ms Mellsop advised us that she was comfortable that the line Mr Field suggested was in the right place on the basis of her examination of the Council's detailed land database.
90. Accordingly, given the consensus of expert landscape evidence, there is a strong case for revision of the ONL line across the Sticky Forest Block at the location proposed by Mr Field and agreed by Ms Mellsop. The position was, however, complicated by the proposal by the witness giving planning evidence for Mr Beresford (Mr Dean Chrystal) that the ONL line be located closer to the lake edge, thereby leaving more of the Sticky Forest Block outside the ONL line than Mr Field had proposed. Mr Chrystal relied on the circumstances surrounding the transfer of this particular block of land to Mr Beresford and his fellow beneficial owners, emphasising that they form part of a Treaty settlement in which the land is intended to provide for the economic sustenance of the descendants of the original beneficiaries. In Mr Chrystal's view this brought Section 8 of the Act into play. He reasoned that in the particular circumstances, the economic wellbeing of the beneficial owners and community wellbeing captured in Section 5 outweigh the landscape values relating to Section 6⁴⁶.
91. To an extent, Mr Chrystal's evidence on these matters was intertwined with the rezoning proposal advanced on behalf of Mr Beresford that is discussed in our Report 16.15.
92. As we will discuss in greater detail in Report 16.15, senior counsel for Mr Beresford contended and counsel for the Council agreed that Section 8 was relevant to our consideration of Mr Beresford's submission. We agree also that this is the case. However, in the light of the Court of Appeal's decision in *Man O'War Station Limited v Auckland Council*⁴⁷, which emphasises that identification of ONLs is solely a landscape issue, we consider that consideration of the implications of section 8 in this case come into play at the second stage, determining the consequences of identification of the ONL for potential development within the identified outstanding landscape. In Section 6(b) terms, it goes to the determination as to what development might be appropriate in this particular instance.
93. Accordingly, we adopt the consensus of the landscape evidence regarding the location of the ONL line on the Sticky Forest Block, rather than Mr Chrystal's suggested alternative and recommend that the ONL be shifted to the orange line shown on Mr Field's Figure 13.

2.7 Mount Alpha Fan:

94. Mount Alpha is part of the imposing chain of mountains that form the backdrop to views across Wanaka township to the west and north-west. At the base of the mountain, an area of alluvial fan is included within the notified ONL. The boundary between the mountains proper and the alluvial fan is also a property boundary and the land below that boundary forms part of a farm owned by Hawthenden Limited which sought⁴⁸ that the ONL boundary be shifted to coincide with the property boundary, that is to say entirely excluding the Mount Alpha Fan from the ONL. The position taken for Council was that while the boundary should properly be amended in places to follow the base of the escarpment marking the edge of the ONL, the fundamental premise of the submission was not accepted. The submitter appeared with expert landscape

⁴⁶ Refer Chrystal Evidence in Chief at paragraphs 80-90

⁴⁷ [2017] NZCA 24

⁴⁸ Submission 776

and geological evidence, supported by planning evidence and legal argument to advance its position.

95. Hawthenden Limited's submission annexed both a landscape and visual assessment and a geological report supporting the relief sought. The authors of both reports were called to give evidence before us, and so we will discuss their views shortly. For present purposes, we observe merely that unlike the situation prevailing in a number of other cases, Council had ample forewarning both of the relief sought and the reasons supporting that relief. Ms Mellso's evidence in chief accordingly contains a detailed discussion of the rationale for the notified ONL line, and the case for it to be shifted⁴⁹.
96. Ms Mellso's view was that the supporting material provided with the submission did not adequately take into account the origins and significance of the distinctive Alpha Fan in the upper part of the Hawthenden property and over emphasised the distinction between this fan and the schist mountain slopes above in terms of contrasts in colour and texture and in pastoral character. Ms Mellso referred us to an Environment Court decision that established the boundary of the Mount Alpha Range ONL as including the area of the Alpha Fan in the ODP⁵⁰, and which has been rolled over into the PDP, emphasising in particular the Court's conclusion that the differences in land management between the Fan and the mountain slopes above were relatively ephemeral and reversible, while the geomorphological characteristics of the mountain face and fan provide a more solid base for landscape classification.
97. In the Court's words:

"[51] We observe first that the Mt Alpha fan could be joined with either the ONL that arcs around it, or the VAL underneath it. There are no artificially small or strained shapes involved in this situation. The complication, is that the geomorphological and pastoral characteristics rather contradict each other. The former make the fan 'read' with the mountainous side, while the latter suggest it is part of the pastoral, visual amenity landscape of the flats as Ms Lucas accepted in cross-examination by Mr Parker. However, those visual amenity landscape characteristics are relatively ephemeral and they could, if a landowner managed their land differently, be reversed. By comparison, the geomorphological characteristics, whilst ultimately also in flux, are relatively solid as a basis for the categorisation we have to make

[52] While we can understand Mr Baxter's assessment if the Mt Alpha fan is viewed from Studholme Road (east) and the Cardrona Valley Road, [adopting the upper boundary of the Alpha fan as the boundary on the basis that it reflects a change in gradient that whilst not reflecting land use changes, is contiguous with the geological underlay] we consider Ms Lucas' assessment is more comprehensive. The obvious demarcation between the Alpha face (including the fan) and the flat land to the north is not obvious from those two roads or from Wanaka. It is very visible from Mr Iron and Mr Barker: the demarcation is the river-truncated end of the fan as identified on Ms Lucas' plan. We hold that lowest line is the limit of the ONL because it is the most clearly definable line although we accept this is a finely balanced decision."

98. Ms Mellso also took issue with the assessed level of naturalness of the Alpha Fan contained in the landscape assessment. Her assessment of the fan was that it had a moderate to high level of natural character. She relied on Environment Court authority⁵¹, that vegetative

⁴⁹ Refer Mellso Evidence in Chief at 7.31-7.38

⁵⁰ *Wakatipu Environmental Society Inc v QLDC* [2003] NZRMA 289

⁵¹ *Upper Clutha Tracks Trust v QLDC* [2010] NZ EnvC 432

patterns might not be the most significant criterion for determining ONL boundaries – a striking landform might be important in some cases.

99. Ms Mellsoop accepted that the Alpha Fan has a much gentler gradient than the upper mountain slopes, but took the view that the fan and its “*truncated edge*” form a distinctive, prominent and legible landform that is more coherent with the mountain slopes above than with the gentle rolling alluvial land below. She also considered that the contrast in colour and texture between the fan and the mountain slopes vary over time, being more readily apparent at some times of year than others.
100. Ms Mellsoop noted that the boundary of the Alpha Fan in both the ODP and the PDP has been drawn at approximately the toe of the escarpment, which she considered the most logical and defensible location other than at the eastern (Cardrona Valley) end where it moves up to exclude two existing dwellings. She suggested a more detailed and accurate boundary in her Figure 2 involving shifting the line to include marginally more of Hawthenden Farm at some parts and exclude more in others.
101. The case presented for Hawthenden Limited by Mr Withnall QC was that the Environment Court in its 2002 decision relied on geomorphological evidence from a landscape witness (Ms Lucas) that was incorrect. In Mr Withnall’s submission, the 2002 decision should be disregarded entirely as a result. We note that as part of her reply, counsel for the Council submitted that it was not appropriate for us to give weight to a critique of evidence provided to earlier Environment Court proceedings, and the subsequent judgments of the Court⁵². We think that counsel rather misinterpreted the case being presented by Mr Withnall. As we understood Mr Withnall’s point, it was that we should not rely on the Environment Court’s 2002 findings and should form our own view on the evidence before us. To the extent that Mr Withnall made submissions, and adduced evidence seeking to persuade us that the base for the Environment Court’s conclusions were incorrect, it was to displace any weight we might put on those conclusions. Ultimately, both Mr Withnall QC and Ms Scott submitted to us that we needed to form our own view on the evidence before us, a view with which we agree. We do not agree that the Environment Court’s decision is entirely irrelevant, but we need to take account of the extent to which the evidence we heard is different to that which the Environment Court heard, and indeed, any other differences to the landscape in the intervening 15 years.
102. A key element of the evidence adduced by Hawthenden Limited was the input of Mr Stephen Leary, an expert consultant geologist. Mr Leary’s evidence was that the Alpha Fan identified by the Environment Court and contained within the notified ONL is only the upper part of an alluvial fan system that extends well beyond the Hawthenden farm for approximately 3 kilometres along the front of Mount Alpha and down to the Lake Wanaka foreshore. Mr Leary’s opinion was that the point at which there is a significant geological change is at the upper boundary of the Hawthenden property where the rough eroded face of the schist mountainside meets the smoother depositional surface of the alluvial deposits.
103. Mr Leary criticised the imprecision (and indeed correctness) of the descriptions of the geology and the geomorphology of the Alpha Fan quoted from the evidence of Ms Lucas and apparently relied on by the Environment Court in its 2002 decision. Mr Leary described the alluvial fan as having been cut by two terraces around the time of last glaciation period (15-18,000 years ago), noting that the terraces have since been partly eroded and then partially buried by subsequent fan activity.

