

**BEFORE THE HEARINGS PANEL**

**FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

**IN THE MATTER of the Resource Management Act 1991**

**AND**

**IN THE MATTER OF of the Rural Hearing Stream 2**

**STATEMENT OF EVIDENCE OF**

**DI LUCAS**

**ON BEHALF OF UPPER CLUTHA ENVIRONMENTAL SOCIETY INCORPORATED**

**LANDSCAPE**

**21 April 2016**

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## INTRODUCTION

1. My full name is Diane Jean Lucas. I am a landscape architect for the company Lucas Associates, established in 1979, and currently based in Christchurch.
2. I hold the qualifications of BSc in Natural Sciences (Otago), and a Masters in Landscape Architecture (Lincoln). I am a registered NZILA Landscape Architect, and a Fellow of the NZLIA, and have more than 40 years' experience in the industry.
3. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.
4. I am very familiar with the Queenstown Lakes District. Following preliminary advice to council during plan development, in 2001 I undertook assessments and provided evidence for UCES to the Environment Court<sup>1</sup> regarding landscape aspects that resulted in the Operative District Plan. That Court identified a tension between landscape values and natural values that needed to be addressed.
5. In the intervening years I have used the ODP to assess many sites and various landscapes in the Wakatipu, Cardrona and Upper Clutha for the Council, for UCES, for Wakatipu Environment Society, as well as for land owners and developers. I have assessed the QL landscapes and proposed a number of 'landscape lines' that have been adopted. I have tested the ODP assessment matters in many areas.
6. I have been involved in development of district plans around the country, including for the council for Rotorua Lakes following the Environment Court's agreement with community criticism of the Proposed Plan's inadequacy for protecting natural landscape values. I have also been involved in landscape assessments of regions, districts and locations elsewhere.
7. For this council I previously prepared a preliminary ecosystems framework<sup>2</sup> as well as conducting charrettes with communities identifying agreed desired futures<sup>3</sup>. I have been

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<sup>1</sup> WESI v QLDC 1043/98, 1165/98

<sup>2</sup> *Indigenous Ecosystems. An ecological plan structure for the Lakes District.* Lucas Associates. A report to the QLDC. 1995.

involved in assessing many different parts of the district for consideration of ONL delineation and development effects.<sup>4</sup>

8. I have applied the ODP and assessed an extensive range of projects under it, in relation to ONL, ONF, VAL and other rural landscapes. I have addressed very extensive and well as very small proposals. I have applied the ODP assessment matters /criteria to all.

## **SUMMARY**

9. I have read the background landscape reports by Read, Steven and Espie that inform the PDP.
10. I have read the evidence of Marion Read, a graduate landscape architect, prepared for QLDC for both Hearing Streams 1 and 2. I agree with Dr Read (19 February 2016, para 2(b) that all of the non-urban landscapes of the District are important. I agree with simplifying the landscape classification to ONL, ONF and other rural areas as RLC. However some of the ONL – RLC delineation in the Upper Clutha I assess as not being adequate.
11. Dr Read suggested (19 February 2016, para 3(b), that assessment matters needed to be rewritten *“to clarify the distinction between landscape character and visual amenity.”* The adequacy of this intent, and the adequacy of the resultant PDP Objectives, Policies and methods, are questioned. The high value and high quality of the District’s landscapes are acknowledged but the fact that it is their natural values, their naturalness, that provide almost all of this value and quality has received inadequate articulation in the PDP. This problem begins in the strategic sections of the PDP and expanded in Chapter 21, the chapter addressing the whole of the non-urban district.
12. To adequately address landscape management as per Rural Chapter 21, I have also considered the related Chapters 3, 6 and 33. The RMA requires that outstanding natural features and outstanding natural landscapes be protected. Objective 3.2.5.1 is appropriately to *“Protect the natural character of Outstanding Natural Landscapes and Outstanding Natural Features from subdivision, use and development.”* Policy 3.2.5.1.1 limits this to protecting them from the adverse effects of subdivision and development.

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<sup>3</sup> eg. Arrowtown 1994 & 2002.

13. The natural values are a crucial aspect of the outstandingness of the ONL and ONF, and are the context and contributors to for the RLC. Yet the PDP Chapter 6 Landscapes does not seek to protect the naturalness of the rural lands of the district, not of the ONL, not of the ONF, not of the National Parks and other conservation lands. Nor of the lakes and rivers.

14. Having reviewed Chapter 21 and its associated chapters, I am extremely surprised and disappointed that the Council is proposing to not protect very important natural values of this crucial district with which it is entrusted. Whilst more explicitly addressed under the ODP, the PDP is deficient in addressing the sustainable management of the natural landscapes of QLD.

## **ANALYSIS**

15. Strategic Directions are stated in Chapter 3, including:

**Objective 3.2.4.5** *Preserve or enhance the natural character of the beds and margins of the District's lakes, rivers and wetlands.*

*Policies 3.2.4.5.1 That subdivision and / or development which may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins be carefully managed so that life-supporting capacity and natural character is maintained or enhanced.*

### **3.2.5 Goal - Our distinctive landscapes are protected from inappropriate development.**

**Objective 3.2.5.1** *Protect the natural character of Outstanding Natural Landscapes and Outstanding Natural Features from subdivision, use and development.*

**Objective 3.2.5.2** Minimise the adverse landscape effects of subdivision, use or development in specified Rural Landscapes.

**Policies 3.2.5.2.1** Identify the district's Rural Landscape Classification on the district plan maps, and minimise the effects of subdivision, use and development on these landscapes.

**Objective 3.2.5.5** *Recognise that agricultural land use is fundamental to the character of our landscapes.*

**Policies 3.2.5.5.1** *Give preference to farming activity in rural areas except where it conflicts with significant nature conservation values.*

Also,

**Objective 3.2.1.4** *Recognise the potential for rural areas to diversify their land use beyond the strong productive value of farming, provided a sensitive approach is taken to rural amenity, landscape character, healthy ecosystems, and Ngai Tahu values, rights and interests.*

(my under-lining emphasis)

16. Chapter 6 is a further strategy chapter providing the overall direction for managing Landscapes. However the Objectives, Policies and Methods for implementing the management of non-urban landscapes are largely contained with Chapter 21, the Rural chapter. The plan structure addresses all non-urban lands and waters as “rural”. Lakes, mountain peaks, National Parks, alpine crags and glaciers, all are addressed as “rural”, and are not farmland, yet the Rural chapter is very focussed on farming.
17. The primary landscape Objective, 6.3.1 references the direction of RMA s.6(b), but inadequately in not referencing the requirement for protection from inappropriate use. In these lakes landscapes, vegetation change whether deliberate or not, such as with the emergence of wilding forests, can be an inappropriate use. There is no policy under 6.3.1 to protect the natural landscape attributes. Nothing to address natural character or the naturalness of the ONL or ONF, let alone of the RCL.
18. As per s.6(b), the landscapes addressed involve both outstandingness and naturalness. From my review, the objectives, policies and methods are entirely inadequate in that they largely ignore the protection of naturalness of ONL and ONF areas.
19. s.6(a) is similarly inadequately implemented. The landscapes being addressed involve very substantial lakes, rivers and wetlands. The natural character of these and their margins is to be preserved as a Part 2 matter. Whilst Objective 3.6.3 addresses lakes and rivers, neither the objectives nor the associated policies make any reference to preserving their natural character. Under Chapter 33, Indigenous Vegetation and Biodiversity, Policy 33.2.3.6 is to “*Ensure indigenous vegetation removal does not adversely affect the natural character of the margins of water ways.*” Whilst this policy is supported, limited to addressing only vegetation removal, it in itself is not adequate to protect the natural character of the many major and minor water bodies that contribute so importantly to the district’s landscapes, including to the ONL and some ONF.

20. Landscape assessment best practice recognises biophysical, perceptual and associative attributes. The Landscape Objectives and Policies inadequately recognise this breadth of landscape value, for example, Objective 6.3.7 in addressing biodiversity.
21. Policy 6.3.1.11 addresses protection of landscape character and visual amenity. Yet this is inadequate without a directive as to what landscape character and visual amenity is to be protected. As per s.6(b) the directive would appropriately be to protect the naturalness.
22. Policy 6.3.1.12 is similarly inadequate in protecting cultural and historic aspects, with “geological features” the only natural aspect recognised. This policy too fails in that natural character, such as geomorphological character, is not addressed.
23. Objective 6.3.2 is to address the known issue of cumulative landscape effects, yet alarmingly does not address naturalness.
24. Objective 6.3.3 addresses ONF areas, but the Policies provide no direction to protect their natural attributes. In my opinion it is entirely inadequate to address landscape quality, character and openness without articulating the objective of protecting, maintaining or enhancing naturalness.
25. Objective 6.3.4 is specifically to address ONL but has no policy requiring the naturalness that underpins the ONL be protected, maintained or enhanced. Given the extensiveness and variability of the ONL areas, there can be no assumption that considerations of quality and character, landscape character or visual amenity will adequately address protecting, maintaining or enhancing landscape naturalness with this policy void.
26. Objective 6.3.5 addresses the RLC, the non-urban areas that are neither ONL nor ONF. I note that 6.3.5.3 recognises the value of openness, and 6.3.5.6 the value of open landscape character. There is however no recognition of natural openness.
27. Chapter 6 Landscapes recognises the value of open space and the problems that have occurred from reduced open character.
28. Objective 6.3.1.7 recognises that urban expansion needs to both avoid impinging on ONL and ONF, but also “*minimise disruption to the values derived from open rural landscapes.*” I note the latter is inclusive of addressing the open rural landscapes that are ONL and ONF areas. It is not limited to Rural Landscape Classification (RLC) areas. I agree that openness

needs to be recognised as a valuable landscape attribute in all of the landscape overlays. For example, the open character of the valley floors of the major rivers feeding these lakes as well as the terraces and outwash surfaces that extend below them.

29. Due to the substantial deficiencies evident in Chapter 6, and the mismatch with Part 2 matters, it is unsurprising that the Objectives, Policies and Methods to address the Rural zone are also deficient. This is particularly with regard to addressing natural character and naturalness, and landscape attributes such as openness and visual coherence. Coherence considerations, regarding the site and wider landscape scales, are essential considerations in assessing change.
30. The Landscape strategy outlined in Chapter 6 is to largely be implemented through overlay methods in Chapter 21 Rural. That is, the ONL and ONF as well as the RLC are addressed. Being largely comprised of natural mountains and lakes, I understand that ONL overlay the majority of the Rural zone. The Zone Purpose (21.1) is “to enable farming”. However, for much of the Rural zone, farming is not appropriate.
31. Addressing the whole of the Rural zone, and seemingly the only overview landscape policy for this very extensive zone, Objective 21.2.1 repeats this directive to enable farming and fails to recognise the importance of protecting natural character, natural attributes or naturalness. Similarly Policy 21.2.1.1, seemingly the only overall policy to address landscape values or those of lakes and rivers, but is to enable farming and does not mention protecting natural character.
32. It is best practice that natural elements, natural patterns and natural processes are all addressed where the landscape values are fundamentally about their natural character.
33. Whilst seemingly intended to address landscape effects, Policy 21.2.1.3 requires buildings to be set back from boundaries and makes no mention of doing this to protect natural landscape attributes, the essential attributes of the District. The amenity considerations are inappropriately narrowed to only visual amenity when all senses should be addressed. Visual coherence and landscape character are not addressed, but would be helpful. The policy appears more concerned with a neighbour’s outlook than with protecting the landscape resource. I note the setback Standards (Table 2, 21.2.1 and 21.5.2) limit discretion to “*rural amenity and landscape character*” with no consideration of naturalness. Considering the Rural zone context, the minimum setbacks as defined are inadequate for sustaining the landscape resource.

34. Policy 21.2.1.6 is the overall policy to address cumulative effects, a known landscape issue in the district. However the policy makes no mention of avoiding adverse cumulative impacts on natural or landscape character.
35. In contrast, ODP assessment matter (E) addressing cumulative effects explicitly addresses effects on natural landscape and effects on visual coherence and naturalness. This I have found very useful in providing a structure for assessment. This and others of the ODP assessment matters/criteria have been found very useful in decision making. For example, refer Bald Developments v QLDC Decision No. C055/2009 appended. The assessment regarding cumulative effects is at paragraphs 151 – 153.
36. The structure and language, the comprehensiveness of the ODP assessment matters provides a “level playing field” for practitioners to assist decision makers. A common set of questions to ensure the full raft of landscape matters are addressed by all participants. It helpfully demonstrates to all the breadth of landscape consideration. Collapsing such matters into some generic language such as landscape quality is not adequate in my opinion.
37. In my opinion the 21.2.1 Objective, policies and the assessment matters are deficient in terms of addressing the landscape resource of the very extensive Rural zone.
38. Objective 21.2.12 addresses lakes and rivers and their margins. With important wetlands in the district, it is unclear as to why wetlands are not addressed as per RMA s.6(a). I note that Policy 21.2.12.5 seeks only to protect, maintain or enhance natural character rather than preserve it as required in s.6(a). Addressing setbacks from water bodies (Table 2, 21.5.4) provides for the very minimal setback distance of 20m as a restricted discretionary activity. However discretion including consideration of open space, landscape and natural character, as well as visual amenity and biodiversity value, is supported.
39. However considering effluent storage ponds (21.5.5), discretionary consideration wrongly precludes natural character.
40. It is of concern that Policy 21.2.12.7 addresses “*adverse effects on visual qualities*” but makes no mention of avoiding or mitigating effects on natural attributes. The focus on visual qualities only is inadequate

41. The Standards demonstrate similar inadequacy for addressing naturalness. For example, some Mining Activities are a permitted activity in an ONL and could through time result in significant adverse effects (21.4.30). Mining rehabilitation is required (21.4.31) to return land “to its original productive capacity”. However returning it to a more natural state may be more appropriate.
42. Table 3, 21.5.16, allows for large buildings (up to 500m<sup>2</sup>) as a permitted activity, with larger footprints requiring no consideration of natural attributes. Whilst consideration of visual prominence is to be addressed, potential effects on openness is not. These appear to be serious deficiencies.
43. Building 21.5.17 allows for tall buildings in the Rural zone. Buildings are permitted to be 8m tall. With floors typically of 2.7m, a small excavation allows for 3-storey buildings to 500m<sup>2</sup> as a permitted activity. If the ground slopes, then a building can step up the slope potentially resulting in even greater landscape effects. The permitted regime I consider to be excessive for these vulnerable landscapes.
44. For consent for buildings taller than 8m, discretion is restricted to addressing some landscape attributes, but not naturalness and not cumulative effects. Also there is no encouragement to cluster buildings to help mitigate effects.
45. Considering farm buildings, 21.5.18.2 provides permitted activity status for a farm building for every 25 ha for properties greater than 100 ha. In terms of location, the only method to address naturalness is that they not protrude onto a skyline or above a terrace edge when viewed from neighbours or roads within 2 km (21.5.18.7). However, permitted to 10 m tall (21.5.20), such farm buildings scattered about could have significant adverse effects on landscape and natural character. Important openness can be particularly vulnerable.

### **ASSESSMENT MATTERS (Landscape) 21.7**

46. The principle to address (21.7.1.3) “*Effects on landscape quality and character*” seeks to “*maintain or enhance the quality and character*” of ONF and ONL. Whilst this principle ought to be implementing s.6(b) and thus protecting the outstandingness and naturalness, it does not seek to maintain or enhance the naturalness of the ONL and ONF. In my opinion this is an oversight.

47. 21.7.1.3 seeks to take into account various landscape attributes:

- (a) Addresses the biophysical, but limits this consideration inappropriately. The geomorphological character is reduced to elements of processes having “*a profound influence on landscape character*”. Biota is limited to vegetation. Birdlife is excluded.
- (b) Addresses “visual attributes” rather than perceptual. It is unclear why the soundscape which is an important natural attribute in some ONL areas is excluded. “*Human influence and management*” is included as a “visual attribute” with absolutely no directive regarding its contribution to or detracting from the outstandingness and naturalness of the ONL or ONF. I consider this attribute inappropriate.
- (c) Address appreciation and cultural attributes,
- (d) Considering only (a) to (c) the effects on the existing landscape quality and character are to be assessed. This ‘test’ fails s.6(b) in not requiring effects on naturalness be addressed. Similarly (e) should require that naturalness or natural character not be degraded.

48. By not addressing protection of the naturalness of ONL and merely seeking that development fit in with the existing landscape character I consider puts these landscapes at risk. The ONL mapped for QLD are very extensive and include development nodes and areas where naturalness has already been significantly compromised but that the landscape context and scale are such that the outstandingness prevails. However this is at risk of being significantly diluted if developments need only fit into that compromised state. It is crucial that protection of naturalness, that avoiding, remedying and mitigating effects on the natural character of the ONL, be clearly articulated as being required. The ONL and ONF Assessment Matter 21.7.1 fails to do this.

