

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

ENV-2024-CHC-

**I TE KŌTI TAIAO  
KI ŌTAUTAHI**

**UNDER**

the Resource Management Act 1991

**IN THE MATTER**

of an appeal under clause 14 of schedule 1 of the Act in relation to the Priority Area Landscape Schedules Variation to the Queenstown Lakes Proposed District Plan

**BETWEEN**

**PASSION DEVELOPMENT LIMITED**

Appellant

**AND**

**QUEENSTOWN LAKES DISTRICT  
COUNCIL**

Respondent

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**NOTICE OF APPEAL**

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Dated: 5 August 2024

**To:** The Registrar of the Environment Court at Christchurch

**And to:** The Respondent

[1] **Passion Development Limited (Appellant)** appeals against a decision of the Queenstown Lakes District Council (**QLDC**) on its Priority Area Landscape Schedules Variation (**Variation**) to the Proposed District Plan (**PDP**).

[2] The original submission on the Variation was filed by the Appellant's consultant planner Richard Kemp, trading as Pragmatic Planning, on behalf of the Appellant. The submission specifically includes reference to Lot 1 DP 20613 as held in Record of Title 838157 in upper Fernhill (**Site**). At the time the submission was lodged under Schedule 1, in August 2022, the future ownership of the Site was uncertain, and the submission was therefore lodged in the name of the consultant planner.

[3] This Appeal is filed in the name of Passion Development Limited as the owner of the subject Site, and the successor under s 2A of the Resource Management Act 1991 (**RMA**), in reliance on *Buckingham Asset Management Ltd v Auckland City Council*.<sup>1</sup>

[4] The Appellant is not a trade competitor for the purposes of section 308D of the RMA.

[5] The Appellant received notice of the decision on 21 June 2024.

[6] The decision was made by QLDC at its meeting held on 6 June 2024.

### **Points of Appeal**

[7] The decisions the Appellant is appealing are:

- (a) the rejection of the relief sought in the Appellant's submissions, including:
  - (i) The decision to not find jurisdiction to allow the Variation to amend or remove the Outstanding Natural Feature (**ONF**)

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<sup>1</sup> *Buckingham Asset Management Ltd v Auckland City Council* ENC Auckland A027/09, 9 April 2009.

and Outstanding Natural Landscape (**ONL**) priority areas overlay (spatial extent) mapping, and / or the underlying ONL or ONF boundaries and classification within the PDP planning maps.

- (ii) The decision to not amend the spatial extent of the 'Western Whakatipu Basin' ONL Priority Area' 21.22.12 within which the Appellant's Site sits and as sought in the Appellant's Submission.
- (iii) The decision to not revise descriptions of landscape values, attributes, and related capacity of the Western Whakatipu Basin ONL Priority Area 21.22.12, including in relation to the Appellant's Site and surrounds specifically.
- (iv) Decisions on the preamble text for the landscape schedules which were otherwise contrary to expert evidence or made without supporting evidence.

**(decisions)**

**Reasons**

[8] The reasons for the appeal are as follows:

*Background to Submission*

[9] The Appellant has interests in land at the Site. The Site is Rural Zone and included in the ONL classification on the PDP planning maps.

[10] The Appellant has obtained detailed planning and landscape advice as to the potential suitability of further urban subdivision and development of the Site.

[11] The conclusion from this evidence is that:

- (a) Parts of the Site have the potential to absorb appropriately designed urban infill type development. A finer-grained landscape assessment of the Site and its surrounds shows that the current ONL classification (and the PA overlay) boundaries in relation to the Site are not logical or defensible and could be further refined

to follow both the existing urban patterning of the landscape as well as legible contour lines.

- (b) Some further urban infill type development within the Site would not adversely affect landscape or visual amenity values, would maintain the attributes and values of the much broader ONL, and could, to a degree, enhance the attributes and values.
- (c) The above would present a logical and coherent planning argument in terms of urban expansion within an area that is readily serviced by Council infrastructure, adjacent to urban zoning, within active transport connections, and could provide for much needed additional housing development capacity.
- (d) In the event the Site remained within the PA overlay, landscape evidence supports there being higher capacity for future infill / expansion of urban development without materially compromising landscape values.