⁵² Reply Submissions for Council at 11.11

104. Mr Leary's evidence was that alluvial terraces are in fact quite common within the Queenstown Lakes District. In his view, the Alpha Fan is not especially large compared to other fans and that there are better formed and preserved alluvial fans elsewhere in the district such as at Stevenson Arm, along the base of Coronet Peak and at the base of the Remarkables. When presenting verbally to us, Mr Leary described the Alpha Fan as not being a particularly good example of an alluvial fan.
105. Mr Leary's evidence was not challenged. Ms Mellsop advised that she did not have expertise in geology or geomorphology such as would entitle her to comment on it.
106. The landscape evidence for Hawthenden was presented by Ms Hannah Ayres. We found the evidence of Ms Ayres a little beside the point, because much of her evidence focussed on whether the Alpha Fan met the tests for being an ONL in its own right, that is to say whether it is natural and whether it is outstanding. We discussed the point with Mr Withnall QC who agreed with our view that where, as here, one is fixing the boundary of a landscape acknowledged to be an ONL (i.e. Mt Alpha), the issue is whether the area in contention reads as part of the ONL, or as part of the surrounding landscape. Mr Withnall also accepted that not every component of a landscape must meet the standards of an ONL. As he noted, many cases, including *Man O'War*, have non-outstanding elements that contribute to the whole. Mr Withnall's submission was that this is a fact-specific issue. We concur.
107. We also find the debate in the evidence of Ms Ayres and Ms Mellsop as to whether the classification of the upper Alpha Fan as an ONL has been or would in the future be restrictive of use of the property for farming to be largely irrelevant given the Court of Appeal's instruction in the *Man O'War* case that the assessment of ONLs is a landscape issue, with planning consequences flowing from that classification rather than the reverse.
108. Where we found Ms Ayres evidence of greater assistance was in her discussion of how ONL boundaries might be identified. Her view was that ideally ONL boundaries should follow clearly discernible lines in the landscape. This occurs, in her opinion, where there is a significant change in land form, a change in gradient, a change in land cover, a change in texture, a change of underlying geology, or a change in soil types and as a result a change in farming practice and land use. Ms Ayres emphasised that while the grass colour of the upper Alpha Fan may appear similar to the mountainside in summer, the texture of the landscape remains very different. Ms Ayres also produced photographs showing the upper Alpha Fan sharply contrasting with the mountain faces above it as a result of the presence of irrigated pasture.
109. As regards geology and geomorphology, Ms Ayres relied on Mr Leary's evidence.
110. Ms Ayres also picked up on a comment by the Environment Court that the visual amenity landscape characteristics of the upper fan could be reversed. She described that comment as "*somewhat unreasonable*" given the fact that it is private land and the likelihood that, if anything, it will be more intensively farmed in future (e.g. as a vineyard) rather than less, or used for recreational activities. The evidence of Mr Eric Hopgood, a director and owner of Hawthenden Limited, is also relevant on the point. Mr Hopgood described the farm property as being established around 1878. Hawthenden Ltd has itself owned the property since the 1990s.
111. Responding to Ms Ayres in her rebuttal evidence, Ms Mellsop expressed the view that the escarpment which forms the boundary of the notified ONL is a clearly legible boundary

between the upper and lower slopes differing as to slope above and below the escarpment, the extent of built form and the presence or absence of indigenous grey shrubland vegetation. Ms Mellsop also reiterated her view as to the legibility and expressiveness of the upper fan, as demonstrating the formative processes of alluvial deposition, the prominence and distinctive wedge-shaped form of the upper fan when viewed from public and private places in and around Wanaka township and the importance of the upper fan to the aesthetic values of the Mount Alpha face as a whole, *“including its visual coherence, memorability and perceived naturalness”*. She produced photographs tending to support these points.

112. Like the Environment Court, we have found the issue in this case to be finally balanced. We should note in passing that we did not find Mr Withnall QC’s argument emphasising the classic statement of the Environment Court⁵³ that ascertaining an area of outstanding natural landscape should not normally require experts because, usually an outstanding landscape should be so obvious, there is no need for expert analysis, to be particularly helpful. As the Court subsequently identified in its 2002 decision, at some point between an outstanding landscape and the adjoining landscape, a line needs to be drawn to differentiate the two, and expert evidence can assist identification of where that line should be drawn⁵⁴.
113. We agree that the longstanding pastoral use of the upper part of the Alpha Fan by Hawthenden Limited and its predecessors are relevant and cause it to be associated with the lower parts of Hawthenden Farm from a land use perspective at least.
114. While noting the Environment Court’s focus in 2002 on the ephemeral and reversible character of vegetation changes, we think that the evidence and submissions for the submitter have a point, suggesting that after 139 years of pastoral farming, it is a little unrealistic to think that the land might revert to more natural vegetation forms within the life of the PDP, or indeed, at any foreseeable point in the future.
115. We are wary, however, of over emphasising the pastoral nature of the property. Large areas of the district that are farmed have been classified as ONLs. The recent decision of the Environment Court in relation to Matakana Island⁵⁵ emphasises that naturalness is an issue of degree. The Court there found a production forest to be sufficiently natural to qualify. We also agree with Ms Mellsop that it is relevant that the signs of human habitation on the upper fan are relatively limited. We acknowledge Ms Ayres’ point that at times of the year, the upper fan will be more clearly distinguishable from the mountainsides above it than it was during our hearing (May/June). We note in that regard, the injunction of the Environment Court in the Matakana Island case not to take a *“snapshot”* and directing us to *“stand back conceptually and bring together in one’s mind the full range of views, along with whatever one may know of relevant processes and associations which can inform ones understanding of those view”*⁵⁶.
116. While relevant, we do not find Mr Leary’s evidence to be determinative of the landscape question. While we can understand his looking a little askance at the florid language of Ms Lucas quoted by the Environment Court, describing something as geologically precise as an alluvial fan, the difference in perspectives is indicative of the different professional training they bring to bear to the issue, and ultimately this is a landscape question, not a geological one.

⁵³ Taken from *Wakatipu Environmental Society Inc. v QLDC* C180/99

⁵⁴ See [2003] NZRMA 289 at [37]

⁵⁵ *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZ EnvC147

⁵⁶ [2017] NZ EnvC147 at [137]

117. We also thought that Ms Mellsop and Ms Ayres were somewhat at cross purposes because Ms Mellsop focussed more on the areas of the Hawthenden property where the escarpment forms a distinct separation between the upper and lower parts of the alluvial fan whereas Ms Ayres focussed more on the areas where Stoney and Centre Creeks have eroded the escarpment leaving no clear differentiation above and below the ONL line.
118. We discussed that point with Ms Ayres who said that she did not regard the terrace escarpment as creating a boundary to a particular landscape character area. Using her methodology, she said, the terrace landform was irrelevant. On that point, we prefer the evidence of Ms Mellsop that the upper fan is both prominent and distinctive when viewed from both public and private places in and around Wanaka. The Environment Court described it as very visible from Mount Barker and Mount Iron. Indeed, this is the point which tips the balance for us. While, as Mr Leary has observed, there are other alluvial fans in the district that are more geologically complete and unmodified, that is essentially just a variation in the argument Ms Ayres put to us, seeking to test the significance of the fan as an isolated feature. The more important point to us is that the upper part of this particular fan is a highly visible part of the backdrop to Wanaka. The photos that both Ms Mellsop and Ms Ayres produced confirm our own impression that when viewed from a wide range of public viewpoints, the upper Alpha Fan is a distinctive part of the mountain landscape largely⁵⁷ separated from the lower parts of the fan by the terrace escarpment.
119. Ultimately, we found the supplementary evidence Ms Ayres provided to us (Exhibit 18-a copy of which is attached to our report) to be helpful in crystallising the different views. Those photographs, showing the existing and proposed ONL boundaries viewed from a distance across town (from Mount Iron), indicate to us that the ONL line Hawthenden Ltd seeks would artificially carve a chunk out of the ONL. While more geologically 'pure' for the reasons provided by Mr Leary, we find that the existing ONL boundary better captures the extent of the mountainous backdrop to Wanaka. It expresses a coherent and legible mountain landscape that is in our view more representative of what viewers will appreciate as an Outstanding Natural Landscape.
120. We have considered the minor amendments to the ONL line that Ms Mellsop has recommended. We asked counsel for the Council whether we had any jurisdiction to extend the areas of the Hawthenden property the subject of the ONL notation. Her response in reply was that we did not. Accordingly, to the extent that Ms Mellsop recommends a minor amendment to the notified ONL line so that less of the Hawthenden property is within the ONL, we accept that change, but we do not recommend any change that would bring more land within the ONL.

2.8 Matukituki Valley:

121. In the notified PDP, the whole of the Matukituki Valley apart from the Treble Cone Ski Area Sub Zone is identified as an ONL on Planning Map 7. The owner of Matukituki Station, Solobio Limited⁵⁸, sought that the ONL notation be removed from the flats and downs of the Matukituki Station to facilitate continued agricultural activities. Longview Environmental Trust⁵⁹ opposed the submission. Its further submission suggested that the PDP provides for

⁵⁷ Mr Leary's Figure 6 indicates that the area where Centre Creek has eroded the escarpment is a relatively small proportion of that part of the ONL line following the escarpment. The Environment Court's observation that there are viewpoints from which the distinction between the upper fan and the land below it is not obvious also needs to be noted, but kept in context.

⁵⁸ Submission 325

⁵⁹ Further Submission 1282

farming within ONLs and that the enabling of farming activities is, in any event, not justification in itself to amend the landscape classification.