49. I have assessed many proposals under the ODP assessment matters and found them very useful as a clear guide as to what needs to be addressed. Considering the assessment matters listed at 21.7.1 as the alternative, I am very concerned. There is a complete lack of guidance to potential applicants to gain an understanding of the attributes of the ONL or ONF that a proposal needs to be assessed against.

## **50. Discussion**

51. I have read the documents provided for QLDC, namely the landscape assessment by Marion Read, the peer review by Anne Steven, and the s.42A by Scott Barr. I have read the submission from UCES as well as several other submissions on Chapter 6.

52. Mr Barr, a planner and not a landscape architect, assesses that the PDP is preferable to the ODP. Mr Barr's justification is with regard to efficiency and effectiveness in better meeting the purpose of the RMA. However, in considering the landscapes of the District, I do not agree that the PDP landscape provisions would be more effective at implementing the protection of the ONL of the District. Nor would they necessarily be more efficient or effective at addressing landscape effects as per the 4<sup>th</sup> schedule with regard to the ONL and other non-urban lands.
53. The PDP proposes addressing non-urban landscapes as either ONL or Rural Landscape. That is, there is to be no specific management for ONL buffer, foreground or transitional landscapes with regard to their amenity value to protect the values of the ONL. As has been recognised in the NZCPS in Policy 15, effects generated on ONL from beyond need to be addressed, not merely effects generated from within ONL. This was demonstrated in the King Salmon case, where the salmon farm was proposed 500m or so beyond the delineated ONL, yet was assessed to have adverse effects on the ONL.
54. Mr Barr notes (para. 1.1) the importance of large landholdings and traditional pastoral farming for rural character. I agree. However he assesses this is a value "*of its own and is distinct from amenity values*". I disagree.
55. Mr Barr supports the proposed RLC. He states (para. 1.1) that it "*recognises the value of rural character and the openness and lack of domestic elements where these are present within the landscape.*" It is unclear what this statement means, re 'the lack of domestic elements where these are present'.
56. Many of the landscapes and landscape units of QLD have attributes vulnerable to other adverse effects, and not only the loss of openness and introduction of domestic elements. It is not merely that they are rural, that is non-urban, that they contribute importantly to the district's landscape resource. Their particular rural character contributes importantly, frequently involving considerable aspects of naturalness.
57. The PDP appears to "dumb down" non-ONL rural landscapes to formulaic could-be-anywhere ruralness. From my analysis, I can accept the non-provision of minimum lot size or residential separation distance. However, to exclude these methods requires robust other methods to sustain the landscape and amenity values.

58. I do not agree with his analysis that *“The assessment matters of the PDP, for ONLs and ONFs, and the Rural landscape, are based on those of the ODP but they have been restructured so as to separate the assessment of landscape effects from those of visual effects. These were confused in the ODP. This is in keeping with best practice.....”* There is no professional requirement to separate visual from landscape. That would be entirely bizarre. I disagree with the s42A statement *“I consider that the assessment matters are effective at implementing these parameters for landscape assessments and are consistent with the NZILA Best Practice Guide – Landscape Assessment and Sustainable Management, 2010, where these parameters are derived to assess the equality of the landscape and what parts of it are valued and could be vulnerable to development.”*
59. Direction to protect the natural landscape values should be made explicit in the objectives, policies and methods. That natural elements, natural patterns and natural processes underpin the landscape values of the district requires emphasis. Also natural topography, natural form, natural values, and geomorphological. Similarly valued attributes such as open character, pastoral, broadly visible, visual coherence and arcadian have been very helpful. As mentioned above, generic terms such as visual quality provide little guidance.
60. As mentioned previously, the usefulness of the ODP assessment matters in achieving adequate assessments for consideration has been well-demonstrated over the decades. I note Dr Read’s articulation of such aspects in some sample assessments for council consideration (refer appendix).

## **MAPPING**

61. The landscape lines have been delineated throughout the QD to differentiate ONL, ONF and RLC. Prepared without using first principles, there are some lines proposed that I question. Two examples are given.

## **WATERFALL CREEK**

To address the boundary between urban Wanaka and the Wanaka ONL the boundary should seek to reflect this major system, from the bedrock source through to the lake. The current proposal inappropriately follows Ruby Island Road, near Waterfall Creek, cutting arbitrarily through the middle of an important geomorphological sequence. The very steep flank to Mt Alpha and waterfall results from the remnant glacial hills below. The active fan surrounds them. The Otago Regional Council map (2011, appendix 1) shows the historic flow paths around and between the two remnant hills, and the active debris lobe at the top of the fan.

62. My analysis of this landscape as experienced from various locations does not support the ONL boundary delineated in the PDP. The mapping is not respectful of the outstanding natural landscape values of the Waterfall Creek complex that includes both the dramatic eroding bedrock country above and the deposition complex below. Instead, inclusion in the ONL of the active fan lobe along with at least one of the impounding hills on the town side of Waterfall Creek, along with an encircling old flow path, would be appropriate. I refer to this first hill as Waterfall Hill.



63. Viewed from the lake (see panoramic photo attached), Waterfall Hill contributes very importantly to the ONL. It forms a dramatic feature with a complex vegetative overlay. Waterfall Hill together with the roche moutonnée feature to the north of Waterfall Creek enclose the lower reach of the Creek. The two hills qualify similarly in terms of contributing outstandingness and naturalness to the ONL.

64. Contrary to the previous indicative line, a boundary along Ruby Island Road and around the lakeside base of Waterfall Hill is proposed in the PDP. This lakeshore strip boundary does not address the relationship between town and natural landscape. The important landscape attributes of Waterfall Hill, the active fan and ancient channelling have been ignored in the

delineation. The complex would seem to provide an appropriate limit to the town and a dramatic interface of town and ONL. The inclusion in the ONL of adequate deposition lands south of Waterfall Creek is important to this interface, including Waterfall Hill and the channel and fan surfaces that surround it.

## **DUBLIN BAY**

65. Most land on the slopes to Dublin Bay is appropriately proposed as ONL including on the roche moutonnée or isolated mountain (LT 15) Mt Brown range. However the important Maungawera Fan has been excluded (LT 11d, refer LT map). Via Quartz Creek and Rods Creek, this landform flows out from the confines of the Maungawera Valley around the end of the range to form a spectacular fan with a 5 km long frontage to Lake Wanaka, spilling out to enclose Stevensons Arm. (refer LT map attached) The smooth fan surface is emphasised with irrigated pasture and tree cover primarily riparian, and the Mt Burke farm node.
  
66. The dramatic geomorphological contrast between the bedrock of The Peninsula just a few hundred metres across the water, and emerging from the Maungawera Valley, the sprawling deposition of the Maungawera Fan cueing to a former glacial era, is now only fed by the diminutive Quartz Creek and Rods Creek.
  
67. Dr Read and Ms Steven have excluded this important landform.

**Appendix 1**

Waterfall Creek, Wanaka

Otago Regional Council, 2011, page 39.



## Appendix 2

### Excerpts from Marion Read's assessments for QLDC:

#### Damper Bay Estates Limited-6 houses in ONL-District Wide

##### Damper Bay Paragraph 43

While the natural character of the foreground is modified being clearly farm land (as indicated by fences, stock, tracks and the hay shed) the natural character of the more distant elements appears very high in these views. The approach to Damper Bay from the east is one of increasing natural character as vineyards and farmland are passed and the eastern hillocks appear. The approach from the west has higher natural character, once the lake edge is left, and the appearance of the western hillocks of Damper Bay contribute to this.

##### Damper Bay Paragraph 45

It is my opinion that the views of the driveways to all lots would detract from the natural character of the views from the Wanaka Mount Aspiring Road to a significant degree.

The appearance of the driveway to Lots 2 and 3 in views from the Wanaka Mount Aspiring Road would be a clear indicator that residential activity was present on the site, even though the actual dwellings would not be visible in the same views. The natural character of the part of the site through which it would pass is relatively high and it would significantly diminish this character in these views approaching Damper Bay.

##### Damper Bay Paragraph 46

The experience of walking from Waterfall Creek to Damper Bay is, in my opinion, one of moving from a fairly highly modified landscape into areas of increasing natural character.

The central valley of Damper Bay itself has clearly lower natural character than the hillocks to the east. However, in the context of Mount Roy behind it the degree of natural character is still significant. It is my opinion that the proposed dwellings would be sufficiently prominent in views from the walking track to significantly detract from the natural character of these views.

##### Damper Bay Paragraph 47

The experience of walking from Glendhu Bay to Damper Bay is, in my opinion, one of moving through a landscape of high natural character.

However, as with views from the other side of the bay, I consider that the proposed dwellings would be sufficiently prominent to also significantly detract from the natural character of these views.

#### Damper Bay Paragraph 48

Views of Damper Bay from the lake from the route travelled between Glendhu Bay and Wanaka are of what appears to be a landscape with a highly natural character.

It is my opinion that the presence of the proposed dwellings would be sufficiently prominent to significantly detract from the natural character of these views.

#### Damper Bay Paragraph 51

The priority and enhancement mitigation planting is to comply with proposed management controls but there is nothing in them to ensure that the planting does not detract from the natural patterns on the site.

The subsequent delineation of lot boundaries would likely detract from the existing natural patterns and processes and adversely affect the natural landscape character.

#### Damper Bay Paragraph 52

As the enhancement / mitigation planting is intended to include riparian planting to improve water quality its implementation in this vicinity is likely to enhance rather than detract from the natural line and form of the landscape.

#### Damper Bay Paragraph 56

In conclusion, it is my opinion that the site has some capacity to absorb development. The inclusion of the six dwellings without mitigation would have an unacceptably high impact on the natural character of the site.

### **G.Mead-Single house and garage ONL-District Wide**

#### Mead Paragraph 14

No lighting is to be permitted on this driveway and I consider that this is entirely appropriate in such a remote, natural location.

#### Mead Paragraph 20

The dwelling would be partially visible from a distance, as discussed above and this would be inconsistent with the natural character of the site and the surrounding landscape.

## **Clevermaker Limited ONF-Single house and garage Roy's Peninsula**

### Clevermaker Paragraph 17

Effects on the naturalness of the landscape would occur but would be limited in scale and extent. The dwelling is to be nestled into a natural hollow on the hillside and the earthworks necessary to erect it would be largely obscured by the dwelling itself.

The proposed driveway would follow a small valley and is intended to meander along its natural form. While this also would reduce the naturalness of the landscape the design ensures that it would do this to a minor degree.

### Clevermaker Paragraph 22

The proposed dwelling would further domesticate the landscape by being located within a natural open landscape. However, in my opinion the location of the dwelling and the intention to revegetate the balance of the site in indigenous vegetation would ensure that this effect would be small.

### Clevermaker Paragraph 24

A dwelling, garage and new driveway would be elements inconsistent with the existing natural character of the site. However, because of the lack of visibility and the revegetation of the balance of the site I consider the degree of this effect to be insignificant.

**Demonstrating such considerations are usefully applied to the whole Rural zone, excerpts from Marion Read's assessments of VAL areas for Council:**

## **G. Murray-4 lot subdivision and development in VAL**

### Murray Paragraph 4.4

It is my opinion that any excess fill material should be required to be dispersed as widely as is reasonably possible in order to maintain the natural topography.

### Murray Paragraph 6.2.2

The nature of the development is a residential subdivision. The degree to which this will compromise the natural or pastoral character of the landscape is extremely limited, not the least by the 'bony' nature of the site itself which will make domesticating activity limited in scope.

Murray Paragraph 6.3.6

The proposed new access roads will not change the line or form of the landscape, nor affect the naturalness of the landscape.

Murray Paragraph 7.4

In the terms of the QLDC District Plan, the proposed subdivision and development will not have any adverse effect on the natural and pastoral character of the landscape in the vicinity.

(my underlining emphasis)

**BEFORE THE ENVIRONMENT COURT**

Decision No C055/2009

21 AUG 2009

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an appeal under section 120 of the Act

**BETWEEN** BALD DEVELOPMENTS LIMITED  
(ENV-2007-CHC-000242)  
Appellant

**AND** QUEENSTOWN-LAKES DISTRICT COUNCIL  
Respondent

**AND** UPPER CLUTHA ENVIRONMENT SOCIETY  
INCORPORATED  
Section 274 party

Hearing: at Wanaka on 27 and 28 April and 9, 10 and 11 June 2009

Court: Alternate Environment Judge DFG Sheppard  
Environment Commissioner W R Howie  
Environment Commissioner S Watson

Appearances: M R Christensen and A C Ritchie for the appellant  
M A Ray for the respondent  
A Borick for the section 274 party

Decision issued: 12 August 2009

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**DECISION OF THE ENVIRONMENT COURT**

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- A. The appeal is disallowed, and the decision declining the resource consent application is confirmed.
- B. The question of costs is reserved. Directions are given in case that question has to be decided by the Court.



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## Introduction

[1] Bald Developments Limited (BDL) applied to the Queenstown-Lakes District Council for consent to a subdivision of about 680 hectares of rural land in the upper Clutha Valley near Luggate to create 38 residential lots and building platforms and one lot (to be held in common by the owners of the residential lots) for farming and recreational activities. Land-use consent was sought for construction of dwellings, and common recreational buildings and facilities. The application was opposed by the Upper Clutha Environment Society Incorporated (UCESI).

[2] After a hearing by two independent commissioners, consent was refused, and by this appeal BDL sought that consent be granted. However by the time the appeal was heard, BDL and the Council had reached agreement that consent should be granted to a modified proposal by which 25 rural-residential lots and one common lot for farming and recreation (630.38 hectares) would be created, subject to conditions on which they had reached agreement.

[3] Owners of properties adjoining the site on the east and the west gave their written approvals to the modified proposal. However UCESI (which took part in the appeal under section 274 of the RMA) maintained its opposition to the modified proposal, contending that having regard to relevant provisions of the Act and the district plan, consent should be refused.

[4] UCESI submitted that the Council should not be permitted to call evidence in support of the modified proposal. After hearing submissions, on 27 April 2009 the Court gave an oral ruling rejecting that submission.<sup>1</sup>

## The primary legislation

[5] The appeal has to be decided in accordance with the Resource Management Act 1991, by which the decision has to be made for the purpose of the Act: to promote the sustainable management of natural and physical resources.<sup>2</sup> The meaning of the term sustainable management is described in section 5(2) of the Act, and elaborated by provisions of sections 6, 7 and 8 of Part 2. Relevantly, by section 6(b) the Court has to recognise and provide for a

<sup>1</sup> Transcript, 27.04.09, pp10f.  
<sup>2</sup> RMA s 5(1).



matter of national importance, being the protection of outstanding natural landscapes from inappropriate subdivision, use and development.

[6] Subject to Part 2, when considering a resource-consent application a consent authority is to have regard to any actual and potential effects on the environment of allowing the activity<sup>3</sup> (except any effect on a person who has given written approval to the application);<sup>4</sup> to any relevant provisions of planning instruments;<sup>5</sup> and to any other matter the consent authority considers relevant and reasonably necessary.<sup>6</sup> When forming an opinion about effects on the environment, a consent authority may disregard an adverse effect if the plan permits an activity with that effect.<sup>7</sup> In deciding an appeal, the Court has the same power, duty and discretion as the consent authority;<sup>8</sup> and has to have regard to the decision the subject of the appeal.<sup>9</sup>

[7] In considering a resource-consent application for a discretionary activity, a consent authority has power to grant or refuse the application, and (if it grants the application) can impose conditions under section 108.<sup>10</sup>

[8] By section 108(1), except as expressly provided in that section, a resource consent may be granted on any condition that the consent authority considers appropriate.

### The district plan

[9] The provisions of planning instruments that are relevant in this case are contained in the Queenstown-Lakes District Council's partly operative district plan (the PODP). No party contended that any respect in which the plan is not yet operative is material; nor that any other planning instrument is relevant. We will identify the relevant provisions of the PODP, and apply them to the circumstances of the proposal, before making our findings on the environmental effects of the activity.

<sup>3</sup> RMA, s104(1)(a).

<sup>4</sup> Ibid, s104(3)(b).

<sup>5</sup> RMA, s104(1)(b).

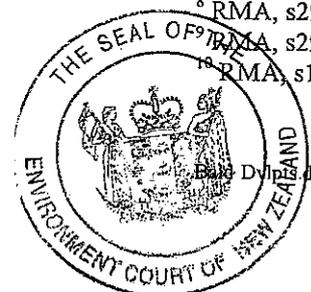
<sup>6</sup> RMA, s104(1)(c).

<sup>7</sup> RMA, s104(2).

<sup>8</sup> RMA, s290(1).

<sup>9</sup> RMA, s290A.