[12] To clarify, this background is not supporting justification for the appeal on the Variation. Rather, this is provided as background / contextual information. The Appeal focuses solely on the landscape issues within the Variation, jurisdiction, and first principles evidence as to landscape boundary and priority area identification, and the scheduling of values and related capacity.

### **Appeal topic 1 – mapping**

#### *Mapping and spatial extent of priority areas and ONL classification*

[13] The Appellant considers the Decisions failed in fact and in law in concluding there was no jurisdiction within the scope of the Variation to make amendments to either the spatial extent of priority areas and / or underlying ONL classifications and boundaries.

[14] The following sequence of issues as at the time of notification of the Variation, are relevant to determining the scope of what submissions could be considered to be 'on' the subject of the Variation and therefore amenable to decisions.

- (a) At the time of notification of the Variation under Schedule 1, the QLDC's public notice included a web link for potential submitters to access, which was directed to the Council's GIS planning maps. The planning maps in turn included a new spatial layer / overlay (in red hatching) which corresponded in the key to the 'priority area landscape schedules'.
- (b) Many submitters to the Variation sought amendments to the spatial extent of that priority area overlay, as well as to the ONL classifications.
- (c) The Appellant's position in the hearing was that Submitters were reasonably led to believe submissions on the Variation could contest the spatial extent of priority areas, as they had been included in the planning maps. The Council could only have included those new spatial layers in planning maps through a public notification process, amenable to consultation and submissions.

[15] There was further uncertainty in terms of the mapped extent of priority areas when Council's opening case in the course of hearings sought to clarify that in fact the priority area spatial extents are not within the PDP planning maps, but rather are material incorporated by reference. On the second day of hearings Council removed the spatial layer within the PDP planning maps.

[16] The spatial extent of the priority areas (whether considered material incorporated by reference or within PDP planning maps), as at the time of notification was also slightly different than that which was approved through Joint Witness Statements in the course of the Environment Court's interim decisions on topic 2, which charted the course of the Variation. The changed spatial overlays at the point of notification further lead submitters to believe there was jurisdiction to submit on that new planning overlay / mapping.

[17] It is for all of these reasons that the Appellant says:

- (a) Council's approach to notification of the Variation had the effect of leading public to believe that the spatial extent of priority areas was within scope / amenable to submission.
- (b) The inclusion of priority area overlays (whether on planning maps or material incorporated by reference), represents a change in the status quo of district plan administration for those landholdings so mapped. Consequently, that new planning regime (and spatial extent) must be amenable to critique through submissions 'on' the variation per the first limb of the *Clearwater*<sup>2</sup> tests.
- (c) Following established case law,<sup>3</sup> boundaries of ONLs and ONFs are generally determined after examination of values and attributes. This Variation is the first time that values and attributes have been examined and consulted upon by QLDC, and it follows that logically that might result in amendments to the spatial extent of priority areas and ONL/ONF landscape classification boundaries.
- (d) There is no risk that persons directly or potentially affected by the relief to amend spatial extents of priority area mapping would be denied an effective opportunity respond and participate in the Variation and appeal process (the second *Clearwater* limb). Particularly given a high percentage of submitters themselves sought mapping changes.
- (e) Respectfully, the Appellant does not consider the matter is entirely clear within the Environment Court's sequence of interim decisions on Topic 2, as to whether further refinements to priority area spatial extents would be amenable to submission through a future variation process, or not.
- (f) Should there be found to be jurisdiction to amend the spatial extent of priority area overlays, it follows logically that there should be jurisdiction to amend the boundaries of landscape classifications within the PDP planning maps consequentially, or at the very least,

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<sup>2</sup> *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP 34/03, 14 March 2003.