122. Solobio Limited did not appear before us. Its submission was assessed by Dr Read from a landscape perspective. Dr Read's conclusion was that the flats and down lands of the Matukituki Station are an integral part of the landscape and should remain as ONL.
123. Dr Read addressed the submission in section 7 of her evidence in chief. She described the Matukituki Valley in some detail, emphasising that the Matukituki River and its channel dominate the valley floor. In her view, the valley has high aesthetic value and is a highly memorable landscape dominated by soaring mountain peaks, by the Matukituki River's complex braiding, and by the ice scoured slopes of the lower mountainsides adjacent to the road. She identified the natural formative processes which establish the landscape as being readily legible and the landscape as having a high transient value.
124. Dr Read's view was that it was not possible to divorce the valley floor from surrounding mountain landscape. She drew parallels with the experience of the Dart and Rees Valleys, with the Cardrona Valley and with the Fern Burn Flats, all of which have been found to be an indivisible part of the relevant ONL, notwithstanding that they include modified valley floors.
125. Longview Environmental Trust appeared. As noted in our report 16, the further submitter presented planning evidence from Mr Edgar and tabled a brief of expert landscape evidence from Mr Ralf Kruger, but Mr Kruger did not appear before us⁶⁰.
126. While we can therefore give Mr Kruger's evidence only limited weight, it is worthy of note that he came to the same conclusion as did Dr Read.
127. As regards the reasoning in the submission that reclassification of the valley flats is required to facilitate continued agricultural activities, we are instructed by the Court of Appeal⁶¹ that the determination of the consequences of the classification as an ONL is a separate matter from identification of the ONL. We therefore agree with Mr Edgar's evidence for the further submitter to the effect that *"it is not the landscape classification itself that inhibits or enables farming activities but the objectives, policies, rules and assessment matters associated with the landscape classification"*⁶².
128. In the absence of any contradictory landscape evidence, we find that the floor of the Matukituki Valley, both within Matukituki Station and beyond its boundaries, to be correctly classified as ONL.
129. We therefore recommend that the submission of Solobio Limited be rejected, and the further submission of Longview Environmental Trust be accepted.

2.9 Lake McKay Station ONL Line:

130. Lake McKay Station is a 6500ha property, most of which consists of hill country immediately behind the township of Luggate. The PDP categorises most of Lake McKay Station as being within an ONL. The owner of the property (LMS)⁶³, sought that the ONL line shown on Map 11 follow the 600 metre contour line from the district boundary (with Central Otago District

⁶⁰ Mr Edgar advised that he was travelling overseas at the time

⁶¹ In *Man O'War Station Limited v Auckland Council* [2017] NZCA 24

⁶² Edgar evidence in chief at paragraph 22.

⁶³ Submission 462

Council) to the Criffel faces near Mount Barker Road. The submitter also sought amendments to the boundary of the Clutha River ONF at two locations east and north-east of Wanaka Airport to reduce the extent to which it extends across the submitter's land.

131. Focussing on the hill country first, the reasons provided in the submission for the requested relief are that:
 - a. Substantial areas of the hill country below the 600 metre contour are modified farm landscapes that have been developed for irrigation after clearance of indigenous vegetation.
 - b. The area was the subject of differing views from the landscape architects advising Council. The submitter preferred the view of Ms Steven that the ONL demarcation should be at a higher altitude, above the Dead Horse Creek and Tin Hut Creek terraces.
 - c. West of Tin Hut Creek, the proposed ONL line includes 270 hectares that the submitter is in the process of clearing of indigenous vegetation in order to plant in lucerne for harvesting with baleage, following grant of a resource consent for that purpose by Council in 2012.
 - d. The submitter proposes rural lifestyle development concurrently for the 'mid run' area and under the PDP, the ONL does not apply to Rural Lifestyle Zones.
 - e. East of Luggate, the suggested ONL line lowers to the 500 metre contour to join with the ONL within Central Otago District.
132. In her review of this aspect of the LMS submissions, Ms Mellsop noted that the information supplied with the submission was not altogether consistent. She supported the notified ONL boundary apart from an area at the northern end of the Criffel/Pisa range which she described as a low hill and smaller conical hillock (referred to as Knob A3KV) on the Criffel Station terrace. She considered this area to be of a different landscape character to the mountains behind and recommended that Knob A3KV be excluded from the ONL. Otherwise she found that the lower ice-eroded shoulder sought to be excluded was a visually coherent part of the mountain landscape, despite the areas of improved pasture and cropping.
133. In his written planning evidence for the submitter, Mr Michael Kelly clarified the discrepancy in the material produced with the submission, confirming that the intention was that the ONL line follow the 550 metre contour east of the south branch of Luggate Creek, lowering to approximately 400 metres in elevation where it crosses Luggate Creek and then continue on this contour to Criffel Station where it rises again above an area of modified farm land. Mr Kelly also contended that Ms Mellsop was being inconsistent by recommending exclusion of Knob A3KV, because the same reasoning could be applied to the mid-run area on Lake McKay Station.
134. Ms Mellsop refuted that contention in her rebuttal evidence. Her opinion was that while there are isolated pockets of glacial till in lateral moraine remnants, terrace remnants and alluvial outwash gravels within the area predominantly of schist within the ONL, Knob A3KV is outside the schist shoulder of the mountain range.
135. Shortly before the hearing, we asked that Council provide us with additional information regarding the juxtaposition of the various ONL options with the ONL line in the Central Otago District Plan. This was supplied in the form of an annotated version of Ms Mellsop's Figure 6 and showed that the ONL line sought by LMS connected to the line on the other side of the district boundary, found in the Central Otago District Plan. Ms Mellsop advised that the CODC line had been drawn to exclude areas of consented subdivision and development and that further south, the ONL line was located at a lower elevation.

136. When Mr Kelly appeared before us as part of the presentation of the case for LMS, he produced an enlarged plan showing both the key contours and the Central Otago District ONL line in relation to those contours. Mr Kelly's plan confirmed Ms Mellsop's description of the position. Mr Kelly also argued that an ONL should only be assigned to land where there is full agreement from the landscape architects that the landscape qualifies as such. The same submission has been made to the Environment Court and rejected⁶⁴. That case involved the Court examining the appropriate location of ONL lines where there was a variety of landscape architect opinion, and finalising its view based on the Court's assessment of the evidence.
137. Here, we also have a variety of landscape opinion, in the form of the reports underlying the PDP. Ms Mellsop has appeared to give evidence as to why she believes the PDP notified line is in the correct location having considered the competing points of view in the earlier reports. The submitter has not adduced expert landscape evidence of its own.
138. The point that has troubled us most is the lack of consistency as between the PDP and the adjacent Central Otago District Plan, particularly given the requirement in section 74(2)(c) of the Act that we have regard to the extent to which the PDP needs to be consistent with the Plan of an adjacent territorial authority.
139. Here, however, it appears from Ms Mellsop's evidence that Central Otago District Council has taken account of the amount of development immediately on its side of the District boundary and drawn the ONL line to exclude that development, rather than basing it on the underlying characteristics of the landscape. Given the subsequent Man O'War decision, it is at best questionable whether the same decision would be made today.
140. In addition, Ms Mellsop referred us to the Environment Court decision in *Bald Developments Limited v QLDC*⁶⁵ in which the Environment Court held in relation to resource consents for a proposed development located immediately on the Queenstown Lakes side of the territorial boundary, that the application site was an ONL. The Council provided us with a copy of Ms Mellsop's revised Figure 6 with the Bald Developments' site overlaid on it. That site extended well below the elevation of the ONL line the submitter proposed (although not quite as low as the ONL line contained in the PDP planning maps).
141. The discussion of the evidence in the *Bald Developments* decision indicates that the same arguments that Mr Kelly has made to us (and which were set out in the LMS submission) were the subject of evidence from the landscape architect giving evidence for the applicant (Mr Baxter). Mr Baxter is recorded as having given evidence pointing to the modification of grazing land on terraces, the recent development of land on the Central Otago District side of the boundary and the presence of roads, tracks, powerlines, pylons and farm buildings. The Court accepted that the site and its surrounds (which include Lake McKay Station, located immediately adjacent) contained features indicative of human activity, but found that they were scattered and seen in context, did not make the landscape fit the ODP's description of a visual amenity landscape.
142. The appeal was rejected and the development has not proceeded.
143. We find the Environment Court's reasoning highly persuasive, particularly given the supporting evidence of Ms Mellsop, assessing the landscape afresh.