<sup>10</sup> RMA, s104B.



## Objectives and policies

[10] Part 4 of the district plan addresses district-wide issues.

[11] Part 4.1 concerns the natural environment. It states several objectives, including protection and enhancement of functioning of indigenous ecosystems, and of sufficient viable habitats to maintain the communities and the diversity of indigenous flora and fauna; improved linkages between habitat communities; and protection of outstanding natural landscapes. Policies for achieving those objectives include avoiding adverse effects of activities on the natural character of the environment and on indigenous ecosystems by ensuring that opportunities are taken to promote protection of them, including at the time of resource consents.<sup>11</sup>

[12] Part 4.2 concerns landscape and visual amenity. It identifies classes of activity that have the potential to impact adversely on the landscape and visual amenity, including structures. Of settlement, it states--

The location and impact of new development must be managed to ensure that the changes that occur do so in a manner which respects the character of the landscape and avoids any adverse effects on the visual qualities of the landscape.<sup>12</sup>

[13] Part 4.2 also recognises that the visual impact of structures is increased when located in visually sensitive areas; that roads, particularly on prominent slopes, may adversely affect landscape values; and that amenity planting may alter the landscape.

[14] The key resource management issues within outstanding natural landscapes are identified as their protection from inappropriate subdivision, use and development, particularly where activity may threaten the openness and naturalness of the landscape.<sup>13</sup>

[15] Part 4.2 states an objective by which subdivision, use and development are undertaken in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values. It specifies numerous policies for achieving that objective, of which those about future development, outstanding natural landscapes (district-wide), avoiding cumulative degradation, structures, and retention of existing vegetation are relevant.

<sup>11</sup> POPD para 4.1.4 Policy 1.7.

<sup>12</sup> Ibid, para 4.2.3i.

<sup>13</sup> Ibid, para 4.2.4(a).



[16] The policies about future development are avoiding, remedying or mitigating adverse effects of development and subdivision where landscape and visual amenity values are vulnerable to degradation, and encouraging development and subdivision in areas with greater potential to absorb change without detracting from landscape and visual amenity values, ensuring that as far as possible it harmonises with local topography and ecological systems, and other nature conservation values.<sup>14</sup>

[17] The district-wide policies for outstanding natural landscapes include maintaining the openness of those outstanding natural landscapes which have an open character at present; avoiding subdivision and development in those parts of the outstanding natural landscapes with little or no capacity to absorb change, but allowing limited subdivision and development in those areas with higher potential to absorb change; and recognising and providing for protecting the naturalness and enhancing amenity values of views from public roads.<sup>15</sup>

[18] On avoiding cumulative degradation, the policies are for ensuring that the density of subdivision and development does not increase to a point where the benefits of further planting and building are outweighed by adverse effects on landscape values of over-domestication of the landscape; and encouraging comprehensive and sympathetic development of rural areas.<sup>16</sup> (The Environment Court has defined over-domestication in this context as the threshold at which the character of the landscape is diminished by the introduction of a density of development which the land cannot absorb.<sup>17</sup>)

[19] The policies in respect of structures include preserving the visual coherence of outstanding natural landscapes and visual amenity landscapes by avoiding, remedying or mitigating any adverse effects of structures on the skyline, ridges and prominent slopes and hilltops; encouraging structures which are in harmony with the line and form of the landscape; and placement of structures in locations where they are in harmony with the landscape. There is also a policy in respect of all rural landscapes of providing for greater development setbacks from public roads to maintain and enhance amenity values associated with views from public roads.<sup>18</sup>

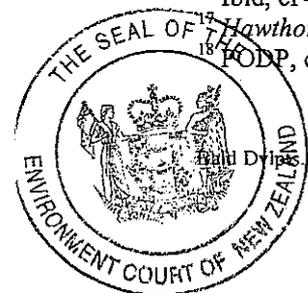
<sup>14</sup> Ibid, cl 4.2.5.1.

<sup>15</sup> Ibid, cl 4.2.5.2.

<sup>16</sup> Ibid, cl 4.2.5.8.

<sup>17</sup> *Hawthorn Estates v Queenstown-Lakes District Council* Environment Court Decision C83/04, para [78].

<sup>18</sup> FODP, cl 4.2.5.9.



[20] In respect of transport infrastructure, there are policies for preserving the open nature of the rural landscape, including discouraging roads and tracks on highly visible slopes.<sup>19</sup>

[21] There is also a policy of maintaining the visual coherence of the landscape and to protect the existing levels of natural character, of encouraging the retention of existing indigenous vegetation in gullies and along watercourses, and maintaining of tussock grasslands and other native ecosystems in outstanding natural landscapes.<sup>20</sup>

[22] Another policy is by encouraging land use in a manner which minimises adverse effects on the open character and visual coherence of the landscape.<sup>21</sup>

[23] On earthworks, the PODP states an objective of avoiding remedying or mitigating the adverse effects from earthworks on the nature and form of existing landscapes and landforms particularly (among others) in areas of outstanding natural landscapes and on the amenity values of neighbourhoods.<sup>22</sup> Policies for achieving that objective are avoiding or mitigating adverse visual effects of earthworks on outstanding natural landscapes, and avoiding earthworks including tracking on steeply sloped sites.<sup>23</sup>

[24] An objective of the Rural General Zone (in which the site is situated) is:

To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.<sup>24</sup>

[25] Policies for achieving that objective include ensuring that activities not based on the rural resources of the area occur only where the character of the rural area will not be adversely impacted;<sup>25</sup> avoiding, remedying or mitigating adverse effects of development on the landscape values of the district;<sup>26</sup> and preserving the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.<sup>27</sup>

<sup>19</sup> Ibid, 4.2.5.12.

<sup>20</sup> Ibid, cl 4.2.5.15.

<sup>21</sup> Ibid, cl 4.2.5.17.

<sup>22</sup> Ibid, cl 4.10.3.

<sup>23</sup> Ibid, cl 4.10.3.4 & 5.

<sup>24</sup> Ibid, para 5.2, Objective 1.

<sup>25</sup> Ibid, para 5.2, Policy 1.4.

<sup>26</sup> Ibid, para 5.2, Policy 1.6.

<sup>27</sup> Ibid, para 5.2, Policy 1.7.



[26] The PODP includes a site standard setting limits on the quantities and dimensions of earthworks, with exceptions that include earthworks for subdivision with resource consent and for a residential building platform.<sup>28</sup>

[27] On subdivision and development, the PODP states an objective of recognition and protection of outstanding natural landscapes and nature conservation values.<sup>29</sup> Policies for achieving that objective include ensuring works associated with subdivision and development avoid or mitigate the adverse effects on the natural character and qualities of the environment, and avoiding any potential adverse effects on the landscape and visual amenity values as a result of land subdivision and development.<sup>30</sup>

### Classification of landscape

[28] The purpose of the Rural General Zone (in which the site is situated) is to manage activities so they can be carried out in a way that achieves stated aims, including protecting and enhancing nature conservation and landscape value; and maintains acceptable amenity for visitors to the zone.<sup>31</sup> In that zone, subdivision of land, and identification of residential building platforms, are classified as discretionary activities.<sup>32</sup> Construction of the proposed common recreational facilities is also classified as a discretionary activity.<sup>33</sup> A new building on an approved residential building platform is classified as a controlled activity.<sup>34</sup> Control is reserved in respect of external appearance, associated earthworks, access, landscaping, and provision of services.<sup>35</sup>

[29] The PODP is constructed so that, by combination of district-wide provisions relating to landscape and visual amenity,<sup>36</sup> and assessment matters for the Rural General Zone,<sup>37</sup> a finding has to be made whether a site is in one of three identified classes of landscape: Outstanding Natural Landscape, Visual Amenity Landscape, and Other Rural Landscape. Specific policies and assessment criteria apply to rural landscapes in those categories.

<sup>28</sup> Ibid, Rule 5.3.5.1viii.

<sup>29</sup> Ibid, para 15.1.3, Objective 4.

<sup>30</sup> Ibid, Policies 4.2f.

<sup>31</sup> Ibid, para 5.3.1.1.

<sup>32</sup> Ibid, cl 15.2.3.3.

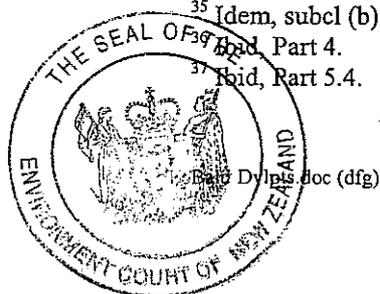
<sup>33</sup> Ibid, cl 5.3.3.3(i).

<sup>34</sup> Ibid, cl 5.3.3.2.

<sup>35</sup> Ibid, subcl (b).

<sup>36</sup> Ibid, Part 4.

<sup>37</sup> Ibid, Part 5.4.



[30] The PODP prescribes a three-step process for assessment of applications for resource consent in respect of rural zones. It requires an analysis of the site and the surrounding landscape, determination of the landscape category, and consideration of stated assessment criteria.<sup>38</sup>

[31] On this appeal, the correct classification of the landscape in which the site is contained was in issue. The Council and UCESI contended that the site is in an outstanding natural landscape. BDL contended that the part of the site that would contain the built form is in a visual amenity landscape.

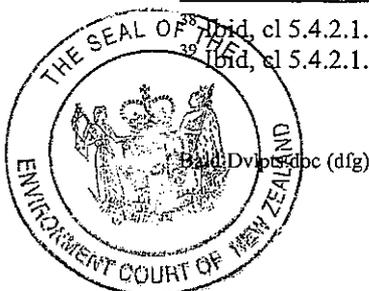
[32] BDL maintained that it would make no difference to the outcome if it is found to be in an outstanding natural landscape. Despite that, we understand that the Court has to make a finding on classification of the landscape of the site, to identify the provisions of the district plan that govern the decision on the proposal; and to know whether section 6(b) is applicable.

[33] Analysis of the site is an important step in the determination of the landscape category, and has to include listed existing qualities and characteristics. Analysis of surrounding landscape has to include a number of other listed matters. Determination of landscape category has to include consideration of the matters identified in the analysis of the site and the surrounding landscape, and any other relevant matter in the context of the broad description of the landscape categories. It involves consideration of the site and the wider landscape within which it is situated; and certain landscape maps.<sup>39</sup>

[34] The material landscape categories are described in paragraph 4.2.4 of the PODP as follows:

The outstanding natural landscapes are the romantic landscapes – the mountains and the lakes – landscapes to which section 6 of the Act applies. The key resource management issues within outstanding natural landscapes are their protection from inappropriate subdivision, use and development, particularly where activity may threaten the landscapes openness and naturalness.

The visual amenity landscapes are the landscapes to which particular regard is to be had under section 7 of the Act. They are landscapes which wear a cloak of human activity much more obviously pastoral (in the poetic and picturesque sense rather than the functional sense) or Arcadian landscapes with more houses and trees, greener (introduced) grasses and tend to be on the District's downlands, flats and terraces. The extra quality that these landscapes possess which bring



them into the category of 'visual amenity landscape' is their prominence because they are

- adjacent to outstanding natural features or landscapes; or
- landscapes which include ridges, hills, downlands or terraces; or
- a combination of the above.

The key resource management issues for the visual amenity landscapes are managing adverse effects of subdivision and development (particularly from public places including public roads) to enhance natural character and enable alternative forms of development where there are direct environmental benefits.<sup>40</sup>

[35] Each party called a landscape architect who, among other things, addressed the analysis of the site and the surrounding landscape, and the classification of the landscape. Ms D J Lucas and Mr A D Rewcastle gave their reasons for classifying the landscape as an outstanding natural landscape; and Mr P J Baxter gave his reasons for classifying as a visual amenity landscape the part of the site where the residential sites (and common recreational centre) are proposed, though he accepted that the steeply sloping part of the site to the west is part of an outstanding natural landscape.

[36] In the event, as might be expected, there was no material difference among them on the analysis of the site and the surrounding landscape. Even the difference between Mr Baxter and the others over classification of the landscape was more one of interpretation and opinion than of direct confrontation.

[37] Ms Lucas distinguished the eroding mountain lands from the outwash plains of the valley floor. She remarked that the development site is not a raised deposition terrace, but an ice-shorn shoulder of the Pisa Range, overlain by a scattering of smeared glacial till.

[38] This witness observed that the mountain landscape continues below the site to the base of the escarpment near the Cromwell to Wanaka Highway, which separates the mountain land from the outwash plains of the valley floor. She gave her opinion that the outstanding natural landscape extends to the base of the escarpment; and that most of the site, including the development area, is included in the outstanding natural landscape.

[39] Mr Rewcastle quoted this passage from an Environment Court decision about the classification process:

When considering the issue of outstanding natural landscapes we must bear in mind that some hillsides, faces or foregrounds are not in themselves outstanding

<sup>40</sup> Ibid, para 4.2.4.

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natural landscapes, but looked at as a whole together with other features that are, they become part of a whole that is greater than the sum of its parts.  
 ... where the outstanding natural landscapes and features end...is... based on the importance of foregrounds in (views of) landscape.<sup>41</sup>

[40] The witness remarked that although parts of the terraced area have been smoothed by ploughing and removal of rocks (citing land in the adjoining Lake Mackay Station) those areas are contained within and dominated by the wider outstanding natural landscape context.

[41] Mr Baxter gave evidence that when viewed from a distance, the terrace area on which the residential building platforms and common facilities are to be located is clearly distinguishable from the rest of the landform, both to the north and the south.

[42] This witness stated that the mid and upper slopes demonstrate landscape characteristics inherent in being an outstanding natural landscape, but that the lower slopes and terrace area are not outstanding natural landscape because of the geographical features and the modification of grazing land on terraces, recent development of land in the Central Otago District, presence of roads, tracks, power lines, pylons, and farm buildings, which identify a cultural and managed visual amenity landscape.

[43] Mr Baxter acknowledged that the terrace area proposed to contain development is flanked by outstanding natural landscape, and stated that the terrace area itself has visual amenity landscape characteristics from the cloak of human activity which is visible to the west of the site, and that changes in the landscape that will occur in time with the approved development to the east on land in the Central Otago District.

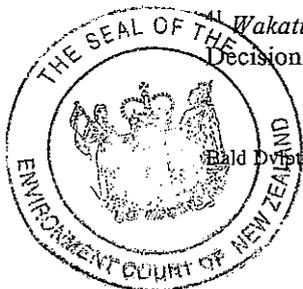
[44] We follow the reasoning in the passage from the Environment Court decision quoted by Mr Rewcastle.

[45] We accept that the site and its surrounds contain features indicative of human activity listed by Mr Baxter; and that further rural-residential development in the vicinity has been granted consent by the Central Otago District Council.

[46] Having, with the assent of the parties, viewed the site and its environs, we find persuasive the common opinion of them all that the higher ground is part of an outstanding

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<sup>41</sup> *Wakatipu Environmental Society Incorporated v Queenstown-Lakes District Council* Environment Court Decision C180/99, para 105.



natural landscape. The part of the site where the residential and common recreation developments are proposed is broken ground in a basin-like feature which, considered on its own, may not itself qualify as an outstanding natural landscape. The features indicative of human activity listed by Mr Baxter are present but scattered and, seen in context, do not make the landscape fit the plan's description of a visual amenity landscape, although consented development in the Central Otago District would contribute to that classification.

[47] In the scale of the landscape of the upper Clutha Valley, the part of the site to be developed is relatively small; in the perspective of the landscape as a whole, that part does not diminish the quality of the whole landscape as outstanding and natural. Bearing in mind the stipulation in the PODP to consider the land subject to the consent application and the wider landscape within which that land is situated, and the reasoning of the Environment Court in the passage quoted by Mr Rewcastle, we accept the opinions of Ms Lucas and Mr Rewcastle, and find that the site (including the part where development is proposed) is contained in an outstanding natural landscape.

#### **Consideration of assessment criteria**

[48] The third step prescribed by the PODP is consideration of the proposed development (including subdivision, identification of building platforms, building, roading, earthworks, landscaping, planting and boundaries) by reference to stated assessment criteria, and recognising the reasons stated in paragraph 1.5.3(iii) for making the activity discretionary, and the 'frequency' with which appropriate sites for development will be found in the locality.<sup>42</sup> There are numerous criteria particular to considering resource-consent applications for activities in outstanding natural landscapes (district-wide) set out in clause 5.4.2.2(2); and also many more criteria of general application set out in clause 5.4.2.3. We will consider the proposal by reference to each assessment criterion that is relevant to the proposal (starting with those particular to development in outstanding natural landscapes (district-wide), then with those of general application); and then by those prescribed by paragraph 1.5.3(iii) and by the frequency of development sites in the locality.

ibid. cl 5.4.2.1.