<sup>3</sup> *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387.

allow for further evidential examination of those by way of a future planning process.

[18] Having established these jurisdictional reasons, the Appellant's case specific to its Site is that:

- (a) The Western Whakatipu Basin priority area spatial extent and the ONL classification boundary in relation to the Site have not been closely examined according to landscape principles, attributes and values.
- (b) A more logical and defensible ONL boundary (and priority area spatial extent) would be that which was supported by the Appellants' expert landscape evidence presented in hearings, and which is based upon existing urban patterning of the landscape as well as legible contour lines.
- (c) The upper extent of the PA boundary in relation to the Site appears to have adopted the ONL boundary in PDP maps. The determination of that boundary through stage 1 of the PDP was some 10 years ago, was not the subject of any site-specific public submission and evidence, and appears to have been a simple adoption of the urban edge at the time, rather than a geomorphological landscape boundary.

[19] In conclusion, the Appellant considers The Hearings Panel appointed by QLDC erred in law in finding that the scope of the Variation was too narrow to allow amendments to the extent of the landscape schedule boundaries / spatial extents, and ONL and ONF classifications; and

[20] The Hearings Panel appointed by QLDC erred in fact by not agreeing with the Appellant's evidence to amend the spatial extent of the Western Whakatipu Basin priority area boundary in relation to the Submitters' Site, and consequently, amendments to the ONL classification boundary in planning maps.

*Material incorporated by reference or not?*

- [21] The Appellant questions whether the spatial extent of priority areas is a matter which can suitably be material incorporated by reference in the PDP. If it can, it is unclear whether Council has followed due process in incorporating and amending such material through the Variation process.
- [22] If the schedules are in fact intended to be high level, and values, attributes, and capacity identification may change overtime, it follows that there should be express recognition that consequently the mapped areas / spatial extent of priority areas may change overtime as a result.

**Appeal Topic 2 – content of schedules**

*Specific issues in relation to the Western Whakatipu Basin ONL Priority Area 21.22.12 values and capacity descriptions*

- [23] The Appellant considers the level of detail and prescription in terms of values and attributes identification may add to unnecessary plan complexity and administration difficulties.
- (a) It seeks relief that generally simplifies and streamlines the level of detail provided in the Western Whakatipu Basin ONL Priority Area 21.22.12 schedule.
- [24] The Appellant further considers that descriptions as to values and attributes of the Submitters' Site within the Western Whakatipu Basin ONL Priority Area 21.22.12 do not accurately represent the nature of the Site.
- (a) The Appellant seeks amendments to attributes and values listed in the Western Whakatipu Basin ONL Priority Area 21.22.12 schedule which better reflect the nature of the Site, and as set out in the Appellant's submission. The following are specific amendments to this schedule sought by the Appellant.
- (b) Values descriptions should include recognition of Site's adjacency to urban areas. Urban areas have a significant influence on the priority area and their presence should play a greater role in the

description of the landscape's important land use patterns and features.

- (c) The aesthetic qualities and values should recognise the 'lower slopes of Ben Lomond' as another area where visible built development is visually confined to the lower slopes of Ben Lomond.
- (d) The perceptual values are attributed to the priority area's hard edge against urban areas. This adjacency should be included in this descriptor.

[25] The Appellant opposes the Decisions in relation to landscape capacity for the Western Whakatipu Basin ONL Priority Area 21.22.12 for the following reasons:

- (a) One cannot 'estimate' how much of an unknown future activity could be accommodated when there are potentially activities, including scale, location, form and external appearance, which we have not yet imagined.
- (b) Assessing capacity is imprecise and accepts that there is an unknown future of landscape where creative land uses may be conceived and applied for in a resource consent application.
- (c) There is no capacity rating higher than some, such as 'high or 'lots'. Similarly, the use of the wording '*extremely limited to no*' is determinative for an 'imprecise' study in the face of an unknown future.
- (d) The capacity rating scales are too determinative, especially with the understanding that landscape capacity/sensitivity is imprecise and can change over time.
- (e) The landscape capacity scale is internally inconsistent across the PDP which uses similar scales.
- (f) Types of activities that are listed for landscape capacity are ill-defined and should be amended.