⁶⁴ *Wakatipu Environmental Society Inc v QLDC* [2003] NZRMA 289 at [36]

⁶⁵ C055/2009

144. Given the Court of Appeal’s instruction in *Man O’War* that we need to assess the landscape merit of the landscape without reference to the consequences of classification, we find that notwithstanding the artificiality of effectively drawing the ONL line vertically down the district boundary from where it is shown in the Central Otago District Plan to the notified PDP ONL line, that is the correct approach in this case.
145. Similarly, notwithstanding Mr Kelly’s challenge to Ms Mellsoy’s reasoning, we find that her recommended exclusion of Knob A3KV is consistent with her general approach, and appropriate.
146. In summary, for the reasons set out above, we recommend amendment to the ONL line at the location suggested by Ms Mellsoy, but no other change to it.
147. Turning to other aspect of the LMS submission, relating to the boundaries of the Clutha River ONF on its true right bank, the reasons for the submission focussed on the extent to which the land in question had been modified for pasture and crops. The submission drew support in part from the initial assessment of Dr Read which would have excluded some Lake McKay Station terrace land from the ONF. This was the subject of Ms Steven’s peer review, which took a different view, and reconsideration by Dr Read. The PDP as notified accepted Ms Steven’s and Dr Read’s revised view.
148. Ms Mellsoy’s evidence⁶⁶ was that the PDP has correctly identified the prominent and distinctive river escarpment separating Wanaka Airport and the lower terraces to the east as being an important part of the Clutha River corridor which the PDP identifies as an ONF.
149. As regards the lower river terrace, Ms Mellsoy’s evidence was somewhat more equivocal, but she noted that it comprises part of a kanuka-covered Department of Conservation Reserve and private land that is either pastoral, kanuka woodland or mixed indigenous and exotic grassland or cushionfield. She also noted that it is separated from the irrigated upper terrace by a clear escarpment and is similar in character to the other terraces included within the river corridor. On this basis, she supported the notified PDP landscape line, although she recommended that it be identified as an ONL rather than an ONF.
150. In the absence of any landscape evidence from the submitter, we accept Ms Mellsoy’s view and recommend maintenance of the landscape line as notified. We will discuss shortly whether the landscape line ought to denote an ONF or ONL.

2.10 Crosshill Farm – Meltwater Channel:

151. Crosshill Farm is a property of approximately 340 hectares roughly bounded by State Highway 6 to the east, Dublin Bay to the north, Lake Wanaka to the west and the Clutha River to the south. Subsequent to lodgement of its submission⁶⁷, the property changed hands. The subsequent owner, Sunnyheights Limited pursued aspects of the submission, including the identification of ONL and ONF lines over part of the property. There are two areas that require consideration. The first is at the confluence of the Clutha and Hawea Rivers. We will address that in the following section, in conjunction with the related submissions of James Cooper⁶⁸. The second area for discussion relates to identification on Planning Map 18 of a meltwater channel as part of the Dublin Bay ONL. This channel was identified in Ms Steven’s peer review report. In her subsequent report, discussing the peer review comments that had been made

⁶⁶ Refer Mellsoy Evidence in Chief at 8.26-8.29

⁶⁷ Submission 531

⁶⁸ Submission 400

on this and other aspects of her initial report, Dr Read agreed with Ms Steven that the channel was significant by reason of the legibility of its physical origins.

152. The submission also sought to expand the area of Rural Landscape Classification (and reduction of the land identified as ONL and ONF) on the true left bank of the Clutha River.
153. The submission relied on landscape evidence presented to the Environment Court in *Upper Clutha Environmental Society Inc v QLDC*⁶⁹.
154. Ms Mellsoop reviewed this aspect of the Crosshill submission at paragraphs 8.56-8.57 of her evidence in chief. Ms Mellsoop referred to the fact that at the western end of the Crosshill property, the Environment Court fixed the ONL boundaries consistently with the ONL and ONF boundaries now identified in the PDP, other than in respect of the meltwater channel identified by Ms Steven. Ms Mellsoop reviewed the case for identification of the latter. She found that it was not sufficiently rare, distinctive, or unusually legible to be classified as either an ONL or ONF. In her view, one would need to be a trained observer to identify this geological feature. We agree – she had to identify for us exactly what it was and how it had been formed. While she noted that the western scarp of the channel supported natural patterns of kanuka regeneration, taking into account the natural science, expressive, aesthetic, and perceptual values of the feature, she did not consider it warranted inclusion as part of the ONLs of either Lake Wanaka or the Hawea/Clutha confluence. When Sunnyheights Limited appeared before us, its landscape witness, Mr Espie, supported Ms Mellsoop’s recommendations. In particular, he did not seek to pursue that aspect of the Crosshill submission seeking enlargement of the Rural Landscape Classification area on the Clutha River or Lake Wanaka side.
155. Given the consensus of the landscape evidence before us (we did not hear from either Ms Steven or Dr Read on this point) and the fact that it aligns with the earlier decision of the Environment Court, we agree with Ms Mellsoop’s suggested amendments to the ONL boundary and recommend changes to Planning Map 18 to implement those amendment.

2.11 Clutha/Hawea River Confluence and Downstream Clutha River Corridor:

156. Planning Maps 18 and 24b show an ONL on the true left bank of the Clutha River, both sides of its confluence with the Hawea River. This was the subject of submission by Crosshill Farms Limited⁷⁰ and James Cooper⁷¹. As above, by the time of the hearing, Crosshill Farms Limited has been succeeded by Sunnyheights Limited. Both submitters seek removal of ONL and ONF classifications from their land. As above, the Sunnyheights land is located on the true right bank of the Clutha River and State Highway 6 forms its eastern boundary. The Cooper land is located on the true left bank of the Hawea River with a Department of Conservation reserve between that land and the river. The upper terraces identified in the PDP as part of the river confluence ONL form part of a very substantial dairy farming operation undertaken by Mr Cooper under the name of Devon Dairies. To the extent that the Clutha River ONF extends onto the Cooper property on the true left bank of the Clutha River downstream of the Hawea confluence, the submission seeks removal of that notation also.
157. Starting at the upstream end of the Clutha River on its true left bank, the ONL line is drawn to include SNA E39A, apparently on the basis of Ms Steven’s peer review. In her review of the Crosshill submission⁷², Ms Mellsoop considered that the upper terraces on the Crosshill Farm’s

⁶⁹ C114/2007

⁷⁰ Submission 531

⁷¹ Submission 400

⁷² Mellsoop Evidence in Chief at 8.59-8.61

(now Sunnyheights) land had been classified as part of an ONL primarily on the basis of the presence of more intact at-risk indigenous vegetation. She observed that these meltwater outwash terraces are not part of the Clutha/Hawea confluence fluvial terrace landscape. Ms Mellsop referred us to the evidence of Mr Davis regarding the ecological significance of the vegetation in question, but noted that its ecological value is only one of several components in the landscape assessment. Ultimately, she was of the view that the most appropriate method of protecting the ecological significance of the remaining vegetation on the upper terrace is through the SNA provisions of the PDP. She recommended that the ONL line be redrawn to include only the lower terraces on the Crosshill/Sunnyheights property, and on the eastern side of State Highway 6, between the State Highway and the Hawea River.

158. When Sunnyheights Limited appeared, Mr Ben Espie gave expert landscape evidence supporting a landscape line that would follow the top of the initial terrace above the true left bank of the Clutha and Hawea Rivers, thereby excluding all of the submitter's property west of State Highway 6, together with the land between the State Highway and the Hawea River that he identified as now being occupied, among other things, by a rodeo arena and a camping ground.
159. Counsel for Sunnyheights Ltd (Ms Hill) sought to emphasise the depth and comprehensiveness of Mr Espie's landscape analysis, in contrast to that of Ms Mellsop. Counsel for the Council in reply conceded that that observation was probably fair. As Ms Scott noted, Mr Espie was able to focus on a small number of submissions on discrete sites, whereas Ms Mellsop gave evidence on all submissions raising landscape issues other than the small number that Dr Read addressed in her evidence.
160. Having said that, we find that both Ms Mellsop and Mr Espie focussed their evidence on the key landscape issues where they differed. We are grateful for their having done so and enabling us likewise to focus on those key issues.
161. Mr Espie considered the terraces identified by Mr Mellsop as properly forming part of the Clutha/Hawea River confluence ONL to be more correctly considered part of the surrounding landscape⁷³. He emphasised the lack of distinction from the farmland to the north and west, in terms of its management, appearance, vegetative cover and naturalness, the fact that it has been intensively farmed in the past, and that it accommodates obvious human occupation and activity.
162. While Mr Espie accepted that the escarpments relied on by Ms Mellsop as forming the boundary of the ONLs she had identified were legible as being naturally formed, he observed that every part of the Upper Clutha Basin has been formed by natural processes and that the legible land forms of this sort are not uncommon or outstanding. As an example, he pointed to terraces above Ms Mellsop's suggested ONL line.
163. Ms Mellsop agreed (in her reply evidence) that there were terraces at higher elevations, but considered they formed part of a different landscape character area extending westward to the moraine enclosing Dublin Bay. Nor in her view were they the result of the same formative processes. She emphasised that the significance of the terrace escarpment that she recommended as the boundary of the ONL is that it provides a legible containment of the confluence that other higher terraces did not.