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*Criteria particular to outstanding natural landscapes (district-wide)*

[49] The assessment criteria applicable to subdivision and development in outstanding natural landscapes (district wide) are to be read “in the light of the further guiding principle” about existing vegetation. That relates to vegetation that was planted after, or (being self-seeded) was less than 1 metre high on, 28 September 2002; and it applies to vegetation that obstructs or substantially interferes with views from roads of the landscape in which proposed development is to be set. It is not relevant to the decision of this appeal.

*Absorptive potential of the landscape*

[50] The first applicable assessment matter relates to consideration of the potential of the landscape to absorb development, visually and ecologically. Seven matters are to be taken into account, consistent with retaining openness and natural character. The first of them is whether, and to what extent, the proposed development would be visible from public places.

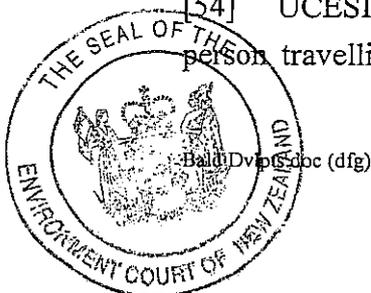
Visibility from public places

[51] BDL submitted that visibility *per se* is not an adverse effect, and that there is no requirement in the PODP that development be invisible, or even reasonably difficult to see (those being tests set by the PODP for development in outstanding natural landscapes in the Wakatipu Basin, but not elsewhere in the District).

[52] BDL contended that due to folding topography, only 13 of the building platforms would be partly visible from public roads at a distance of at least 2.8 kilometres, altering as a viewer moves vantage point; but that not all of them would be visible in a single view. It maintained that the proposed building platforms, roading and curtilage areas would be indiscernible to the naked eye when viewed from off the site.

[53] In response to UCESI’s case that the development would be visible from passing aircraft, BDL submitted that such visibility would be transitory, and dependent on the flight path taken according to weather conditions. It submitted that, as a matter of practicability, views from aircraft should be ignored.

[54] UCESI submitted that views from aircraft are not more transitory than those of a person travelling in a car or bus, but may be closer. It contended that all the proposed



residential complexes and associated roading or driveways would be visible from a walking track on the Grandview Range, a public place; and from several public roads.

[55] We accept that there is no requirement in the PODP that development on the site be invisible, or even reasonably difficult to see. The relevant criterion is the potential of the landscape to absorb development, visually and ecologically. That is not a condition of eligibility for consent, but one of several criteria of judgement whether consent should be granted or not. The question whether, and to what extent, the proposed development would be visible from public places is one factor to be considered in applying that criterion.

[56] Considerable evidence was devoted to this question. Our understanding of the evidence was assisted by our having visited various vantage points.

[57] We accept the evidence and find that the development would be visible from aircraft (including airliners approaching or departing from Wanaka Airport), although those views would be transitory; and that the development would also be visible from roads and public places (including from parts of walking tracks on the Grandview Range) but only at considerable distances, and only parts of the development at a time.

[58] The context of the visibility question is the potential of the landscape to absorb the development. In that context, we judge that the extent of visibility is so restricted by topography, distance, and transitory factors that from a visual viewpoint it does not on its own afford a substantial basis for finding that the landscape cannot absorb the proposed development.

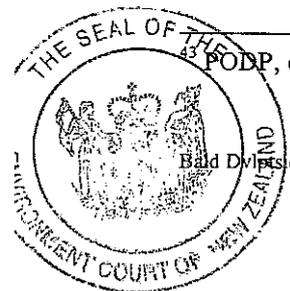
#### Domination or detracting from natural landscape values

[59] The second factor in deciding the absorptive potential criterion is whether the proposed development is likely to be visually prominent to the extent that it dominates or detracts from views otherwise characterised by natural landscapes.<sup>43</sup>

[60] BDL contended that the proposed development would be difficult to see, would not dominate, nor detract from views. Mr Baxter gave his opinion that the development would not be visually prominent, nor would it detract from views characterised by natural

PODP, cl 5.4.2.2(2)(a)(ii).

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landscapes, being the greater views of the Pisa Range. He considered that the proposed environmental management plan and proposed mitigation measures required by proposed conditions would ensure that the development would integrate with the existing natural character, which would be protected and enhanced.

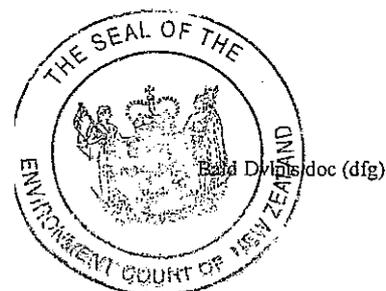
[61] Mr Rewcastle remarked that the proposed building platforms would be limited to elevations below 475 metres above sea level to avoid development being on high, prominent positions.

[62] UCESI, by its President Mr J R Haworth, asserted that the development would significantly detract from views of outstanding natural landscape. He listed dwellings, accessory buildings, and numerous other articles associated with residential occupation (which he described as “surrounding clutter”) extending a presence of people, wood-smoke, children’s toys, glinting windows, lighting at twilight and at night; and also adverse amenity effects of noise from vehicles, lawnmowers, hand tools, stereos and so on. He described the development as a complete change in landscape character for the site with significant adverse effects on natural values; and spoke of the proposed subdivision sitting incongruously in, and significantly detracting from, views of the outstanding natural landscape.

[63] Having reviewed the evidence in the light of our observations from vantage points agreed on by the parties, we find acceptable the evidence on this topic given by Mr Baxter. The restrictions on the visibility of the development would be such that it would not be visually prominent to the extent that it would dominate views of natural landscapes. What Mr Howarth described as ‘surrounding clutter’ would not be significant at the distances at which it would be visible, and we judge that it would be disproportionate to categorise reflections and lighting as significant detractions from views otherwise characterised by a natural landscape. He gave evidence as President of UCESI, and his evidence was not balanced in the way expected of an independent expert witness.

#### Detraction from natural patterns or processes

[64] The third factor on the absorptive potential of the landscape is whether any mitigation or earthworks and/or planting associated with the development would detract from existing



natural patterns and processes within the site and surrounding landscape, or otherwise adversely affect the natural landscape character.<sup>44</sup>

[65] In respect of that, BDL identified mitigation measures being proposed design controls over external appearance of buildings, over glare from windows, curtilages, vehicle movements, and lighting controls. On earthworks, BDL remarked that the roading network would use existing farm tracks, which would be located in less visible parts of the site and would be restricted to 3.8 metres width with vegetation to the edges, and would not be visible from wider views. Major earthworks and screen planting are not proposed, though natural regeneration is promoted.

[66] Mr Baxter gave detailed evidence generally supporting those contentions. He explained that the existing vegetation pattern would be protected and enhanced; that exotic planting would be restricted to curtilage areas; and that earthworks would be minor in extent. He confirmed that no mitigation screen planting or earth mounding is proposed. He accepted that the earthworks should be managed by collaboration of an engineer and a landscape architect.

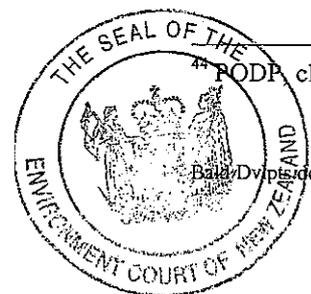
[67] By Mr Howarth's evidence, UCESI supported the proposed avoidance of screen planting and earthworks as mitigation measures, but argued that this would leave parts of the development visible from some public places, as householders are unlikely to allow vegetation to obstruct views from their residences.

[68] We have already addressed the UCESI's assertions about the visibility of the development from public places. It would be insubstantial. Even if householders are allowed to trim vegetation to preserve views, that would not be relevant to this factor of absorptive potential of the landscape; nor would it detract from natural patterns or processes.

[69] On earthworks, we find that Mr Howarth's evidence overstated the likely effects because, as described by Mr Baxter, their extent would be restricted, and their implementation is to be professionally controlled.

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<sup>44</sup> PODP, cl 5.4.2.2(2)(a)(iii).



[70] In short, we find that mitigation, earthworks, and planting would not detract significantly from natural patterns and processes, in the context of the absorptive potential of the landscape.

Effects of new subdivision boundaries

[71] The next factor to be addressed is whether, with respect to the subdivision, any new boundaries are likely to give rise to planting, fencing or other land use patterns which appear unrelated to the natural line and form of the landscape.<sup>45</sup> This factor is informed by a statement that wherever possible, with allowance for practical considerations, boundaries should reflect underlying natural patterns such as topographical boundaries.

[72] In this respect, BDL contended that the design of the subdivision is consistent with natural patterns.

[73] Mr Baxter gave evidence that in respect of the residential lots, fencing would only be permitted around the curtilage areas, and owners would be free to choose to fence closer to dwellings than on the curtilage boundaries. He concluded that neither roading nor fencing would give rise to arbitrary lines; and that fencing around Sheepskin Creek and the refugia would not draw attention to the residential development.

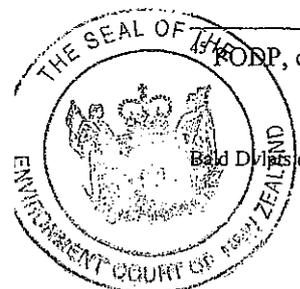
[74] Mr Baxter also gave his opinion that planting in curtilage areas (which would be restricted to 3 metres in height) would not cause arbitrary patterns. He acknowledged that the proposed lot boundaries do not follow natural lines of the landscape, but remarked that fencing lot boundaries would be prohibited. The parts of the lots beyond the curtilages are to be farmed in common with the residue lot. The witness also gave his opinion that fencing of the refugia and Sheepskin Creek would not be visible off site, and that any effect on the natural line or form of the landscape would be negligible.

[75] For UCESI, Mr Haworth contended that fencing the residential lots would be inevitable, could create a sharp contrast in colour and texture, and would be likely to be obvious as straight lines in the landscape in an area that is currently open. However, Mr Howarth did concede that fencing the lot boundaries is to be prohibited.

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RODP, cl 5.4.2.2(2)(a)(iv).

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[76] Ms Lucas referred to the proposed fencing-off of part of Sheepskin Creek and a tributary. She stated that this would ignore the topography, and would result in non-natural management boundaries becoming apparent. She also gave her opinion that roads would be clearly evident as they would be kept open 20 or 10 metres wide as firebreaks.

[77] In addressing this factor we bear in mind that it relates to the subdivisional boundaries, in a context of the absorptive potential of the landscape; and an aim that boundaries should reflect natural patterns such as topographical boundaries.

[78] We accept that fencing of lot boundaries is to be prohibited; and that fencing of part of Sheepskin Creek to be subject to a conservation covenant would generally relate to the course of the creek and its tributary, and to the topography of that incision. We also accept that the lines of those boundaries, and of those around the refugia, would not be significantly visible from off the site, and find that their effects on the line and form of the landscape would be insignificant.

#### Effects on indigenous vegetation

[79] The fifth factor is whether the site includes any indigenous vegetation, wildlife habitats, wetlands, significant geological or geomorphologic features, or is otherwise an integral part of the same.<sup>46</sup> This leads to the sixth factor: whether, and to what extent, the proposed activity would have an adverse effect on any of the ecosystems and features identified.<sup>47</sup>

[80] BDL contended that the proposal, carried out in accordance with the environmental management plan, would enhance ecosystems.

[81] Mr A S W Penniket, a professional restoration ecologist, gave evidence of ecosystem conservation measures in the environmental management plan (including the exclusion of introduced browsers from Sheepskin Creek and refugia, predator control and habitat enhancement) all providing protected habitats and contributing to the protection of the Upper Clutha environment.



[82] Mr G A Davis, an ecological consultant, gave detailed evidence of his ecological assessment of the site, and of the likely ecological effects of the proposed development. He gave his opinion that the environmental management measures in the environmental management plan would result in a net positive ecological benefit; and he reported his recommendations for mitigation measures. Those recommendations have been incorporated in the proposed consent conditions.

[83] In her evidence Ms Lucas (a landscape architect) was critical of Mr Penniket's evidence. However her critique was more rhetorical argument about the extent of the measures proposed, than identifying any ecosystem overlooked by Messrs Davis and Penniket. Nor was it directed to the questions in hand of adverse effects on ecosystems and features in the context of the landscape's absorptive potential. This witness did not present an ecological assessment of the site corresponding to that made by Mr Penniket.

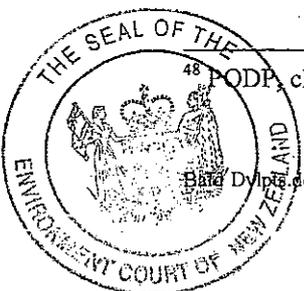
[84] Having reviewed the evidence on this topic, we find generally acceptable the opinions presented by the qualified ecologists Messrs Davis and Penniket. In reliance on that evidence, we find that the site contains indigenous ecosystems and wildlife habitats, and is an integral part of significant geological and geomorphologic features. We find, too, that the proposed environmental management plan and mitigation conditions would result in a net positive ecological effect, particularly in respect of the galaxiid habitat in Sheepskin Creek, and the ecologies of the proposed refugia.

#### Introduction of exotic species that could spread

[85] The final factor to be taken into account in considering the potential of the landscape to absorb development, both visually and ecologically, is whether the proposed activity would introduce exotic species with the potential to spread and naturalise.<sup>48</sup>

[86] In considering that, we have regard to the altered stocking of the site, by which cattle are no longer to be run, and the numbers of sheep reduced. We also have regard to the proposed fencing of the Sheepskin Creek covenant area and of the refugia, to reduce exotic pests, particularly stoats, rats, opossums and rabbits. Ongoing grazing by sheep would control exotic briar. Exotic (wilding) pine and broom are to be controlled.

<sup>48</sup> POPD, cl 5.4.2.2(2)(a)(vii).



[87] In summary, the evidence does not support a finding that the proposed activity would introduce exotic species with potential to spread or naturalise; but supports a finding that existing exotic species would be considerably reduced.

Judgement on absorptive potential of landscape

[88] Taking into account the seven factors prescribed, we have now to come to a judgement on the first criterion, the potential of the landscape to absorb development, consistent with retaining openness and natural character. On none of the seven factors does our finding indicate that the landscape lacks potential to absorb the proposed development consistent with retaining openness and natural character if carried out in compliance with the proposed consent conditions, including the environmental management plan. In respect of visibility from public roads and places, we accept BDL's contention in closing that the landscape has potential to absorb some change.

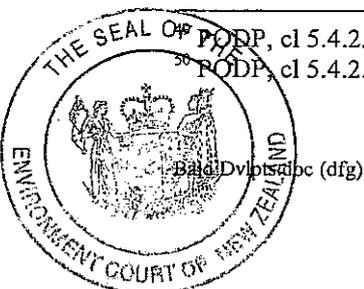
*Effects on openness of landscape*

[89] The second assessment criterion is the adverse effects of the proposed development on the openness of the landscape. In applying this criterion, the PODP prescribes three factors that are to be taken into account.<sup>49</sup>

Location in visible open landscape

[90] The first factor is whether and the extent to which the proposed development would be within a broadly visible expanse of open landscape when viewed from any public road or public place.<sup>50</sup> (There is a further point about unformed legal roads but, there being none in the vicinity of the site, that is not applicable in this case.)

[91] BDL contended that all the proposed building platforms are within topographic folds, and not within a broadly visible expanse of open landscape when viewed from public places or roads. It added that the openness of the site would be maintained by retaining 92.74 percent (630 hectares) of the site as open space.



[92] It was Mr Baxter's evidence that minimal visibility of the proposed development means the landscape would still be viewed as open space; and that the scale of development in relation to the size of the site would result in the majority of the site and surrounding landscape being retained as open space, with development concentrated in areas with higher potential to absorb development by being less visible or not visible as open space from outside the site. This witness disagreed with Mr Howarth's statement that some of the residential complexes would be broadly visible from important public roads and places.

[93] Mr Rewcastle gave his opinion that the plateau on which the proposed building platforms are to be located forms part of a broad, visible expanse of open mountainous landscape, and that the proposed development would compromise that openness to some extent. However he considered that the openness of the most sensitive parts of the site (the broad plateau shoulders) would be maintained, and that the complex, undulating topography provides an opportunity to mitigate visibility and reduce prominence of such development.

[94] Mr Martin gave his opinion that the development would be sufficiently recessive when visible from available public vantage points, and that the openness and character of the outstanding natural landscape would be reduced but would be sufficiently protected.

[95] It was Ms Lucas's evidence that the site is on display to the wider upper Clutha, particularly to Hawea Flat, the Grandview Range, and the Clutha corridor including the State highway to Tarras. This witness stated that there are public viewpoints across these lands, including a public track along the Grandview Range, from which the development would be within a broadly visible expanse of open landscape. She added that, viewed from public roads down within the valley, the site is an important part of the open landscape of the Pisa flanks.