[26] The Appellant seeks amendments to the capacity ratings or the removal of the Priority Area and ONL classification, to respond to the issues above.

[27] Specifically in relation to the Appellant's Site and the priority area 21.22.12, the Appellant seeks greater capacity recognition for urban expansion where that development will read as infill on the lower slopes of Ben Lomond near Fernhill (or wording to similar effect).

#### **Preamble text to the landscape schedules**

[28] The Appellant considers there is ambiguity in the preamble text which needs amendment, to address the following:

- (a) How the schedules are to be applied in relation to consented / permitted activities, or different weighting of the schedules according to different consent activity status.
- (b) How the schedules would or could be relevant in the case of an application for any future plan change, review, or variation process.
- (c) How the schedules would or could be relevant to any other spatial planning / future development strategy exercise.
- (d) Reconciling the text of preambles which assumes the schedules can be supplemented by further site-specific assessments, with the content of schedules which are highly detailed and prescriptive.

#### **Further general reasons for Appeal**

[29] The Decisions do not otherwise:

- (a) Provide the most appropriate way in which to achieve higher order provisions and strategic policies and objectives of the PDP;
- (b) Give effect to the operative or proposed regional policy statements for Otago;

- (c) Give effect to national direction within the Act including section 6b;  
or
- (d) Provide for the most efficient and effective planning regime in accordance with section 32 of the Act.

**Relief Sought**

[30] The Appellant seeks the following relief:

- (a) that QLDC's decision is overturned and the Appellant's submission is accepted; or
- (b) that QLDC's decision is overturned and relief set out in this appeal, and in the attached table are accepted; or
- (c) Any further consequential, alternative, or additional relief which gives effect to the concerns raised in the Appellant's submission, or within this Appeal; and
- (d) Costs.

[31] The following documents are **attached** to this notice:

- (a) the Appellant's submission;
- (b) the QLDC's decision; and
- (c) a list of names and addresses of persons to be served with a copy of this notice.

Dated: 5 August 2024



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**Signed for Passion Development Limited**  
by its solicitor and duly authorised agent  
R E M Hill / B A G Russell

**Address for Service of the Appellant:**

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**Advice to recipients of copy of Notice of Appeal**

*How to become party to proceedings*

You may be a party to the appeal if you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court, and serve copies on the other parties within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

Provision	Relief sought (by underline / strikethrough)	alternative relief	Scope
<b>Preamble</b>			
<b>1.1-1.3</b>	Greater clarity is required in these clauses to understand what relevance the Schedules have in specific consenting contexts, what weight those are to be given, and how those are to assist efficient and effective plan administration. Any references to evaluative language should be removed.	Alternative, consequential, or other relief to give effect to the issues in the Appeal	Para 3A sets out specific relief to the schedule values and attributes, however their application is intrinsically linked and reliant on the preamble text and the application of the schedules in a broader context. That preamble application changed extensively through the hearing process.
<b>2</b>	Greater clarity is required in the application and weighting of the schedules. The Appellant further seeks amendments to ensure the schedules do not apply, and are not relevant for, private plan changes / plan review or change processes	Alternative, consequential, or other relief to give effect to the issues in the Appeal	The submitter also sought in the alternative, additional or consequential relief necessary or appropriate to address the matters raised in the submission and/or the relief requested in the submission,
<b>4.1-4.4 landscape capacity</b>	The preamble context for landscape capacity needs to be amended (if not deleted) to provide greater clarity and recognition for the quantum and types of activities listed which have been assessed for capacity, and the methodology used to assess any resulting capacity.	In the alternative, delete references to landscape capacity and defined activities within the schedules	
<b>4.5</b>	Amend the capacity rating scale to reflect that one cannot 'estimate' how much of an unknown future activity could be accommodated when there are potentially activities, including scale, location, form and external appearance, which we have not yet imagined. The schedules acknowledge that only a certain list of general activities have been assessed which are directed in Chapter 3, and other activities will in future require their own capacity assessment. The rating scale should therefore be headers only, rather than include any evaluative wording, and / or be refined to a five	In the alternative, delete references to landscape capacity and defined activities within the schedules	