⁷³ Refer Espie evidence at paragraph 23 and 24

164. Ms Mellsop also took issue with Mr Espie's views as to the naturalness of the lower terraces. In her rebuttal evidence, she noted that while there has been some modification in the past, there are few buildings within the landscape and no dwellings. Ms Mellsop also observed that most of the terraced land on the true right bank of the Hawea River is retired farmland with a mix of indigenous dryland vegetation, planted and wilding exotic trees and regenerating kanuka forest. Both Mr Espie and Ms Mellsop produced photographs illustrating the latter point.
165. Ms Mellsop also pointed out an apparent contradiction in Mr Espie's evidence because he disagreed with her classification of the confluence as an ONL while showing the area including the lower Hawea River and the terraces on its true left bank to be an ONL in his Appendix 4. When he appeared, Mr Espie corrected his evidence and provided us with a replacement Appendix showing the lower Hawea River and the lower terraces on its true left bank as part of the Clutha River ONF. He stated in introducing his evidence that in his view the "*protrusion*" from the Clutha River corridor at the Hawea confluence to be justified, among other things, because it is genuinely part of the feature of the Clutha River corridor. In his summary of evidence, Mr Espie suggested that it is logical for the Clutha River corridor ONF to expand in confluence areas to take in some of the confluence/delta landform that is distinct from the surrounding farm land and has clear boundaries.
166. We note that Ms Hill vigorously defended Mr Espie from any suggestion of inconsistency, submitting that Mr Espie had clearly explained his rationale, while failing to acknowledge that clarity was only achieved when Mr Espie revised the evidence that had been pre-circulated.
167. We fear that we may not have assisted matters by suggesting to Mr Espie that the view one took of his evidence in support of the Crosshill/Sunnyheights submission was linked to our assessment of the evidence he also gave for James Cooper, which we are about to discuss. The thinking underlying our question was that the position taken on the true right bank of the Hawea River should reflect our conclusion as to whether the landscape line on the true left bank of the Hawea River is drawn as Mr Espie suggested at the margins of the Cooper property or higher in elevation, as Ms Mellsop recommended. Mr Espie agreed that that was the case, but having reflected on the point, we wonder whether the proposition we put to Mr Espie is in fact correct. While the lower terrace land Mr Espie identified on the true left bank of Hawea River as part of the ONF may be distinguished (as he suggested) by the nature and extent of native vegetation, it suggests that the extent of the feature or landscape, as applicable, extends beyond the top of the first riverbank. Once past that point on the true right bank of the Hawea River, there appears to be no logical stopping point before one gets to the enclosing escarpment that Ms Mellsop identified.
168. In addition, we find Mr Espie's reasoning justifying the Clutha River ONF going so far up the Hawea River to be somewhat strained. It seems to us that if the Clutha River is regarded as a discrete feature, the area defined by Mr Espie goes far further than just catching its confluence with the Hawea River. It also does not explain why the confluence with the Cardrona River is not treated in the same way.
169. Last, but not least, we consider that there is a jurisdictional problem were we to find merit with Mr Espie's evidence. The Crosshill Farm's submission that Sunnyheights Limited is now pursuing sought only that its land be removed from the ONL. That would provide us with jurisdiction to shift the ONL/ONF line to the State Highway, but no further. That would leave the land between the State Highway and Hawea River as part of the ONL (or ONF, as Mr Espie

suggested). Applying Mr Espie's test, we could detect no change in landscape character marked by the State Highway.

170. For all of these reasons, we recommend that the ONL/ONF boundary be relocated to the top of the highest terrace that completely encloses the Clutha/Hawea confluence on the true right bank.
171. Turning to the Cooper submission relating to the location of the ONL line on the true left bank of the Hawea River, the background to location of the ONL line is that Ms Steven considered in her Review Report that the line should be drawn around (that is to say excluding) the pivot irrigated terraces of the Cooper land. Dr Read, in her response to the peer review⁷⁴ adopted an earlier landscape analysis of Mr Richard Denney that she referenced. She agreed that while, superficially, the land does not have the characteristics that would normally qualify as belonging to the ONL or ONF category, it is not necessary that the quality of a landscape need be entirely consistent to justify that categorisation, and in this case, the Cooper land is entirely surrounded by a landscape that both she and Ms Steven agreed to be outstanding. She considered its inclusion within the category to be appropriate.
172. When Ms Mellsoop reviewed the question⁷⁵ she took the view that one had to look at the issue more broadly and take into account the area identified as part of the Clutha River ONF downstream of the Hawea River confluence, as far as Rekos Point. She was of the view that the highest enclosing escarpment on the stretch of river west from Rekos Point formed an integral part of the river contour continuing around and above the confluence with the Hawea River, that is to say, including the irrigated Cooper terraces, notwithstanding the distance that highest escarpment moves from the riverbank⁷⁶. She shared Mr Denney's opinion that the terraces and escarpments around the Clutha/Hawea confluence form a memorable and expressive landscape forming part of the wider ONL of the Clutha River corridor and the Clutha/Hawea confluence. In that context, the Cooper property is part of the larger ONL.
173. Accordingly, the only amendment Ms Mellsoop recommended to the notified plan was to eliminate a slim protrusion into the Cooper land following an internal road line and to reclassify the land identified as one ONL.
174. Ms Steven, in her peer review report, likewise considered that the entire Clutha River corridor is treated as an entity as an ONL and on that basis, the area of the Cooper land on the true left bank currently identified as part of the ONF should be extended to include the irrigated paddocks, along with the natural scarp. Dr Read's view in her post review amendments report⁷⁷ was that while the vegetation communities along the fringes of the corridor might warrant protection, this should be achieved through mechanisms other than classification as part of an ONL/ONF. We have no jurisdiction to consider that additional amendment in any event, and so we do not address it further.
175. However, the suggestion that the Clutha River corridor be classified as an ONL rather than an ONF raises a different jurisdictional issue that we should discuss before canvassing the competing views of Mr Espie and Ms Mellsoop. No submitter sought that the Clutha River ONF either in the stretch above the Hawea confluence or further downstream be converted from

⁷⁴ Refer Dr Read's post review amendments dated 16 October 2014 at 3.4.3

⁷⁵ Mellsoop Evidence in Chief at 8.39-8.50

⁷⁶ She estimated it at up to 2km from the river edge and comprising about 370 hectares of land, including the Department of Conservation reserve.

⁷⁷ 4.3.4.2

an ONF to an ONL. Accordingly, we have to determine whether we have jurisdiction to entertain that recommendation. We asked Mr Todd, counsel for James Cooper, whether he had a view on the point. Mr Todd suggested that we canvas the series of cases identifying ONLs and ONFs without further elaboration. He did tell us that he would not have thought it was a major problem to distinguish between the two, but that for the purposes of his submissions, it made no difference.

176. We took Mr Todd's position to be one of something short of consent on behalf of his client, but not actively taking the point either. We therefore invited counsel for the Council to address the issue as part of her reply. The legal submissions in reply for the Council addressed the point in some detail⁷⁸.
177. Counsel submits first that in order for there to be scope for the Panel to accept Ms Mellsop's recommendation, the effect of an ONL and ONF notation would need to have been the same at notification. Counsel analysed the notified objectives and policies of the PDP in some detail noting that while the policy direction is not identical, the default status across both is that subdivision and development is avoided where that would degrade, or not protect, the outstanding landscape or feature. In counsel's submission the differences between the subsequent policies are subtle, reflecting the difference in scale between features and landscapes (the larger scale of a landscape potentially including a farming operation). She noted, however, that despite these practical differences, the same assessment matters apply to both.
178. Overall, counsel's submission was that the effect of the ONL or ONF classification is the same in terms of the applicable PDP rules and accordingly, that there is scope to change the notation on the Cooper land from ONF to ONL. We are unsure why counsel felt that the issue of scope needed to be determined on the basis of the PDP as notified. We would have thought that the decision as to whether a particular change is minor (for the purposes of clause 16(2) of the First Schedule) needs to be made in the context of the PDP provisions we recommend. If that is the case, we consider that our recommendations overall, treat ONL and ONF notations as even more interchangeable than the notified position counsel for the Council analysed.
179. We also note the recent comment of the Environment Court in *Western Bay of Plenty District Council v Bay of Plenty Regional Council*⁷⁹ to the effect that the issue whether the particular area in question there (a sand barrier) was classified as a feature or a landscape is of limited significance. The Court drew attention to the fact that section 6(b) of the Act treats them the same way.
180. We therefore accept counsel for the Council's submission that we have jurisdiction to alter the notation on the Planning Map from ONF to ONL if we find that there is evidence to support that change.
181. Turning to the merits, Dr Read observed in her initial report⁸⁰, that the distinction between ONFs and ONLs is one of scale. At a certain point, an area is too large to really be considered a feature in a landscape. This also works in reverse. The Environment Court has repeatedly rejected suggestions that relatively small areas of land might be considered landscapes and in *Wakatipu Environmental Society Inc v QLDC*⁸¹ the Court suggested that among other things, in

⁷⁸ Refer Council Submissions in Reply at Section 24

⁷⁹ [2017] NZ EnvC 147 at [139]

⁸⁰ At 3.7.6.6

⁸¹ [2003] NZRMA 289 at [20]

most circumstances in this district, to be a separate landscape, a flat area must contain at least one, preferably more rectangles of at least 1.5 x 2 km sides and that no part of the landscape may be more than 1km from such a rectangle. The Court, however, emphasised that the area qualifications might not invariably apply. It instanced hillsides as a potential exception and they could not apply to a feature which is “*by definition, part of a landscape*”. [emphasis in original].