[96] Ms Lucas gave her opinion that any evidence of the development would adversely affect the open space values of the northern flank of the Pisa Range, with cues to domestication, and sprawl across the ice-scoured shoulder of the mountain. She assessed that the openness of the landscape would be significantly compromised and adversely affected by the development dispersed across the site.

[97] In making an assessment of this factor, we have to consider two questions: whether the development would be within a broadly visible expanse of open landscape when viewed from any public road or public place; and (if so) the extent to which it would be so.



[98] Having reviewed the evidence in the light of our own observations, on the first question we find that the proposed development would be within an expanse of open landscape and, when viewed from certain public roads and public places (including the Grandview Range) that expanse of landscape is broadly visible, even though at some distance.

[99] On the second question (of extent), we find that (with exceptions) the development would be only partly, not fully, within a broadly visible expanse of open landscape when viewed from any public road or public place. Exceptions are from the air, and possibly from vantage points on the top, or high on the flank, of the Grandview Range.

[100] On that basis, we adopt Mr Rewcastle's opinion that the development would compromise the openness of the landscape to some extent, although the more sensitive parts of the landscape would be maintained in open space.

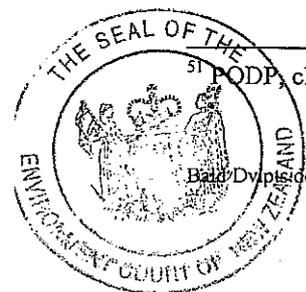
#### Effects on open space values

[101] The second factor prescribed for assessing the effects on the openness of the landscape is whether, and the extent to which, the proposed development is likely to adversely affect open space values with respect to the site and surrounding landscape.<sup>51</sup>

[102] In that respect, Mr Baxter gave his opinion that the development would not adversely affect open space values because minimal visibility of proposed dwellings means that the landscape would still be viewed as open space; the majority of the site and surrounding landscape would be retained as open space; development would be clustered in areas with higher potential to absorb it by being less or not visible as open space from outside the site; and the remaining lands (including visible bluffs and slopes of the Pisa Range) are to be retained as farm land.

[103] Mr Rewcastle also remarked that the openness of the most sensitive parts of the site would be maintained, referring to the broad plateau shoulders.

<sup>51</sup> PODP, cl 5.4.2.2(2)(b)(ii).



[104] UCESI (by Mr Howarth) asserted that the existing entirely open space values of the site (in terms of absence of built form) would disappear by construction of the 26-lot residential subdivision.

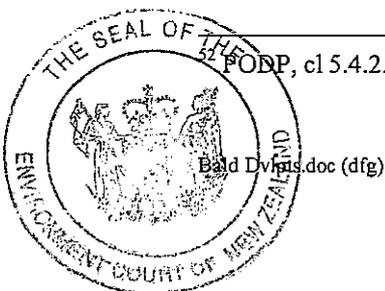
[105] Ms Lucas observed that this factor is not confined to visibility from public places, and gave her opinion that the development would adversely affect the open space values of the northern flank of the Pisa Range, remarking that it would sprawl across about 250 hectares on the shoulder of the mountain. She assessed that the openness of the majority of the shoulder of the range would be significantly compromised and adversely affected.

[106] We accept Ms Lucas's point that this factor is distinct from others in that is not predicated on visibility from public places. It is focused on open space values of the site and the surrounding landscape. So we are not persuaded by Mr Baxter's point that the open space values of the site and surrounding landscape would not be adversely affected because of restricted visibility from public places. Nor are we persuaded by his points that the majority of the site and landscape (including visible bluffs and slopes) would be retained in open space, and that the development would be clustered in less visible parts of the site.

[107] On the question whether the development would adversely affect open space values, we accept Ms Lucas's evidence and find that it would do so, even though visibility of the development would be limited. On the extent of the adverse effects, we accept that the effects could be more severe, if more open space of the site was to be developed. Correspondingly, the effects might be less severe if the development was to be less extensive. However we judge that the dispersal of 26 dwellings (and ancillary development) across what is currently open space would adversely affect open space values of the site and surrounding landscape to a considerable extent.

#### Definition of development by natural elements

[108] The third factor by which effects on openness of landscape is to be addressed is whether the proposed development is defined by natural elements such as topography and/or vegetation which may contain any adverse effects associated with the development.<sup>52</sup>



[109] For UCESI, Mr Howarth contended that the development would not be defined by topographical elements, but would sprawl over a very larger area of landscape. That contention does not appear to be contradicted.

[110] We find that although largely on a terrace, the proposed development would not be defined by natural elements such as topography or vegetation that would contain its adverse effects.

Judgement on effects on openness of landscape

[111] So on the second criterion (effects on openness of landscape) we have found that the development would be within an expanse of open landscape, broadly visible when viewed from public roads or places; that it would adversely affect open space values to a considerable extent; and that it would not be defined by natural elements which would contain its adverse effects.

*Cumulative effects on landscape values*

[112] The third criterion is cumulative effects on landscape values.<sup>53</sup> Four factors are to be considered in applying it.

Elements inconsistent with natural character

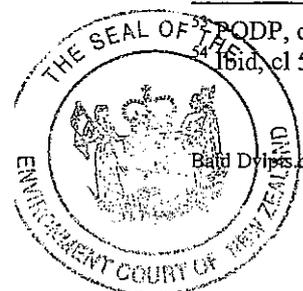
[113] The first factor is whether, and to what extent, the proposed development would result in the introduction of elements which are inconsistent with the natural character of the site and surrounding landscape.<sup>54</sup>

[114] In his evidence, Mr Rewcastle gave his opinion that the proposed development would introduce elements (most significantly, buildings) which are inconsistent with the natural character of the site and surrounding landscape. He referred to mitigation and enhancement measures by which, on balance, he considered the development would represent potential for the natural character to be enhanced; but gave his opinion that in the wider landscape context, the proposed development would further degrade natural values.

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<sup>53</sup> PQDP, cl 5.4.2.2(2)(c).

<sup>54</sup> *Ibid*, cl 5.4.2.2(2)(i).



[115] UCESI contended that the development would be entirely at odds with the current open, undeveloped, and largely natural character of the site; and would introduce elements inconsistent with that natural character.

[116] Ms Lucas agreed with Mr Rewcastle's opinion that the development would further degrade natural values, and stated that it is likely that the proposed development would reduce rather than enhance naturalness. This witness assessed the site as having a high naturalness; and gave her opinion that the introduction of substantial residential structures, roading and activity across much of the more accessible lands of the site would be very inconsistent with the surrounding natural landscape character of the Pisa flanks.

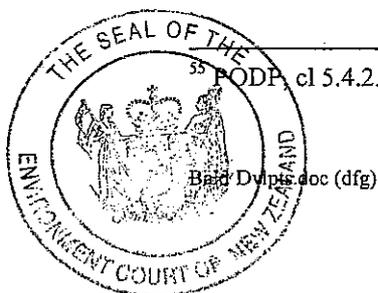
[117] We accept the evidence of Ms Lucas and Mr Rewcastle, and find that the development would result in the introduction of elements that would be inconsistent with the natural character of the site and surrounding landscape, namely dwellings and associated structures, roading, and residential activity. The extent of the inconsistency is assessable by the number of proposed dwellings (26), the potential for accessory structures, the extent of roading to provide access to 26 dispersed dwellings, and the residential activity that would be generated in and about that many dwellings. In our judgement that extent should be categorised as substantial.

#### Exacerbating effects on natural character

[118] The second factor prescribed for consideration of adverse effects is whether the elements identified would further compromise the existing natural character of the landscape either visually or ecologically by exacerbating existing and potential adverse effects.<sup>55</sup>

[119] BDL submitted that the environment that may be affected is not just the environment as it currently exists, but also the environment that would exist if activities permitted by the district plan, or authorised by unimplemented resource consents, are carried on.

[120] A question arose whether, for this purpose, unimplemented resource consents for residential development on adjacent land in the Central Otago District are to be considered, if they would not be permitted activities by a proposed change to the Central Otago district plan. That question was not argued by counsel in this appeal.



[121] Absent more information about the reasons for the plan change, and assistance from counsel, we regard the outcome of the plan change as difficult to predict. For the present purpose only, we treat the Central Otago District Council's resource consents for the development as current, and lawfully able to be exercised.

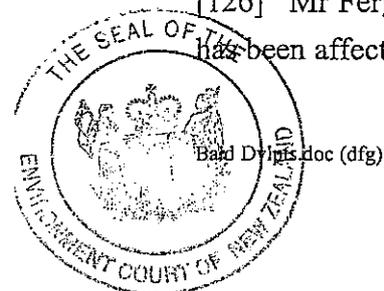
[122] We therefore treat the rural-residential developments of adjacent land that had been authorised by the Central Otago District Council's grant of resource consents as part of the environment of the subject site. We find that this existing and potential development of adjacent land (some 170 dwellings in total) has existing and potential adverse effects on the openness of the landscape, and on its natural character. We have now to consider whether those elements the proposed development would introduce that would be inconsistent with the natural character of the site and surrounding landscape would further compromise the existing natural character of the landscape by exacerbating those effects.

[123] In respect of that, BDL acknowledged that the proposed development would add to the existing and anticipated development that is in the Central Otago District, but contended that the cumulative effects would not be significant due to the recessiveness of the proposed development, ensured by location and design restrictions, when viewed from locations off the site; and the whole of the proposed development not being visible at the same time, in the same visual catchment as development in the Central Otago District.

[124] Mr Baxter gave his opinion that the proposed development would not visually compromise the existing natural and pastoral character of the site, because of the undulating nature of the site, its lack of immediate visibility and the existing vegetation patterning that allows for carefully thought-out development to occur. He concluded that overall the site would largely remain as an open rugged typical central Otago landscape, with the residential lots set among the same mottled landscape.

[125] Mr Baxter gave his opinion that the cumulative effects of adding the proposed development to those already permitted would not give way to adverse effects on the wider landscape because the proposed development would have substantially lower density, and because certainty is to be given to platforms and controls, and because the proposal secures and seeks to enhance the existing landscape character.

[126] Mr Ferguson acknowledged that the capacity of the landscape to absorb development has been affected by the developments having consent in the Central Otago District.



[127] Mr Rewcastle also acknowledged that the developments authorised in that district would have some cumulative effect along the walls of the larger mountain containment of the upper Clutha basin; and that there are existing adverse effects (which he considered not significant in the wider landscape) of agricultural modification on the Lake Mackay Station to the west of the site, and in the form of the electricity distribution line and fence lines on the subject site. He concluded that the proposed development would further degrade natural values.

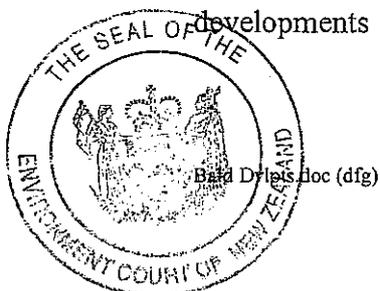
[128] UCESI contended that the proposed development would further compromise the natural character of the landscape in addition to the adverse effects of the subdivision consents granted for development in the adjacent landscape; and would exacerbate existing and potential adverse effects resulting from them.

[129] Ms Lucas described the site as having high naturalness, and gave her opinion that the proposed development would exacerbate the effects of the development already consented to in the adjoining district; and that the proposed development would very significantly further degrade the natural values, resulting in very significant cumulative adverse effects on the Pisa Range landscape.

[130] We have found that the proposed development would introduce elements (dwellings, associated structures, roading and residential activity) that would be inconsistent with the natural character of the site and surrounding landscape. We find that the existing natural character of the landscape is impacted by existing and potential adverse effects of the extensive residential developments that have been authorised on adjacent land in the Central Otago District.

[131] We acknowledge BDL's point about restrictions on the visibility of the proposed development, and Mr Baxter's point about the proposed mitigation of adverse effects by careful design taking advantage of the topography. Those are matters of degree of visibility of the proposed development. However the focus of this factor of the cumulative effects criterion is compromise of the natural character of the landscape, rather than visibility of the proposed development.

[132] We judge that the natural character of this landscape is adversely affected by the developments authorised in the adjoining district; and that the elements of the proposed



development that are inconsistent with the natural character of the landscape would further compromise the existing natural character of the landscape and exacerbate those effects.

Threshold of absorptive capability for change

[133] The third factor prescribed for assessing the cumulative effects on landscape values is whether existing development and/or land use represents a threshold with respect to the site's ability to absorb further change.<sup>56</sup>

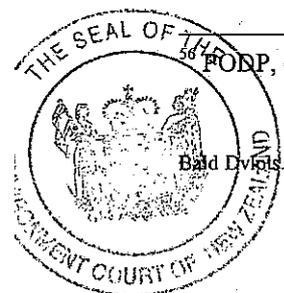
[134] UCESI contended that the site has a low threshold for development, further reduced by the consents for development on adjacent land within the same outstanding natural landscape and able to be viewed at the same time from public places.

[135] Ms Lucas gave her opinion that the development allowed in the Central Otago District represents a threshold that would be exceeded if development continued westward across the territorial authority boundary.

[136] Mr Baxter gave his opinion that the cumulative effects of adding the application sites to those already permitted would not exceed the threshold for development because the proposed 26 rural-residential lots have a substantially lower density than those in the Central Otago District, and certainty would be given to platforms and controls to secure and enhance the existing landscape character.

[137] Mr Ferguson accepted that the capacity of the landscape to absorb development has been affected by the existing and consented development across the territorial authority border, but he observed that the subject proposal would locate building development within confined platforms and limited curtilage areas, to check further spread of domestication and restrict visibility from public places.

[138] Mr Rewcastle gave his opinion that the proposed development is close to reaching a threshold of the site's ability to absorb change, but on balance he considered that cumulative effects would not be significant.



[139] We have already stated our finding that the landscape has potential to absorb some change. That was in the context of visibility factors. The factor now addressed is in a context of cumulative effects on landscape values, with particular reference to the natural character of the landscape.

[140] The reasons given by Messrs Baxter and Ferguson for their opinions were influenced by the design of the proposed development by which views of it would be restricted. To that extent we discount their opinions on a natural character threshold, as natural character can be diminished by development and structures that are secluded from view.

[141] Rather we find Ms Lucas's opinion on this topic persuasive. We judge that the existing and potential development (largely in the adjoining district) represents a threshold with respect to the ability of the subject site to absorb further change without substantial loss of the landscape's natural character.

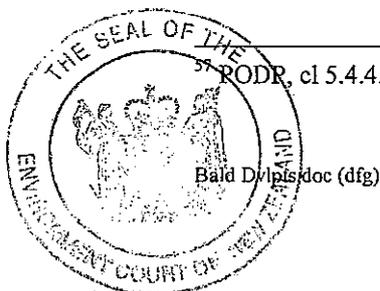
#### Degradation of natural values or inappropriate domestication

[142] The fourth factor prescribed for assessment in consideration of the cumulative effects criterion applies where development has occurred or there is a potential for it to occur under existing resource consent or zoning. The factor is whether further development is likely to lead to further degradation of natural values or inappropriate domestication of the landscape.<sup>57</sup>

[143] In this respect, UCESI acknowledged that it requires imagining 170 residential complexes with associated curtilages and roading in the landscape to the east of the subject site. Only some of the residential complexes and some of the roading exists there now.

[144] UCESI contended that, with the existing and potential development, the further development sought on this appeal would lead to further degradation of natural values and inappropriate domestication.

[145] Ms Lucas gave her opinion that the proposed development would very significantly further degrade the natural values, and would inappropriately spread domestication westward across the Pisa flanks. This witness stated her disagreement with Mr Rewcastle's opinion



that the proximity of Luggate enhances the suitability of the site for residential use, because the PODP seeks a clear distinction between the township and its rural context. However, she did agree with Mr Rewcastle's opinion that the proposed development would further degrade natural values.

[146] Mr Baxter gave a contrary opinion that the cumulative effects of adding the application sites to those already permitted would not give adverse effects on the wider landscape, citing the lower density of the proposal, the certainty given to building platforms, and controls that he considered would enhance the existing landscape character. He also referred to the possibility of the proposed development providing a logical end to development from the east, and providing a buffer against development further west.

[147] We find that development has occurred, and there is potential for more development (already consented) to occur, on adjacent land in the Central Otago District; and we hold that this factor has to be taken into account.

[148] The focus is on natural values and inappropriate domestication of the landscape. We find that the existing and potential development on the adjacent land does and would degrade natural values in an outstanding natural landscape; and does and would result in inappropriate domestication of that landscape.

[149] We accept that the proposed development would, as Mr Baxter stated, have lower density, be subject to controls over building sites, and be intended to enhance the existing landscape character. Even so, the proposed development would by its nature be inconsistent with the natural character of the site and surrounding landscape, and would be inappropriate domestication in an outstanding natural landscape. It would represent degradation of natural values, and inappropriate domestication that, considered with the degradation and domestication resulting from the existing and potential development of adjacent land further east, would be further degradation and inappropriate domestication. In short, those adverse effects would be cumulative.