	<p>point scale that is less determinative, especially with the understanding that landscape capacity/sensitivity is imprecise and can change over time, such as (for example):</p> <p><u>1. Very High 2. High 3. Medium 4. Low 5. Very Low</u></p>		<p>including modifications to the landscape schedule or any such other combination of plan provisions, objectives, policies, rules, standards, and zoning provided that the intent of this submission, as set out in Part 3 of this submission, is enabled</p>
<b>5.1</b>	<p>Ensure the listed and defined activities to which capacity relates are either paired back so they are 'high level' and grouped according to potential effects, or otherwise, are only as defined in the PDP already.</p>	<p>In the alternative, delete references to landscape capacity and defined activities within the schedules</p>	
<b>5.2</b>	<p>The range of land use activities addressed in the capacity section of the PA Schedules include the activities prescribed by SP 3.3.38. It is acknowledged that this does not span the full array of land use activities that may be contemplated in the PAs over time. <del>In the case of a future application for a land use activity that is not addressed in a PA Schedule, an assessment applying the principles set out in 3.3.43, 3.3.45 and 3.3.46 is required.</del></p>	<p>In the alternative, delete references to landscape capacity and defined activities within the schedules</p>	
<b>General relief</b>	<p>As set out in the Appeal, general relief is sought in terms of simplifying and streamlining the wording of the preamble and providing greater clarity generally in terms of when the schedules are to be considered, what weight</p>	<p>Alternative, consequential, or other</p>	

<b>sought on preamble</b>	those are to be given, and their purpose to aid in efficient plan administration.	relief to give effect to the issues in the Appeal	
<b>21.22.12: Western Whakatipu Basin ONL - Schedule of landscape values</b>			
<b>important land use patterns and features,</b>	<p>Add greater recognition for the following attributes and values within the Site:</p> <ul style="list-style-type: none"> <li>• The edge of the PA boundary and ONL classification is a cadastral pattern instead of any landscape pattern or feature. This should be changed (as sought in the relief in mapping above), or otherwise recognised in the schedule if it is retained. Along with the need to acknowledge the capacity for urban expansion in-between the existing urban development</li> <li>• Values descriptions should include recognition of Site's adjacency to urban areas. Urban areas have a significant influence on the priority area and their presence should play a greater role in the description of the landscape's important land use patterns and features.</li> <li>• The aesthetic qualities and values should recognise the 'lower slopes of Ben Lomond' as another area where visible built development is visually confined to the lower slopes of Ben Lomond.</li> </ul>	Alternative, consequential, or other relief to give effect to the issues in the Appeal	Para 3A and 3C of submission

	<ul style="list-style-type: none"> <li>The perceptual values are attributed to the priority area's hard edge against urban areas. This adjacency should be included in this descriptor.</li> </ul>		
<b>Capacity</b>	<ul style="list-style-type: none"> <li>Refine the list of activities such those are 'effects' based and high level only, or otherwise only reference defined activities within chapter 2 of the PDP.</li> <li>Amend the capacity list so there is some recognition of the type, quantity, design, location of the referenced activities</li> <li>Recalibrate the rating scales as set out in the appeal above</li> </ul> <p>Or in the alternative:</p> <ul style="list-style-type: none"> <li>Recognise that within the Site, there is higher capacity for future expansion, integration, co-location, and further capacity for urban expansion, commercial recreational activities, visitor accommodation and tourism related activities, gondolas, towers and cableway</li> </ul>	<p>Alternative, consequential, or other relief to give effect to the issues in the Appeal (including either amending the mapping, or recognising within the text of the schedule that the mapping likely needs further refinement.</p>	