182. In his evidence for Mr Cooper, Mr Espie suggested that the broad Clutha River corridor Ms Mellisop had defined was too wide to be a feature, but too narrow to be a landscape in its own right, being often 1.1 to 1.3 km wide as it runs past the Cooper land holding. He referred us to the Environment Court’s 2002 decision in that regard. When we discussed the point with Mr Espie, however, querying whether these criteria really apply only to flat land (which this is not), Mr Espie agreed that the criteria are “*pretty loose*” and he would not rely on them.
183. Again, we think that the recent Environment Court decision in *Western Bay of Plenty District Council v Bay of Plenty Regional Council* already referred to is of assistance. There, the Court commented⁸²:

“Approaching the text of s6(b) with the RMA’s purpose and the guidance of the High Court and the Supreme Court in mind [referring to NZ Rail Limited v Marlborough District Council [1994] NZRMA 70 and Environmental Defence Society v New Zealand King Salmon [2014] NZSC 38 respectively] we note that features and landscapes are not the same thing. In broad terms and in the context of the RMA we think one may generally speak of a feature as a single element of natural and physical resources while a landscape is usually a collection of such elements. The Environment Court has previously held, relying on a dictionary definition, that a feature is a distinctive or characteristic part of a landscape and therefore that an outstanding natural feature is a distinctive part of a larger landscape which is an outstanding natural landscape. But with respect, that cannot be a fixed relationship: the scale of elements is necessarily relative and a feature may be so large, as in the case of a mountain or an island, that it can encompass one or more landscapes while retaining its overall integrity as a feature. A feature may also be relatively small, such as a particular geological formation, whereas one would ordinarily not characterise a similarly small area as being a landscape. In some cases, an outstanding natural feature may exist in splendid isolation without an outstanding natural landscape around it, while in others it may be outstanding because of its relationship to other features or the landscape, whether those other things are outstanding or not...”

184. With this guidance in mind, whether one is looking at the river corridor recommended by Mr Espie (including the ‘protrusion’ up the Hawea River) or the broader corridor recommended by Ms Mellisop, we consider it might appropriately be described as a landscape. This is because it contains more than one element of natural and physical resources by definition, since it includes both the river proper (i.e. the wet bit) and some dry land beyond the river, at least below the point where it approaches the Hawea confluence and broadens out.
185. Accordingly, we agree with Ms Mellisop’s recommendation that Planning Map 18 should be amended to show the Clutha River corridor as an ONL below the confluence with the Hawea River. Turning to the key question of what that ONL should include, Mr Espie’s evidence for James Cooper is that none of the terraces or escarpments within the Cooper land can correctly be considered to be ONFs because they are:

⁸² [2017] NZ EnvC 147 at [82]

- a. Insufficiently distinct from their surrounds to be correctly termed features;
 - b. No more natural than the surrounding non-ONL landscape;
 - c. Insufficiently outstanding to be elevated above the landscapes of the District generally.
186. He also contended that the terrace flats and escarpments are distinct from the river but are not distinct from the surrounding landscape that continues to the north⁸³.
187. When Mr Espie presented his evidence to us, he emphasised that when drawing a line between two landscapes, a recognisable change of character is required at the line. In his opinion that was not the case for the lines recommended by Ms Mellsop. In his view, it is a homogeneous farming operation. While the terrace escarpment Ms Mellsop had relied upon as indicating the boundary is legible in his opinion, it does not mark a change of character.
188. In his evidence, Mr Espie also pointed to an apparent inconsistency between evidence Dr Read had prepared on a development proposal located on the true right bank of the Clutha River, opposite the Cooper land, where she found that the northern margin of the ONF runs along the edge of the more developed ground. We asked Dr Read about that when she appeared before us and her response was that her evidence was discussing the limits of the ONF. Her view was that the entire terrace face was part of an ONL to the opposite terrace, within which the ONF sat.
189. Mr Espie also emphasised in his evidence that development of the land was ongoing. Since his first assessment concluding that the Cooper land was not part of an ONL or ONF, significant progress has been made in converting the lower terraces to irrigated dairy land. We noted ourselves during our site visit that the process of conversion on the terraces at the downstream end of the Cooper land, adjacent to the Clutha River was well under way.
190. Mr Espie emphasised other developments on the disputed area of the Cooper property including an additional farmhouse, farm sheds, barns and silos, including a large milking shed, and two additional water storage reservoirs. While not pressing the point as a reason for granting the relief sought⁸⁴, Mr Todd made it clear that it was the cost and difficulty of obtaining resource consent for the milking shed referred to just above that has provided the submitter with motivation to pursue his submission.
191. We noted all of the developments Mr Espie referred us to during the course of our site visit. Viewed close up, they are obvious unnatural elements in the landscape. However, in such a large landscape, they are not obvious or obtrusive elements in the landscape when viewed from any distance.
192. We find that there is merit in both landscape perspectives presented to us. While the presence of irrigated pasture land does not disqualify land from being categorised as part of an ONL, the presence of accoutrements like pivot irrigators reinforces the progressive loss of naturalness of the Cooper land.
193. We find that the case is stronger for identification of the terraces at the downstream end of the Clutha River as part of the ONL. They are matched by identification of the lower river terraces opposite the Cooper land on the true right bank of the river as an ONF. That is not challenged in submissions or evidence, apart from the submission of LMS discussed above that relates to a separate lower terrace at the very downstream end of the reach in issue.

⁸³ See Espie Evidence in Chief at 4.8

⁸⁴ Presumably recognising the *Man O'War* decision as an insuperable obstacle to that line of argument

Accordingly, irrespective of the view we take on the Cooper submission, the PDP will identify a ONF/ONL including the opposite river terraces. It would be inconsistent, in our view, not to identify the equivalent terraces on the true left bank, particularly given that, if anything, the character of the land within those terraces is more clearly associated with the river and differentiated from the land higher and further back from the river than is the case on the other side. During our site visit, we were struck by the extent to which, when viewed from the riverbank, those terraces are enclosed by the escarpment Ms Mellsoy has recommended mark the edge of the ONL.

194. We find the case much more finely balanced at the confluence. As the landscape witnesses acknowledge, the irrigated terraces are more expansive in area. Also, the indigenous vegetation at the lowest level on Department of Conservation reserve land provides a potential distinguishing line, while the escarpment Ms Mellsoy recommended as marking the boundary from the balance of the Cooper property provides less of a division between the lower terraces and the balance of the property than does the escarpment further downstream.
195. Ultimately, we thought that the view one took of the Cooper terraces at the confluence depended on the viewpoint. While the terrace escarpments relied upon by Ms Mellsoy are highly legible from all viewpoints we saw, or were provided with photographic evidence of, the photographs Ms Mellsoy provided to us confirmed our own impression (from our site visits) that when viewed from elevated viewing points such as Mount Iron, there is little or no differentiation in character between the lower terraces forming part of the recommended ONL, and the balance of the dairy farm beyond. Viewed from lower elevations, however, the escarpment is a much more dominant factor. While the terraces still appear as a sea of green irrigated pasture, they no longer link to the background dairy land, but rather read to the lower terraces and the river, and the river gorge in the background (when viewed from the north-west).
196. Earlier in this report, we noted the comments from the *Matakana Island* decision to the effect that we should not adopt a single view or snapshot approach, but rather stand back conceptually and bring together the full range of views, along with whatever we might know of relevant processes and associations. The full range of views produces an equivocal response. The processes that have formed these terraces are, however, very obvious and ultimately that is what tips the balance for us, recommending that the ONL line be drawn at the line Ms Mellsoy recommends, including the minor change to exclude the road up to the upper part of the Devon Dairies farm, rather than the competing lower position that Mr Espie suggests.

2.12 Lake Hawea Foreshore:

197. Mr David Sherwin⁸⁵ appeared and submitted that the ONL line drawn east of Muir Road on the foreshore of Lake Wanaka be amended to sit closer to the lake edge, in line with the peer review assessment of Ms Steven. Mr Sherwin also referred us to the Environment Court's conclusion that the land in dispute is a 'visual amenity landscape' in terms of the classification in the ODP.
198. Mr Graeme Ballantyne⁸⁶ filed a separate submission to the same effect as Mr Sherwin. Contact Energy Limited⁸⁷ opposed the relief sought. Neither Mr Ballantyne nor Contact Energy appeared at the hearing.

⁸⁵ Submission 388

⁸⁶ Submission 245

⁸⁷ Further Submission 1085

199. When he appeared before us, Mr Sherwin advised that the notified ONL line sits on the southern side of the moraine above the lake whereas the line recommended by Ms Steven mostly follows the moraine.
200. Looking first at the extent to which the Environment Court has already provided guidance on the subject, Mr Sherwin did not provide us with a full citation, but Ms Mellsop's evidence in chief supplied the details. The relevant decision is that in *Sutherland and Follis v QLDC*⁸⁸. The case involved a small subdivision. The Court recorded that the three landscape architects giving evidence assessed landscape effects based on the premise that it was a visual amenity landscape but that Ms Steven (giving evidence on that occasion for UCES) was of the view that it was in a transition area between the Lake Hawea ONL and the inland visual amenity landscape.
201. The Court recorded that it would use the assessment criteria applying to visual amenity landscapes given the agreement of the witnesses but went on as follows:
- "However, we make no definitive finding on landscape category, noting that the moraine adjoins the outstanding natural landscapes of Lake Hawea as well as the mountains to the east, and along with the unmodified part of the Gladstone Gap, as a significant and clearly visible part of the natural history of the area. This leaves open the possibility of a fuller case being mounted to classify the area as part of an ONL."*
202. Given those comments, we consider that the decision does not provide the authoritative guidance that Mr Sherwin suggested to us. Reading between the lines, it seems to us that the Court was distinctly unconvinced that the area was a visual amenity landscape.
203. Turning to Ms Steven's peer review report⁸⁹, the relevant section of her discussion states:
- "I would not include land behind the crest of the moraine however as it is not part of the lake's landscape setting and it has no significant natural or visual values warranting its inclusion. Whilst I can understand the rationale of including the terminal moraine land form as a whole as a basis for ONL, I do not think it is sufficiently uncommon, legible or an impressive enough example to warrant ONL status on a land form basis alone."*
204. While Ms Steven appeared before us for another submitter, she did not address this particular aspect of the landscapes of the district.
205. In Dr Read's report responding to the peer review comments, she observed that the locations of the line she favoured, and that of Ms Steven were not particularly divergent other than in relation to a small hill south of the township of Gladstone (not relevant to the submission) which she agreed should be included⁹⁰. The notified ONL line followed Dr Read's original line. Hence Mr Sherwin's submission.
206. Ms Mellsop, provided a further assessment in her evidence in chief⁹¹. She noted that the land in question is part of the terminal moraine of Lake Hawea enclosing the southern shore of the lake and it has been modified by construction of a stop bank to block an ancient water channel through the moraine allowing water to flow out of the lake at times of very high lake levels.