[150] We do not find persuasive Mr Baxter's point about the proposed development providing a logical end to development from the east, and providing a buffer against development further west. In our opinion, any justification for the existing and potential development in the part of this outstanding natural landscape that is in the Central Otago District ends at the territorial authority border; and if a buffer is needed against development



further west, the faithful application of the classification, assessment and other provisions of the PODP, in the light of its objectives and policies, indicate the appropriate extent of it.

Finding on cumulative effects on landscape values

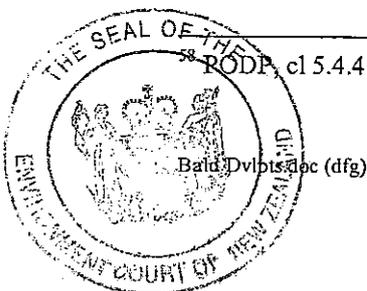
[151] We have addressed the four factors to be taken into account in considering whether there are likely to be any adverse cumulative effects on the landscape as a result of the proposed development.

[152] We have found that the development would to a substantial extent introduce elements inconsistent with the natural character of the site and surrounding landscape. We have found that the natural character of the relevant landscape is adversely affected by the effects of developments authorised in the adjoining district; and that the elements of the proposed development that are inconsistent with the natural character of the landscape would further compromise the existing natural character of the landscape, and exacerbate those effects. We have found that the existing and potential development represents a threshold with respect to the ability of the subject site to absorb change without substantial loss of the landscape's natural character. And we have found that the proposed development would be inconsistent with the natural character of the site and surrounding landscape; would be inappropriate domestication in an outstanding natural landscape; and would lead to further degradation of natural values and inappropriate domestication of the landscape.

[153] Taking those findings together, we judge that the proposed development would have adverse cumulative effects on landscape values.

*Positive effects*

[154] The fourth relevant assessment criterion prescribed by the PODP is positive effects associated with the proposed developments.<sup>58</sup> The plan prescribes six factors that are to be taken into account in that regard. We address them in turn.



Protecting indigenous vegetation

[155] The first of the factors for considering whether there are any positive effects associated with the proposed development is whether it would protect, maintain, or enhance any of the ecosystems or features identified in subclause 5.4.2.2(2)(a)(v).<sup>59</sup> That is, whether the site includes any indigenous ecosystems, wildlife habitats, wetland, significant geological or geomorphological features or otherwise an integral part of the same.

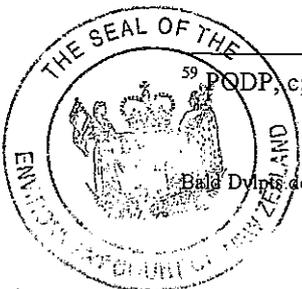
[156] On this topic, BDL contended that the positive effects associated with the proposal include ecological protection and enhancement of the site through the environmental management plan, particularly fencing a larger area around the area subject to a conservation covenant, and excluding sheep grazing from it, to protect endangered flora and flathead galaxiid fish; monitoring vegetation to assess grazing impacts; 'enabling' increased regeneration of kanuka; and introduction of pre-settlement species. BDL urged that the life-supporting capacity, including ecological integrity, of the land would be enhanced and assured.

[157] The evidence of Mr D C Reeves, director of BDL, described the company's intention to provide rabbit-proof fencing of the Sheepskin Creek conservation area and of rock outcrop refuge areas for flora and fauna; and the environmental management plan intentions for protection from feral animal predators and for control of weeds.

[158] The value of those measures was endorsed by Messrs Penniket and Davis in their evidence. Mr Davis also drew attention to the effect of expanding the area subject to conservation covenant in protecting the quality of the water in the creek from fertilisers and herbicides, as well as from grazing sheep and rabbits.

[159] Mr Davis also explained the positive effects for native bird species from increasing the diversity of plant species as food sources and as cover, and from reducing pressure from predators; and positive effects for skinks, and geckos, as well as protection of the galaxiid population in Sheepskin Creek.

<sup>59</sup> PQDP, c; 5.4.4.2(2)(d)(i).



[160] In his evidence Mr Baxter identified another potential enhancement of indigenous ecosystems arising from a proposed condition that 90 percent of any new planting within curtilage areas is to be in native species.

[161] UCESI questioned how it will be certain that the environmental management plan would be implemented, for instance, if the body corporate of the 26 owners of residential lots is wound up.

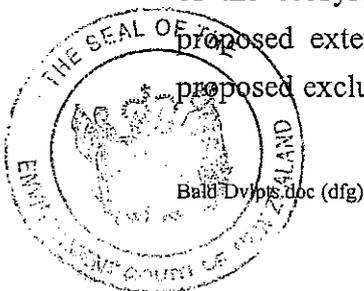
[162] Mr Howarth acknowledged that there may be a positive effect on ecosystems from the measures for protection of the galaxiid population in Sheepskin Creek. He offered some comments belittling the value of the potential positive effects, questioning the length of time it would take for the positive effects to eventuate, and whether they compare with the adverse effects.

[163] Ms Lucas categorised the proposed ecological protection and enhancement as minimal and questionable. She concluded that the protection would be piecemeal and fragmented, and that ecological systems would not be adequately addressed.

[164] The factor in question is whether the proposed activity would protect, maintain or enhance any of the ecosystems or features identified in subclause (a)(v). In addressing this factor, other potential positive effects are not relevant. Unlike other factors in this section of the PODP, this one does not extend from 'whether' to 'the extent to which'; so in addressing this factor, questions of degree or extent do not directly arise.

[165] Addressing the factor on its terms, we do not consider Mr Howarth's question whether the galaxiid population in Sheepskin Creek is threatened, as that is not raised by considering the proposal would protect, maintain or enhance any of the ecosystems or wildlife habitats identified. Likewise, we do not consider the length of time for the positive effects to eventuate; nor whether the protection would be piecemeal or fragmented or adequate; nor do we (at this point) compare the value of the potential positive effects with any adverse effects of the proposal.

[166] In considering whether the proposed activity would protect, maintain or enhance any of the ecosystems or features identified in subclause (a)(v), we find, first, that by the proposed extending and fencing of the Sheepskin Creek conservation area, and by the proposed excluding sheep and rabbit grazing in it, the proposal would protect the indigenous



ecosystems and wildlife habitats of that area, or integral parts of the same. The result would be protection, maintenance, and enhancement of the ecosystem and habitat associated with the indigenous galaxiid fish.

[167] Secondly, we also find that the fencing of the rock outcrop areas to be refuges for flora and fauna would protect, maintain, and potentially enhance indigenous ecosystems and wildlife habitats of those areas, particularly associated with native birds, skinks and geckos, and indigenous flora.

[168] Thirdly, we find that by 'enabling' increased regeneration of kanuka, by introduction of pre-settlement species, and by requiring that 90 percent of planting in curtilage areas be native species, the proposal would potentially enhance indigenous ecosystems and wildlife habitats associated with those woodland species.

[169]. To the extent of those measures, we find that this factor of the criterion of positive effects would be met.

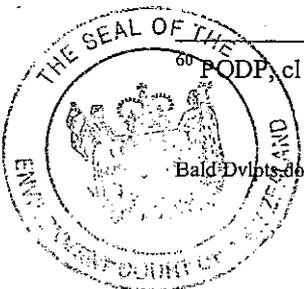
#### Native vegetation

[170] The second factor to be taken into account is whether the proposed activity would provide for the retention and/or re-establishment of native vegetation and "their" appropriate management.<sup>60</sup> It seems that addressing this factor may overlap to some extent with addressing the previous factor.

[171] In this respect BDL referred to a programme of assessing impacts of grazing on vegetation and monitoring stock numbers accordingly. It stated that the environmental management plan would protect existing vegetation to enable increased regeneration of kanuka woodland, and the introduction of pre-settlement species across the whole site.

[172] Mr Reeves gave evidence that BDL is offering implementation of the environmental management plan as a condition of consent to ensure that the current regeneration of the land is continued and enhanced; and accepted that removal of all wilding pines from the site, and rabbit-proof fencing around the Sheepskin Creek conservation area, and threatened plant and

<sup>60</sup> PODP, cl 5.4.4.2(d)(ii).



refuge areas, would have to be carried out before the Council could issue a certificate under section 224 of the RMA.

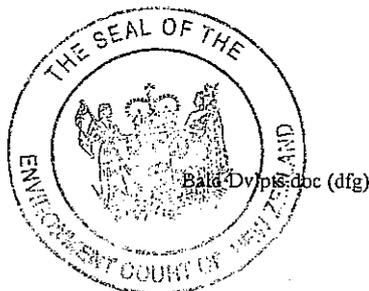
[173] In his evidence, Mr Penniket identified conservation benefits of BDL having excluded cattle from the stocking regime of the site; having prohibited all fires there; and having reduced the numbers of sheep grazing the land; as well as potential benefits of implementation of the environmental management plan (referring particularly to its pest control measures). He explained that these would enable steady progress towards reversing soil erosion, decline of natural habitats, and deterioration of conservation areas, citing resultant kanuka regeneration. The witness also explained that the proposed fencing around the Sheepskin Creek conservation area would include a degraded forest remnant of *Olearia lineata* and *Coprosma intertexta*.

[174] Mr Davis, in his evidence, described the effect of exclusion fencing in promoting recruitment of *Olearia lineata*, and assisting with the maintenance and enhancement of that population. He also stated that *Coprosma intertexta* populations are associated with rock outcrops which are proposed for protection by exclusion fencing. Further, Mr Davis explained that the proposed removal of wilding pines would avoid risk of further trees establishing, and disturbing native vegetation.

[175] However from Mr Davis's evidence of his vegetation condition assessment, he considered that the development would disturb in total 0.10 hectares of kanuka woodland, 0.53 hectares of mixed shrubland, and 5.57 hectares of short tussock/pasture grassland. The witness referred to proposed revegetation of equivalent areas, and gave his opinion that over time the proposal would enhance the vegetation values of the site.

[176] In response to Mr Howarth's evidence, Mr Davis added his opinion that the grazing regime would promote the expansion of the kanuka woodland, and therefore would not have an adverse effect on native vegetation.

[177] UCESI did not contradict the evidence we have summarised tending to show that the proposed development would provide for retention and re-establishment of native vegetation and its appropriate management. Rather, the evidence of its witnesses focused on belittling the value of the retention, re-establishment and management of native vegetation in this case.



[178] In the present context, the PODP prescribes consideration of whether the proposed activity would provide further retention and/or re-establishment of native vegetation and their appropriate management. The value of doing so is not a question for a consent authority considering a specific application (although the value might be expressed indirectly in coming to an ultimate judgement).

[179] We accept the evidence of Messrs Reeves, Penniket, and Davis on the topic, and find that the proposal would provide for retention and re-establishment of native vegetation and its appropriate management.

#### Protection of open space

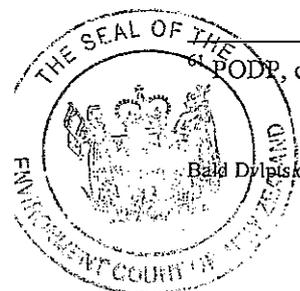
[180] The next factor prescribed to be taken into account in considering positive effects associated with the proposed development is whether it provides an opportunity to protect open space from further development which is inconsistent with preserving a natural landscape.<sup>61</sup>

[181] In this respect, BDL identified the proposed covenant (to be given effect by a consent notice) that would restrict further subdivision of the 630.28-hectare common lot (except farm buildings and boundary adjustments that do not create any additional lots), and contended that this would ensure that the open space of the site would be maintained in perpetuity.

[182] UCESI contended that this factor is failed, because the proposal would cause an area of open and largely natural landscape to be inappropriately developed. On the covenant requiring the 630-hectare part of the site to remain open space, Mr Howarth remarked that this is how it appears now; and that it is highly unlikely that consent for its development would ever be granted, given the provisions of the district plan. The witness added that this greatly reduces the value of the covenant.

[183] In addressing this factor, we do not consider that we are called on to predict whether the district plan provisions will remain unchanged indefinitely; nor to predict how a hypothetical application for resource consent for further subdivision or development of the residual lot might be decided; nor to assess the value of the covenant.

<sup>61</sup> PODP, cl 5.4.4.2(2)(d)(iii).



[184] Our task is to find whether the development would provide an opportunity to protect open space from further development that would be inconsistent with preserving a natural open landscape. On the evidence, we find that it would.

Remedying or mitigating adverse effects

[185] The fourth factor in considering positive effects is whether the proposed development provides an opportunity to remedy or mitigate existing and potential adverse effect by modifying, including mitigating or removing, existing structures or developments, and/or surrendering any existing resource consents.<sup>62</sup>

[186] No party or witness brought to the Court's attention any respect in which the proposed development might provide such an opportunity, or realise it. We therefore treat this factor as inapplicable in the circumstances of this application.

Esplanade reserves

[187] The fifth factor relates to the ability to take esplanade reserves around margins of any lake, river, wetland or stream within the subject site.<sup>63</sup>

[188] UCESI remarked that no esplanade reserve is offered by BDL; and that indeed appears to be the case.

[189] The natural character and natural conservation values of the part of Sheepskin Creek within the area proposed to be fenced off around it may be considered to be protected by that measure and the existing conservation covenant. Whether the remainder of the creek in the site (upstream of the galaxiid habitat) possesses natural character and natural conservation values that could be protected appropriately by an esplanade reserve was not addressed in the evidence. No party contended, and no witness gave an expert opinion, that it would.

[190] In the absence of any contention or evidence to the contrary, we conclude that this factor is not applicable in the circumstances.



Legal instruments to realise and ensure positive effects

[191] The sixth and final factor prescribed for considering positive effects is the use of restrictive covenants, easements, consent notices, or other legal instruments otherwise necessary to realise those positive effects referred to in subclauses (i) to (v) and/or to ensure that the potential for future effects, particularly cumulative effects, 'are' avoided.<sup>64</sup>

[192] In that context, BDL proposed the retention of the common lot (630.28 hectares) as open space by a volunteered covenant (to be assured by consent notice) restricting any further development (except farm buildings or subdivision other than boundary adjustments that do not create any additional lots) to ensure that the open space of the site is maintained in perpetuity. That was confirmed by the evidence of Mr Reeves.

[193] In his evidence, Mr Davis referred to a proposed condition (also to be assured by consent notice) that would impose a ban on keeping domestic cats on the property, to limit the risk of cats preying on native bird, skink and gecko populations.

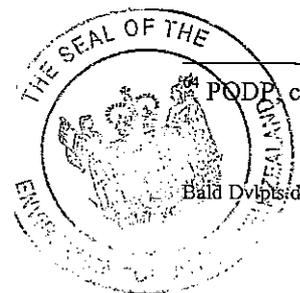
[194] On the proposed covenant against further subdivision and development of the common lot, Mr Howarth remarked that this area is already well protected by the district plan from inappropriate subdivision and development. He added that the value of the covenant is further diminished by the existing covenant over part of Sheepskin Creek.

[195] Mr Howarth went on to make other remarks about the scale of potential financial gains for BDL if the proposal gains consent. The relevance of his conjecture about that is not apparent to us.

[196] Our duty, in considering whether there are any positive effects of the proposal, is to take into account the use of legal instruments to realise the positive effects identified in the previous five factors, and ensure that the potential for future effects, particularly cumulative effects, is avoided. In carrying out that duty, we take into account the consent conditions proposed by BDL, including the environmental management plan; the covenant restricting further subdivision and development of the common lot (to be assured by consent notice);

PODP cl 5.4.4.2(2)(d)(vi).

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and the covenant restraining the keeping of domestic cats (also to be assured by consent notices).

[197] No party identified any other subject-matter within the scope of this factor for such a legal instrument that might be contended to be desirable; and we are not aware of any.

#### Finding on positive effects

[198] We have addressed the six factors prescribed to be taken into account in considering whether there are any positive effects associated with the proposed development. We have found that the proposal would protect, maintain, and enhance certain indigenous ecosystems and wildlife habitats; that it would provide for the retention of native vegetation and its appropriate management; that it would provide an opportunity to protect open space from further development that would be inconsistent with preserving a natural open landscape; and that legal instruments would be used to realise those positive effects and to ensure that potential adverse effects (including potentially cumulative effects) would be avoided.

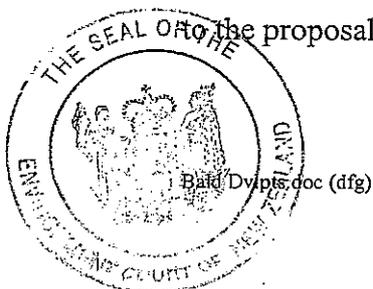
[199] Taking together those findings on the prescribed factors, we find that there would be positive effects associated with the proposed development.