⁸⁸ C20/2005

⁸⁹ Dated June 2014

⁹⁰ Refer Dr Read's post review amendment report at 3.6.1

⁹¹ At 8.76-8.81

Ms Mellisop was of the view that the land sought to be excluded from the ONL is an integral part of the moraine landform that extends as far as the base of a pine plantation within the cemetery reserve adjoining the site.

207. In her view, the terminal moraine has high geomorphological values and is rare because, unlike other lake terminal moraines at both Lakes Wanaka and Wakatipu, it has not been modified by urban development. She thought it had a strong connection with the lake and the landform is clearly legible as part of the lake moraine.
208. While there is a competing landscape viewpoint on record, only Ms Mellisop appeared to give evidence on the issue (as an expert). Accordingly, we find that the ONL boundary is best shown as notified. We recommend rejection of Mr Sherwin's submission (and that of Mr Ballantyne).

3. SNA BOUNDARIES:

209. The planning maps identify several significant natural areas (SNAs) for the purposes of implementation of Chapter 33 of the PDP. Mr Glenn Davis gave evidence on submissions relating to SNAs. In summary, with the exception of one amendment which we will discuss shortly to an SNA on Lake McKay Station, Mr Davis did not recommend any change to the identified SNAs.
210. Of the submitters we heard from, two (Sunnyheights Limited⁹² and James Cooper⁹³) sought removal of an SNA in their submission, but did not provide evidence and/or submissions to support that submission, from which we might conclude that we ought not to accept Mr Davis's evidence. We therefore recommend rejection of those submissions.
211. Two submitters who appeared did actively pursue submissions related to SNAs. One of those submitters, Allenby⁹⁴ presented evidence and legal submissions on the relevant SNA⁹⁵ that were so intertwined with the submitter's proposals for its entire site located on Mount Iron that we will address it as part of that integrated proposal in our report 16.14.
212. The remaining submitter on SNAs was LMS⁹⁶ and we address it in the following section of our report.

3.1 Lake McKay Station SNAs:

213. The submission of LMS seeks amendment to the boundaries of the proposed SNAs E30A, E30B, E30D, E30F, and E18G. The relevant SNAs can be seen on Planning Maps 11, 18 and 18a. It also seeks that the proposed SNAs on the station are not made operative until consultation is completed "*and the final areas have been defined*".
214. The submission for the company records that there are seven SNA areas proposed for Lake McKay Station covering a total area of 400 hectares, which from the owner's perspective is a significant area of land on which is not possible to develop and improve pasture and consequently a potential loss of future income. It accepts that a large proportion of the proposed SNA areas are located on steep sided gullies or rocky steep hillsides, which is why they have not been developed to date and why there are significant stands of indigenous vegetation on the sites. However, the submitter records that there may be future land use options that would make use of these areas profitable. More specifically, the submission seeks

⁹² As successor to the submission of Crosshill Farms Limited (#531)

⁹³ Submission 400

⁹⁴ Submission 502

⁹⁵ E18C on Planning Map 18

⁹⁶ Submission 439

that parts of the listed SNAs be excluded in order to allow future development for pasture or for track development. The submission provides details of the amendments requested.

215. The submission also records a concern with the consultation process undertaken in relation to identification of SNAs prior to notification of the PDP.
216. The evidence in chief of Mr Davis records that he undertook a site visit of Lake McKay Station along with Mr Barr and Mr Kelly (representing the submitter) in February 2017.
217. Mr Davis's evidence is that all of the SNAs contain kanuka woodland and grey shrubland communities that are representative of the original vegetation within dry lowland environments of the Upper Clutha where the remaining indigenous vegetation covers less than 20%. He notes that an at risk 'declining' tree daisy (*olearia lineata*) is present and that the indigenous vegetation will provide habitat for a range of species including the at risk 'recovering' eastern falcon.
218. Mr David recommended that the SNAs should be left as mapped with the exception of SNA E30A shown on Planning Map 11, where he recommended realignment of the eastern boundary of the SNA to reduce the amount of land it covers.
219. When the representatives of the submitter appeared before us, Mr Kelly advised that we should treat submission 439 as amended in the following respects:
 - a. As to SNA E30A (Dead Horse Creek), the submitter accepted the revised boundary line on the eastern side of the SNA proposed by Mr Davis and requested that the SNA boundary be amended to allow for a 20 metre wide corridor for the existing farm roads crossing through the north and south sections.
 - b. As to SNA E30B (Tin Hut Creek), the submitter withdrew the request to exclude areas E30B2 and E30B3 meaning that this SNA is no longer the subject of submission.
 - c. As to SNA E30D (Luggate Creek Gorge), the submitter requested that the boundary of the SNA be amended to include a 20 metre wide corridor for the existing farm road. Mr Kelly noted that this road is the main thoroughfare between the hill country to the south of Luggate Creek and the farm woolshed and yards area near Atkins Road. Mr Kelly's evidence also recorded that, as indeed we observed during our site visit, the hill slope is steep and the switchbacks very tight to negotiate in a four wheel drive.
 - d. As to SNA E30F (Alice Burn), the submitter requested amendment to the SNA to include a 20 metre wide corridor for the existing farm road.
 - e. As to SNA E18G (Winestock), the submitter again requested that the boundary of the SNA be amended to include a 20 metre wide corridor for the existing farm road.
220. The key point made by the owner of Lake McKay Station, Mr Colin Harvey, was that the SNAs identified in the PDP include several essential farm roads containing major irrigation supply pipelines. He identified apparent inconsistency as to which parts had been included and excluded. Mr Harvey emphasised the very significant land area involved which, as he observed, the land owners have created an indigenous vegetation by good stewardship. He emphasised in particular the lack of sufficient consultation with the Council on the proposed SNAs and the cost imposition on the land owner flowing from identification of the SNAs. Mr Harvey observed in this regard that the SNAs become sanctuaries for pest animals increasing the ongoing cost of pest control to the station compared to the position if the SNAs were cleared.

221. As part of his presentation, Mr Kelly observed that the reason for this submitter requesting road corridors is that any upgrade to the existing roads that was more than maintenance would require resource consents, including expert ecological assessment.
222. Mr Kelly noted that this is costly and time consuming for the landowner.
223. We discussed with Mr Kelly why he was recommending a 20 metre road corridor. While, as he observed, some of the existing tracks are very steep, a 20 metre road corridor would permit two lane traffic over its entire length. Mr Kelly pointed to the switchback nature of some of the existing tracks as necessitating a wider corridor than would normally be associated with internal farm access tracks. While that might be the case, it does not explain why a 20 metre road corridor is sought in all cases. In addition, had it been critical, we would have wanted to see engineering evidence supporting the need for such a wide corridor.
224. Shortly after the hearing commenced, however, we noted the release of a High Court decision related to areas of significant indigenous vegetation and significant habitats of indigenous fauna: *Royal Forest and Bird Protection Society of NZ Inc v Christchurch City Council and Others*⁹⁷. We asked that the hearing administrator refer this decision to Mr Kelly in order that he might have the opportunity to address us on its relevance (or otherwise) to the case advanced by the submitter.
225. Although this decision is effectively made by consent, in it the High Court reviews the matters at issue which were the subject of settlement by the parties and concludes that the proposed amendments are consistent with the purpose and principles of the RMA, including in particular section 6(c) of the Act. Among other relevant points in the decision, the Court recorded the agreement of the parties that the question of whether a site is significant and so triggers the requirement to protect it under Section 6(c) is an ecological assessment not to be conflated with management or planning decisions. Reference is made to the Environment Court's decision in *Friends of Shearer Swamp v West Coast Regional Council*⁹⁸ and to the High Court's decision upholding that decision in *West Coast Regional Council v Friends of Shearer Swamp Inc*⁹⁹ as supporting that approach.
226. As counsel for the Council identifies in her reply submissions¹⁰⁰, there is a clear parallel in the approach described by the High Court and that endorsed in the *Man O'War Station* decision in relation to Section 6(b). In summary, both are 'top down' approaches.
227. We record counsel for the Council's suggestion that we exercise caution in placing conclusive weight on the *Forest and Bird* case given that the points at issue were not contested. However, clearly there was a contest in the earlier *Shearer Swamp* litigation to the same effect.
228. Mr Kelly did not provide us with any basis which would suggest that we should not rely on these authorities.
229. Accordingly, it appears to us that the LMS submission on the planning maps at least is misguided. The submitter does not provide any ecological evidence that would contradict Mr Davis and cause us to consider that the SNAs (as Mr Davis suggests they be amended), are not well founded on ecological grounds.