[200] We add that the proposal would potentially have one or more other positive effects on the environment that do not fall within any of the factors prescribed by the PODP for considering the potential effects. Therefore we consider that possibility later in this decision in the course of performing the duties prescribed by section 104(1)(a) of the RMA.

#### *General criteria for assessment*

[201] We have addressed the assessment matters prescribed by the PODP that are particular to considering applications for resource consent for activities in outstanding natural landscapes (district-wide).

[202] The PODP also stipulates reference to another set of general assessment matters, prescribed in clause 5.4.2.3. The subject-matter of some of those criteria overlap with matters already considered in addressing the particular criteria; and others are not applicable to the proposal or the site.



Natural conservation values

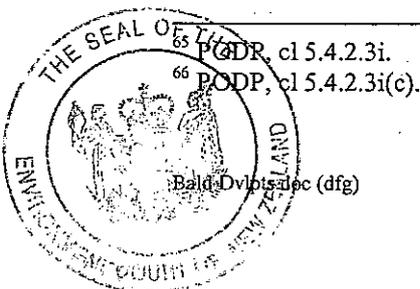
[203] Under this subheading, seven criteria are prescribed.<sup>65</sup> Several of them relate to indigenous ecosystems and biodiversity.

[204] The first is the extent to which the proposed activity would result in opportunities for their protection and enhancement. The second is any adverse effects on them from animal pests and domestic animals. The fifth is the extent to which the activities would protect and enhance the survival and well-being of indigenous plants and/or animals that are rare, vulnerable, endangered or significant. The sixth relates to the extent to which the activity would adversely affect, or provide opportunities to enhance, lizard populations and their habitats at rock outcrops.

[205] In considering the criteria particular to outstanding natural landscapes (district-wide), we addressed factors relating (among other things) to indigenous ecosystems. We stated findings (among others) that the proposed environmental management plan and consent conditions would result in a net positive ecological effect; and to the effect that the proposed exclusion of animal pests from around the Sheepskin Creek area and from around the rock outcrop refuges would reduce adverse effects on indigenous ecosystems. The prohibition on keeping cats is also intended to mitigate such effects. Those measures would provide some protection and enhancement for indigenous plants and animals, including lizard populations and their habitats.

[206] The third criterion for assessing effects on natural conservation values is any need to avoid, contain, manage and/or monitor the adverse effects of introduced plant species/forms which have potential to spread and naturalise.<sup>66</sup>

[207] The particular criteria required us to consider whether the proposed activity would introduce exotic species with the potential to spread and naturalise. We stated our findings that the proposed activities would not introduce such species, and that existing exotic species would be considerable reduced (including by removal of wilding pines).



[208] The fourth criterion is the extent to which the activity provides opportunities for making available information regarding indigenous vegetation.<sup>67</sup>

[209] We have reviewed the submissions of the parties and the evidence given, but have not found any reference to this topic. We infer that it is considered inapplicable in the circumstances of this proposal.

[210] The seventh criterion is the extent to which the inherent values of the site, and its ecological context, have been recognised and provided for.<sup>68</sup>

[211] The inherent values of the site and the relationship of its ecological context to them, were described in the evidence of Ms Lucas, Mr Davis and Mr Baxter. The inherent values include its open, natural character, and its geomorphology and topography, expressive of glacial impacts.

[212] In addressing the particular criteria, we stated our findings that the proposed activities would compromise the openness of the site to some extent; although the more sensitive parts would be maintained in open space; and that the proposed development would to a considerable extent adversely affect open space values of the area to be developed. So on the seventh of the natural conservation value criteria, we find that the inherent values of the site would not be fully recognised or provided for.

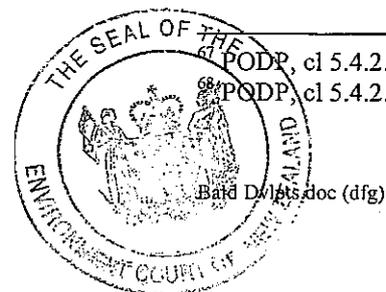
#### Finding on natural conservation values

[213] Having addressed the listed criteria for consideration of natural conservation values, we conclude that the development would provide some protection and enhancement for indigenous plants and animals (including populations of galaxiids and lizards and their habitats); would not introduce exotic species with potential to spread and naturalise; but would not fully recognise and provide for the inherent natural values of the site (particularly its open, natural character).

67 PODP, cl 5.4.2.3i(f).

68 PODP, cl 5.4.2.3i(g).

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*Other general criteria*

Buildings

[214] The next of the general criteria that is applicable relates to buildings.<sup>69</sup> It requires consideration of the extent to which the location of buildings and associated earthworks, access and landscaping would break the line and form of ridges, hill and prominent slopes. It also requires consideration of whether the external appearance of buildings would be appropriate within the rural context, but as far as we know, none of the residential buildings to be constructed on the site has been designed yet, so we cannot sensibly address that point at this stage.

[215] Consideration of the locations of buildings and associated earthworks, access and landscaping overlaps with consideration already given to some factors of the particular criteria about the absorptive potential of the landscape. The extent of visibility of the development would be so restricted by topography, distance and transitory factors that the landscape would be able to absorb it, and it would not be visually prominent to the extent that it would dominate views of natural landscapes; nor would mitigation, earthworks and plating detract significantly from natural patterns and processes in the context of the absorptive potential of the landscape.

[216] So we find that the design of the proposed development would result in buildings, earthworks, access and planting making no significant breaks in the line and form of the landscape.

Access

[217] The next of the general criteria that is applicable in this case relates to access.<sup>70</sup> It involves consideration of three factors.

[218] The first is the extent to which alternative formed access can be assured to the residential unit in the long term.

PODP, cl 5.4.2.3.iv.  
RODR, cl 5.4.2.3.xxiii.

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[219] Having reviewed the evidence, we are not satisfied that alternative formed access to the proposed residential units can be assured for the long term, or at all.

[220] The second factor is the extent to which the level and nature of the use of the proposed residential unit will make it unlikely that formed road access will ever be necessary.

[221] We have considered the level and likely nature of the proposed residential units, and are satisfied that formed road access would be needed to them all.

[222] The third factor about access relates to financial contributions to the Council. We are not aware that there is any dispute between BDL and the Council in this respect; nor does this proceeding provide an appropriate opportunity for resolving any such dispute.

#### Nature and scale of activities

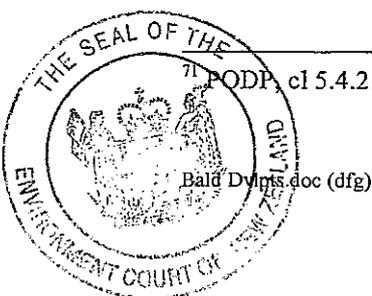
[223] The next criterion identifies six respects for considering the nature and scale of the proposed activities.<sup>71</sup>

[224] The first is the extent to which the activity and the proposed use of buildings would be compatible with the scale of other buildings and activities in the surrounding area.

[225] In that respect, we find that they are likely to be compatible with the scale of buildings and activities on adjacent land in the Central Otago District where consents for subdivisions have been granted and some are already being exercised.

[226] The second respect is the extent to which the character of the site will remain dominant.

[227] The character of the site is open and natural, and development of 26 residential complexes with associated access would compromise its open, natural character, to the extent that it could no longer be described as open and natural.



[228] The third and fourth respects do not apply directly to the BDL proposal. The fifth is the extent of noise and visual impact.

[229] The proposed buildings would be sufficiently spread that any noise from their use would be attenuated before being perceived off site. The visibility of buildings and other structures would be restricted by topography and distance so the visual impact would be largely absorbed by the landscape.

[230] The sixth respect for considering the nature and scale of proposed activities is the extent of adverse effects of likely traffic generation, and the ability to mitigate such effects.

[231] We consider that the scale of residential traffic likely to be generated by 26 rural-residential complexes would be unlikely to have an adverse effect on State Highway 6 between Cromwell and Wanaka.

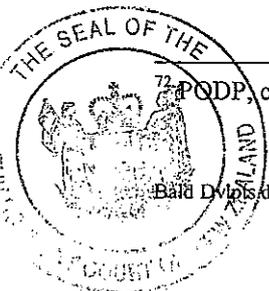
[232] In summary, the scale of the proposed activities would not be problematic, but their nature would be inconsistent with the open, natural character of the site.

#### Significant indigenous vegetation

[233] Another general criterion stipulates four respects for considering effects on significant indigenous vegetation.<sup>72</sup> In considering the proposed development by reference to them, we address them out of the order in which they are prescribed.

[234] The fourth respect is the extent to which previous activities have modified the site. On that topic, Mr Davis gave evidence that the pre-settlement vegetation on the part of the site to be developed was likely to have been dominated by shrubland, including kanuka, kowhai, and halls totara, with wetland communities in depressions. He stated his understanding that much of the woody vegetation would have been lost in early Maori fires; and that this loss would have been exacerbated by effects of burning and grazing associated with historic pastoral activities. Ms Lucas added her understanding that barely 1 percent of the original forest remains.

<sup>72</sup> PODP, cl 5.4.2.3.xxvi.



[235] So on that evidence we find that previous activities have modified the indigenous vegetation of the site to a very considerable extent.

[236] Next we turn to the significance of the existing species and their communities. There was no question that they are important.

[237] Then we consider the extent to which the proposed development may adversely affect the life-supporting capacity of the indigenous species. There was no evidence that it would.

[238] Next, the extent to which the proposed activity may adversely affect landscape and natural values of the site and in the vicinity of the site. In the context of significant indigenous vegetation, we have stated our findings that the proposal would provide for retention and re-establishment of native vegetation, and that there would be a positive net ecological effect.

[239] Then we are to have regard to the extent to which the proposed activities may adversely affect the life-supporting capacity of soil and water. We have considered the evidence, and see no basis for finding that the activities would have any significant impact on that capacity.

[240] Finally we are required to consider the degree to which alternative sites and methods have been considered. Because there is no evidence of adverse effects of substance on significant indigenous vegetation, consideration of alternative sites is unrealistic from that viewpoint.

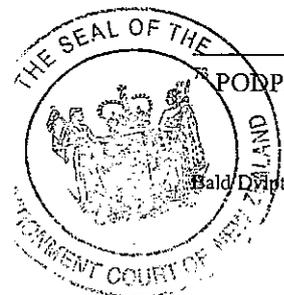
#### Residential units

[241] The list of general criteria continues by itemising seven factors for considering residential units that are discretionary activities.<sup>73</sup>

[242] The first of those factors is the extent to which the proposed residential activity would maintain and enhance several qualities, not all of which are applicable to the proposal and its site. First we are to consider the extent to which the proposed development would maintain and enhance rural character. In that a collective of the owners of the rural-residential lots is

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<sup>73</sup>PODP, cl 5.4.2.3.xxvii.



expected to contract for grazing by sheep of the common lot, the proposal would maintain a rural character; and the presence of residential activities on the 26 residential lots would not diminish that significantly.

[243] Then we are to consider the extent to which the residential activity would maintain and enhance landscape values. This calls for consideration of matters already addressed by reference to the particular criteria for assessing activities in outstanding natural landscapes (district-wide). In that context, we stated findings to the effect that the development, carried out in accordance with the environmental management plan and in compliance with the proposed consent conditions, would not be visually prominent so as to dominate views of the natural landscape, but would compromise its openness and natural character, and have adverse cumulative effects on landscape values.

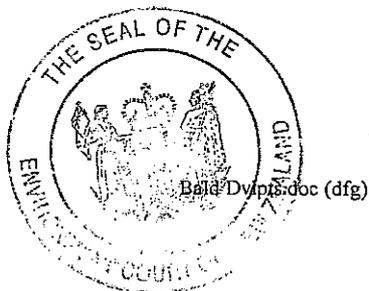
[244] The third consideration is the extent to which the residential activity would maintain and enhance heritage values, but no such values were identified as being associated with the site.

[245] The fourth consideration is the extent the residential activity would maintain and enhance visual amenity. Because the residential activities would be largely obscured from view, except in small parts and at a considerable distance or transitory views from the air, we find that the extent to which they would fail to maintain those amenity values would be minor.

[246] The fifth consideration is the life-supporting capacity of soils, vegetation and water. We have not identified any basis in the evidence for finding that the residential activities would have any significant impact on the life-supporting capacity of those media.

[247] The remaining respects are the extent to which the residential activity maintains and enhances infrastructure, traffic safety, and public access to and along lakes and rivers. Given the location of the site, a decision to grant or refuse consent to this proposal cannot, in practice, be informed by consideration of any of those matters.

[248] The second factor for considering residential units that are discretionary activities is the extent to which the residential activity may adversely affect adjoining land uses.



[249] Resource consent has been granted for rural-residential subdivision and development of the adjoining land to the east (in the Central Otago District). The proposed development would not adversely affect that use of that land.

[250] Adjoining land to the south, west and north is being farmed, and the proposed development would not be likely to adversely affect that use of that land.

[251] The current owners of both those adjoining lands have given (and as far as we know, have not withdrawn) their written approvals to the proposal, so we are required by section 104(3)(b) of the RMA not to have regard to any effect on them.

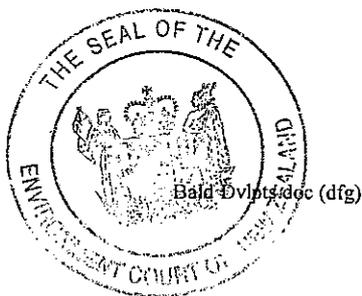
[252] The third factor is the extent to which the residential activity may be adversely affected by natural hazards or exacerbate a natural hazard situation. There was no basis in the evidence for making a finding on those points.

[253] The fourth factor is the extent to which the location of the residential unit and associated earthworks, access and landscaping affects the line and form of the landscape. We have considered this topic in the context of the general criterion in respect of buildings, and stated our finding that it would not.

[254] The fifth factor is whether the bulk, design, external appearance and overall form of the residential unit is appropriate in the rural context. As we said in considering the general criterion in respect of buildings, as none of the residential buildings has been designed yet, we cannot sensibly address the appearance of the proposed buildings at this stage. That also applies in this context too.

[255] The sixth factor relates to supply of potable water, disposal of domestic sewage, and telephone and electricity services. None of those topics was in issue on this appeal, and we presume that satisfactory provision could be made in accordance with local requirements and practice.

[256] The seventh factor raises potential to interfere with irrigation infrastructure. The evidence on this appeal gives no basis for an adverse finding in that respect.



### Earthworks

[257] The next topic in the set of general assessment matters is earthworks.<sup>74</sup> There are six main criteria, each involving two or more items for consideration.

[258] The first main criterion is environmental protection measures, itemising seven respects, mostly relating to the way in which the proposed earthworks are to be carried out to minimise adverse environmental effects.

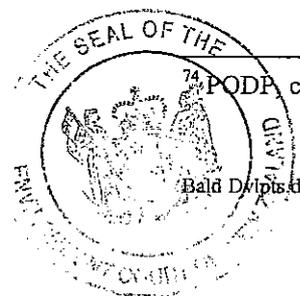
[259] The proposed consent conditions require the taking of appropriate measures, and the focus of the appeal hearing was whether consent should be granted or refused, rather than details of how earthworks are to be carried out. Accordingly, we do not address those points item by item.

[260] The second main criterion is effects on landscape and visual amenity values, with six respects itemised.

[261] Although the specific wording may differ, the substance of the items is generally similar to that of particular criteria for considering proposed activities in outstanding natural landscapes (district-wide). To avoid unnecessary repetition, we confine ourselves to items that raise new topics, or that could be significant in deciding the application.

[262] One item is the potential for cumulative effects on the natural forms of existing landscapes (which we take to mean, on the existing natural form of a landscape). Another is whether and the extent to which the earthworks would create an area that is inconsistent with the existing character of the landscape.

[263] In our opinion the effects of alterations to existing natural forms of the landscape by earthworks for building platforms and access tracks would be cumulative on effects of similar alterations for similar purposes on land to the east, and for farming purposes on other adjacent land. The visual effects of the proposed earthworks are to be mitigated by planting, but the natural landforms are to be altered permanently, and that would be inconsistent with



the existing natural character of the landscape generally, including the higher, southern part of the site itself.

#### Finding on earthworks

[264] In our opinion although visual effects of the earthworks proposed for the subdivision and development (building platforms and access tracks) would be mitigated, the effects of actual alterations to the natural landform would, cumulative on effects of existing and consented alterations to the natural landform in the vicinity, be inconsistent with the natural character of the landscape, and have an adverse effect on the environment.

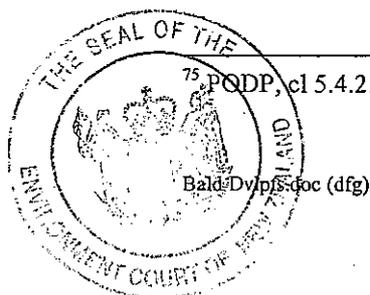
#### *Reasons for making activity discretionary*

[265] The PODP stipulates that consideration of an application for a discretionary activity in the rural zones is to include recognition of the reasons stated in paragraph 1.5.3(iii) for making the activity discretionary.<sup>75</sup> That paragraph explains several reasons for classifying classes of activity discretionary. Of them, two are of general application: a potential that the activities may not be suitable in all locations, and where environmental effects are so variable that general standards cannot be prescribed for them.

[266] Another reason is particular to outstanding natural landscapes and features in certain parts of the district, including the inner upper Clutha area. It is simply that the activities that are classified discretionary are inappropriate in almost all locations in those parts of the district.

[267] In his evidence, Mr Haworth relied on this for general propositions that the PODP discourages development in outstanding natural landscapes; and that the objectives, policies and assessment criteria are onerous in respect of subdivision and development in the Rural General Zone where the site is in an outstanding natural landscape.

[268] We find those propositions too general to be helpful. The appropriateness of each proposal that is a discretionary activity has to be judged on its own circumstances.



<sup>75</sup> PODP, cl 5.4.2.1, Step 3.

*Frequency of appropriate sites in locality*

[269] Finally, the PODP also stipulates that consideration of an application for a discretionary activity in the rural zones is to include the 'frequency' with which appropriate sites for development will be found in the locality.<sup>76</sup> In this respect, Mr Ferguson gave evidence about management of land in the same landscape as the site, but in the Central Otago District. Mr Howarth also gave evidence of an ample supply of locations for residential and rural living in more appropriate places.

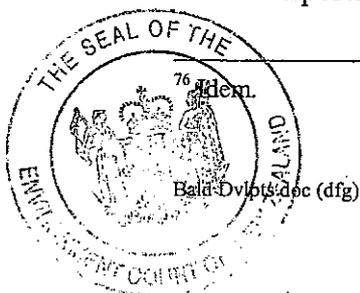
[270] On the evidence we find that there are numerous sites for residential and rural residential development in consented subdivisions on the outskirts of Luggate and on land close to the site in the Central Otago District. We judge that granting consent to the BDL proposal cannot be justified on the ground of there being insufficient sites for residential or rural residential development in the locality. Sites on the outskirts of Luggate would be more appropriate in terms of the PODP, because they are not in an outstanding natural landscape.

*Assessment of proposal by criteria prescribed by PODP*

[271] We have considered the proposal by reference to separate assessment criteria prescribed by the PODP: some particular to activities in outstanding natural landscapes, as well as some criteria of more general application. We have now to develop from our findings on the separate criteria an assessment of whether consent to the proposal should be granted or refused.

[272] Many of our findings, based on prescribed assessment criteria, are indicative of the proposal, carried out in compliance with the proposed consent conditions (including the environmental management plan) being judged worthy of consent:

- (a) In visual terms, the landscape has potential to absorb that change.
- (b) The proposal would have net positive effects in protecting, maintaining and enhancing certain indigenous ecosystems and wildlife habitats (including populations of galaxiids, skinks and lizards and their habitats); and would provide for retention of important indigenous vegetation.



- (c) The proposal would (by legal instrument) protect substantial open space from further development that would be inconsistent with preserving a natural open landscape.
- (d) The proposed earthworks (access tracks and building platforms) would be needed for the residential complexes.
- (e) The scale of the proposed residential activities would not be problematic.
- (f) The proposal would maintain a rural character that would not be diminished significantly by the residential activities.

[273] However, findings on other topics identified in the prescribed assessment criteria indicate that consent for the proposal should be refused:

- (a) The development would compromise intrinsic values of the site and landscape of openness and natural character by introducing elements inconsistent with them, in particular buildings and earthworks.
- (b) The existing and consented potential development of other land in the vicinity represents a threshold on the ability of the landscape to absorb change without substantial loss of open and natural character.
- (c) The loss of those character elements would be cumulative on similar effects of development already consented in respect of land in the immediate vicinity, and would exacerbate them.

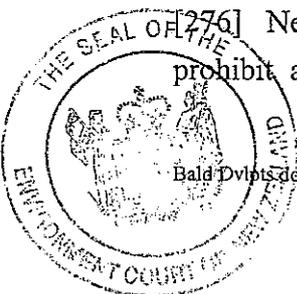
[274] We have considered whether the plan permits an activity that would have those effects, but find that it does not. Those adverse effects cannot be disregarded on that ground.

***Consideration by objectives and policies and section 6(b)***

[275] We have now to consider whether the objectives and policies of the PODP, and the provisions of Part 2 of the RMA, guide the making of a decision.

[276] Neither section 6(b) of the RMA, nor the objectives and policies of the PODP, prohibit all subdivision development in an outstanding natural landscape. Section 6(b)

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directs protection of those landscapes from inappropriate subdivision, use and development; and the objectives and policies apply that direction to outstanding natural landscapes of the district by indicating effects of subdivision development in them that may be appropriate.

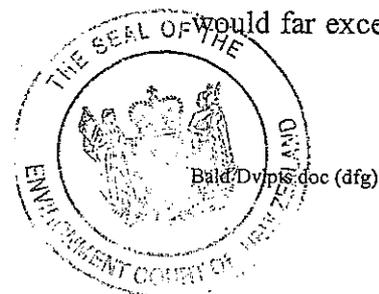
[277] There are respects in which BDL's proposed development would not be inappropriate. It would avoid structures being placed on skylines, ridges, prominent slopes and hilltops; and the residential buildings would largely be secluded from public view. It would also appropriately protect by fencing and removal of weeds and wilding pines, indigenous populations and habitats of Sheepskin Creek and around rock outcrops. In these respects the proposal would support objectives of the PODP.

[278] However the proposed development would be inappropriate in terms of the PODP in other respects, related to the intrinsic qualities of the outstanding natural landscape: its openness and its naturalness. It would not be consistent with the policy of maintaining the openness of outstanding natural landscapes; nor with the policy of maintaining existing levels of natural character; nor (as a cumulative effect) with the policy against over-domestication; nor would it be consistent with the policy about subdivision works avoiding adverse effects on the natural character and qualities of the environment.

[279] The several objectives and policies of the PODP should be read together to indicate a consistent theme. In our opinion the consistent theme of the PODP relating to subdivision development in outstanding natural landscapes (district-wide) is that development may be permitted and treated as appropriate if it does not adversely affect the natural environment, nor the landscape and visual amenities, nor the intrinsic qualities and character of the landscape.

[280] In determining the appeal, the Court is obliged to have regard to the decision that is the subject of the appeal. In doing so, we bear in mind that the proposal before the independent commissioners who made that decision differed from the modified proposal before the Court, particularly in that it provided for 35 rural-residential lots, not 26.

[281] The commissioners found that the part of the site proposed for development has a strong natural and pastoral character, and that the impact of the proposed building would be significant and detrimental. They considered that the amount of development proposed would far exceed the ability of the site to absorb development while maintaining a dominant



natural and pastoral character; and concluded that what was proposed was well outside the intentions of the district plan, even assuming a visual amenity landscape classification.

### Ultimate judgement

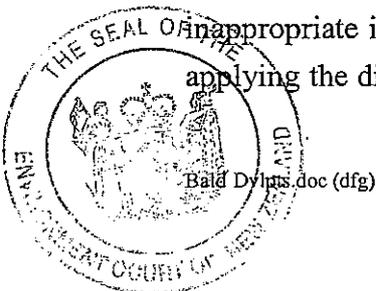
[282] On our own findings, the proposed development (creating only 26 rural-residential lots) in protecting indigenous fauna and flora and removing weeds and wilding pines) would not adversely affect the natural environment, and has been designed to minimise adverse effects on visual amenity landscape values. However the proposed development would degrade the intrinsic qualities and character of the outstanding natural landscape of openness and naturalness; and those effects would be cumulative on similar adverse effects of development already consented to by the adjoining territorial authority. Except in the latter respect, our findings are largely similar to those of the commissioners who made the decision subject to appeal.

[283] We acknowledge that the proposal would have another positive, beneficial effect, in that BDL is offering to provide a public access track to the Pisa Conservation Area, the public value of which was endorsed by Mr T S Dennis, Chairman of the Upper Clutha Tracks Trust.

[284] Nor do we overlook Mr Reeves's warning about the risks to environmental values if the site is not developed, and is farmed as a permitted activity to maximum economic advantage with burning of tussock, clearing of other vegetation, cultivation, and grazing by cattle.

[285] Even so, the Court's duty is to make a judgement whether granting consent would more fully achieve the purpose of the Act than would refusing consent; and the direction to recognise and provide for the protection of outstanding natural landscapes from inappropriate subdivision, use and development is identified as a matter of national importance contributing to that purpose. The PODP incorporates an application to the district of that direction.

[286] In that the proposed subdivision and development would deprive the relevant outstanding natural landscape of its openness and naturalness, we hold that it would be inappropriate in terms of section 6(b), and inconsistent with the relevant PODP policies for applying the direction in that section to the outstanding natural landscapes of the district. In



our judgement, those considerations indicate that, although there would be beneficial positive effects, and positive design elements, the purpose of the Act would be more fully achieved by refusing consent than by granting it.

[287] So the Court disallows the appeal, and confirms the primary decision declining resource consent to the modified proposal.

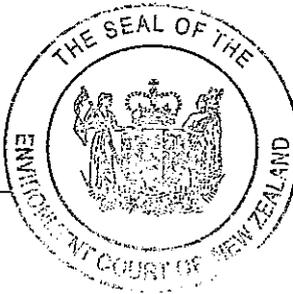
### Costs

[288] The question of costs is reserved. If agreement cannot be reached, any party may lodge and serve a written application for costs within 20 working days of the date of this decision accompanied by affidavit evidence of any matters of fact (beyond the findings of this decision) on which the application is made. Any party against whom an order for costs is sought may lodge and serve written submissions in response within 20 working days of receipt of the application, and those submissions may similarly be accompanied by affidavit evidence. If necessary, a written reply may be lodged and served by the applying party within 10 working days of receipt of the response.

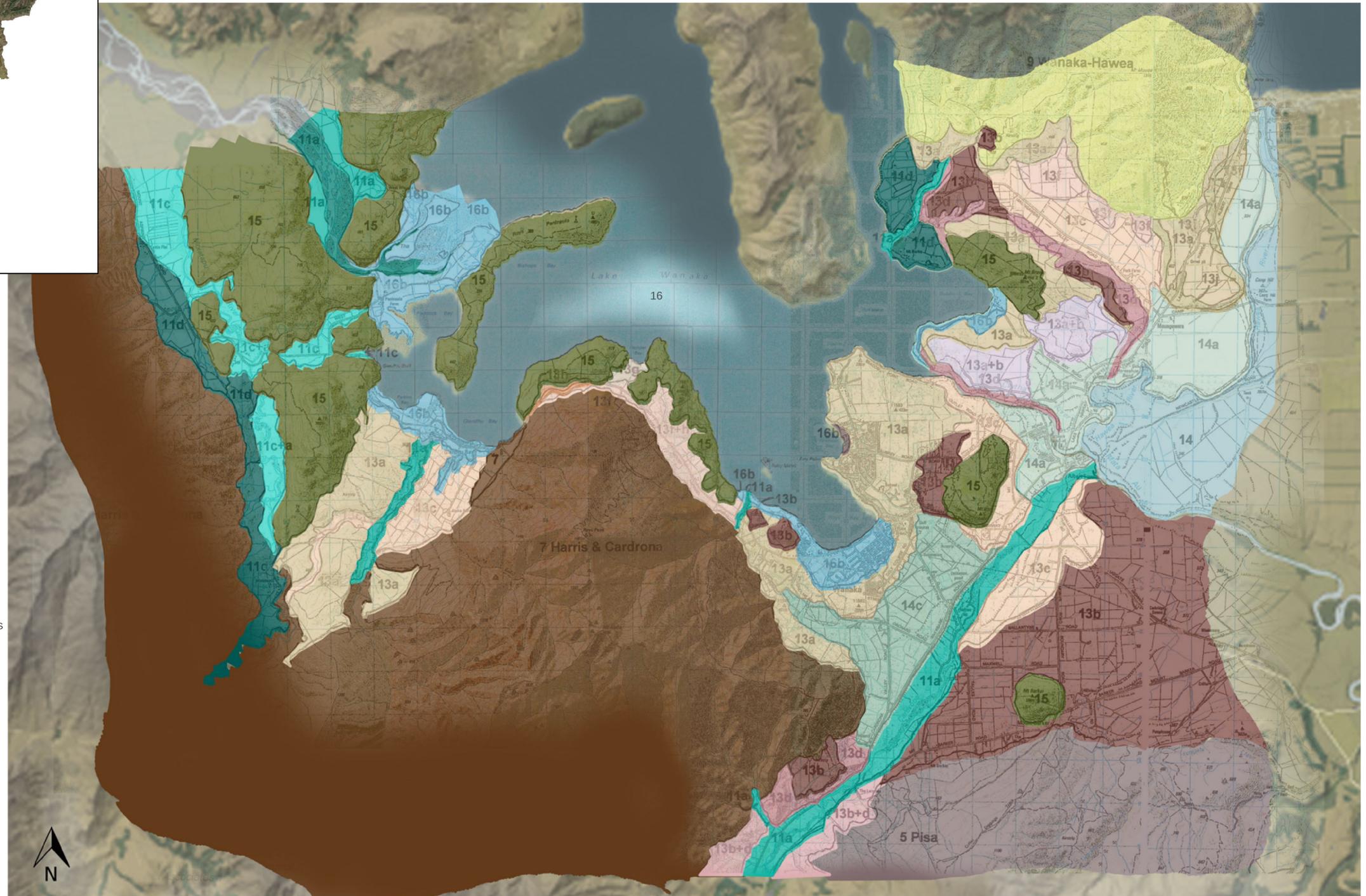
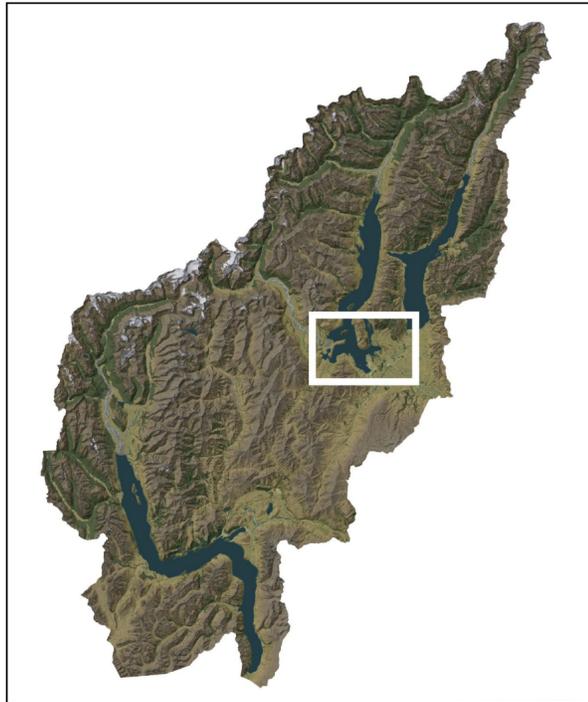
**DATED** at Auckland this *14<sup>th</sup>* day of *August* 2009.

For the Court:

  
D F G Sheppard  
Alternate Environment Judge



# Southern Wanaka: Land Types



## Key

### Mountain Land Types

- 5. Pisa
- 7. Harris - Cardrona
- 9. Wanaka - Hawea

### Valley and Basin Land Types

- 11. Major River Valley Fill
  - 11a. Braided Valley Fill
  - 11c. Floodplain Terraces
  - 11d. Fans
  - 11c/a.
- 13. Moraine and Fluvial Outwash
  - 13a. Moraine Fields
  - 13b. Glacial Terraces & Moraine Dumps
  - 13c. Fluvial Valley Terrace/Treads/Scarps
  - 13d. Moraine and Terrace Scarps
  - 13f. Fans
  - 13g. Alluvium and Swamp
  - 13h. Valley Fill Swamps
  - 13j. Erosional/hard Rock Hill Slopes
  - 13a/b.
  - 13b/d.
  - 13f/h.
- 14. Outwash Plains
  - 14a. Fluvio-glacial Terraces/Plains
  - 14c. Fans
- 15. Isolated Mountain
- 16. Major Lake
  - 16b. Beaches and Deltas



ONL

ONL

Proposed Rural Landscape

Proposed ONL

Waterfall Creek

ONL

ONL