⁹⁷ [2017] NZHC 669

⁹⁸ [2010] NZ EnvC 345

⁹⁹ [2012] NZ RMA 45

¹⁰⁰ Reply submissions for Council at 17.3-17-5

230. Rather, to the extent that the submitter may have a valid case, it relates to the objectives, policies and rules governing activities within SNAs, which were not before us in this hearing.
231. To the extent that a submitter had a concern about consultation, we think it is important to record that consultation under Act does not require agreement¹⁰¹. Mr Davis's evidence is that he and Mr Barr went onsite and reviewed the boundaries of the proposed SNAs on the station afresh. As already noted, he has recommended that those boundaries be amended at one location as a result. Mr Harvey was unable to be present on that occasion, but we do not consider that that is fatal to the integrity of the consultation process – Mr Kelly was present to represent the landowner's interests. Mr Davis also recorded the basis for the submitter's concern, which Messrs Harvey and Kelly reiterated to us (the desire to provide for future upgrading of the Station's internal roading network). For the reasons we have set out above, we do not consider it would have been appropriate for Mr Davis to agree that those considerations would justify an amendment to the boundaries of the SNAs on the property.
232. In summary, we do not recommend any amendment to the SNAs beyond those suggested by Mr Davis in his Evidence in Chief. As above, we consider that to the extent the submitters concerns can be addressed, they need to be addressed in the context of Chapter 33 of the PDP.

4. SUMMARY OF RECOMMENDATIONS

233. In summary, for the reasons set out in our report, we recommend the following amendments to the Upper Clutha Planning Maps as they relate to ONL, ONF and SNA notations:
- a. With the exception of the Hydro Generation Zone, show all Special Zones and ODP Zones in white, with no landscape notations or lines applying to them. The land currently shown as Rural Zone overlaid with the Hydro Generation Zone should just be shown as Rural (refer Section 1.2 above);
 - b. Amend the ONL boundary at Eely Point (Planning Maps 18 and 20) to follow the road boundary on the Lake Wanaka side (refer Section 2.2 above);
 - c. Amend the ONF boundary on Hikuwai Reserve (Planning Maps 18 and 24b) as recommended by Ms Mellsop (refer Section 2.3 above);
 - d. Amend the ONL boundary on north side of the Maungawera Valley (Planning Map 18) as recommended by Ms Mellsop (refer Section 2.4 above);
 - e. Amend the ONF shown on Planning Maps 11a, 18 and 24b over the Clutha River corridor to show it as an ONL, insert boundary with the upstream Clutha River ONF as per Figure 8 of Ms Mellsop's Evidence in Chief, and remove the boundaries shown on Planning Maps 18 and 24(b) between the former Clutha River ONF and the Clutha/Hawea Confluence ONF (refer Section 2.11 above);
 - f. Amend the (now) ONL boundary on the true right bank of the Clutha River at Albert Town (Planning Maps 18 and 24b) as recommended by Ms Mellsop (refer Section 2.5 above);
 - g. Amend the ONL boundary across Sticky Forest (Planning Maps 18 and 19) to follow the orange line on Mr Field's Figure 13 (refer Section 2.6 above);
 - h. Amend the ONL line across the Hawthenden property (Planning Map 18) to reduce the size of the ONL, where shown on Ms Mellsop's Figure 2 (refer Section 2.7 above);
 - i. Amend the ONL line shown on Planning Maps 18 and 18a to exclude Knob A3KV, as shown on Ms Mellsop's Evidence in Chief Figure 4 (refer Section 2.9 above)

¹⁰¹ See e.g. *Greensill v Waikato Regional Council* W017/95

- j. Amend the ONL notations on the Crosshill/Sunnyheights property (Planning Maps 18 and 24b) as shown on Ms Mellisop’s Evidence in Chief Figure 9 (refer Sections 2.10 and 2.11 above);
 - k. Amend the ONL boundary located on the Cooper property (Planning Map 18) as shown on Ms Mellisop’s Evidence in Chief Figure 8 (refer Section 2.11 above);
 - l. Amend the boundary of SNA E30A as shown on Appendix 1 to Mr Davis’s Evidence in Chief (refer Section 3.1 above)
234. These changes are shown on the revised Planning Maps attached to our Report 16
235. It follows that we recommend that the following submissions be accepted in part:
- a. Roger Gardiner¹⁰²
 - b. Allenby Farms Ltd¹⁰³
 - c. Tim Burdon¹⁰⁴
 - d. Lakes Land Care¹⁰⁵
 - e. Michael Beresford¹⁰⁶
 - f. Hawthenden Ltd¹⁰⁷
 - g. Lake McKay Station¹⁰⁸
 - h. Sunnyheights Ltd¹⁰⁹
 - i. James Cooper¹¹⁰
236. Where the above submissions were the subject of further submissions, our recommendations in relation to the further submissions reflect the position recommended in relation to the relevant principal submission.
237. We have discussed in this report our reasons for recommending that the following submissions be rejected:
- a. UCES¹¹¹- see Section 2.1 above.
 - b. Solobio Ltd¹¹²- see Section 2.8 above.
 - c. David Sherwin¹¹³- see Section 2.18 above.
238. As discussed in Section 2 and 3 above, we have not discussed the other submissions seeking amendments to ONL and ONF, and SNA lines respectively and that were not the subject of any expert evidence supporting the relief sought.
239. In addition, we recommend that Council undertake a review of its approach to ONLs and ONFs incorporating the following elements:

¹⁰² Submission 260

¹⁰³ Submission 502

¹⁰⁴ Submission 791

¹⁰⁵ Submission 794

¹⁰⁶ Submission 149

¹⁰⁷ Submission 776

¹⁰⁸ Submissions 462 (ONL) and 439 (SNA)

¹⁰⁹ Submission 531

¹¹⁰ Submission 400

¹¹¹ Submission 145

¹¹² Submission 325

¹¹³ Submission 388

- a. To consider application of the landscape notations to zones not the subject of the PDP where appropriate;
- b. To consider whether any existing ONL or ONF boundaries should be extended to cover land not within the Rural Zone or (in the case of the instances noted in this report) the existing boundaries over non-Rural Zone land including roads are appropriate;
- c. To identify the attributes of ONLs and ONFs that are identified that contribute to those landscapes and features being outstanding;
- d. To identify any consequential amendments required to the PDP, including but not limited to Chapters 3 and 6 to reflect the results of the review on the points above.

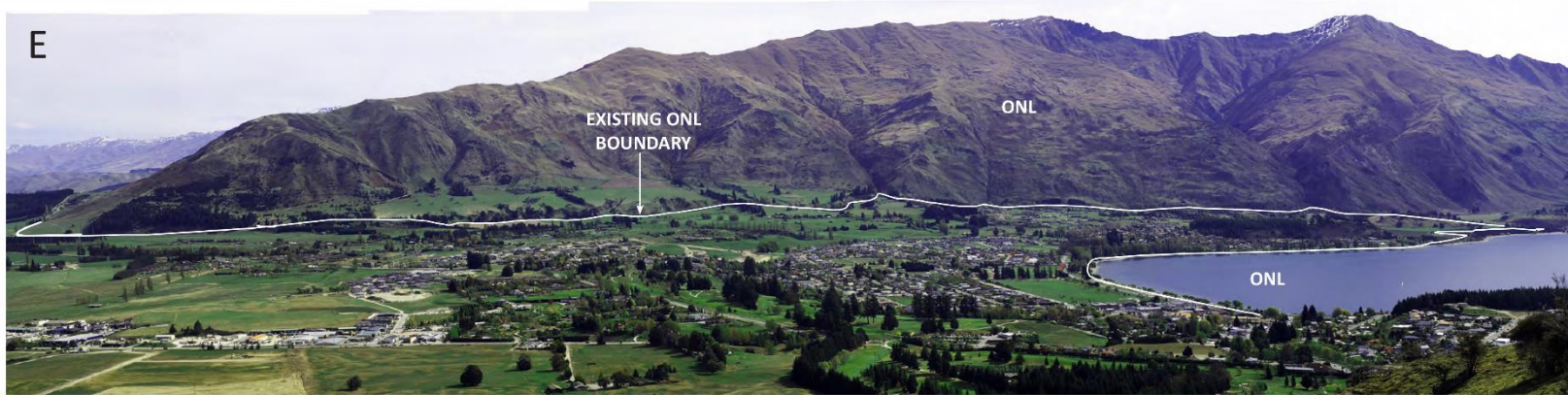
For the Hearing Panel



Trevor Robinson, Chair

Dated: 27 March 2018

Attachment- Exhibit 18 (Mt Alpha Fan)



Photograph E: View from Mt Iron overlooking Wanaka to the Mt Alpha Range with approximate location of existing ONL boundary marked as solid white line



Photograph F: View from Mt Iron overlooking Wanaka to the Mt Alpha Range with approximate location of existing ONL boundary marked as solid white line and approximate location of proposed ONL boundary marked as a dashed white line.

Note: The lines drawn over these photographs are an estimated interpretation of where the ONL lines exist on the ground, derived from overlapping Council supplied GIS data on a georeferenced aerial photograph, and interpreting the line in relation to actual landscape features visible in this view. Due to perspective, there are locations where the line on the ground would be hidden by vegetation and topography, but appear visible here. These images should be treated as indicative only.

Supplementary Evidence Hannah Ayres