

Before the Hearings Panel

For the Proposed Queenstown Lakes District Plan

Under the Resource Management Act 1991

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

Summary Statement Chris Ferguson

8 November 2023

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Correction

- 1 At para 41 of my EIC I stated that the VIF, as directed through SP 3.3.29, applies to all ONF/Ls, creating an anomalous situation where the landscape schedules are required to identify landscape values and landscape capacity for Exceptions Zones but where future activity, including activity not provided for by the Exception Zone, is not required to protect the landscape values specified on the landscape schedules.
- 2 This statement is incorrect as provision 3.1B.6 identifies SP 3.3.29 as one of the policies that do not apply within any Exception Zone. Within the ONF/Ls (but not RCLs), there is, therefore, no ambiguity the landscape schedules are not required to identify the landscape values and landscape capacity for Exception Zones. There is a question raised through expert witness conferencing whether the mapping of the Priority Areas should be amended to also exclude the Exception Zones. I address this below.

Joint Witness Statement

- 3 As I was unable to attend expert witness conferencing, this statement provides brief commentary on the matters where I agree or disagree with the JWS¹.

Landscape Capacity rating system

- 4 The JWS sets out agreement by the experts on a landscape capacity rating system. Agreement is based on modifications to Ms Gilbert's rebuttal version with the following amendments:
 - (a) Replacement of the no capacity with extremely limited or no capacity
 - (b) Adoption of the descriptors from the rating system proposed by Mr Bentley.
- 5 The concerns I raised with the landscape capacity rating system proposed within the Council's s42A reports related to consistency with the approach used in the PDP for the Wakatipu Basin, and the use of absolute language, and defensibility against a plethora of alternate or bespoke systems that might be developed. Agreement through the JWS minimises the defensibility issue and replacement of the no capacity rating further addresses my concern with the use of absolute language and that not being supported by the analysis undertaken to prepare the schedules.

¹ "Outcome of Expert Landscape Architects and Planning Conference held 3 October 2023"

- 6 Whilst I retain some reservations about the PDP having two different rating systems for s7 landscapes (RCLs and the WBRAZ), on balance, I agree with the position reached by the experts within the JWS.
- 7 I understand that counsel for the Council has in its opening submissions resiled from the position set out within the JWS, stating that the description of “*extremely limited to no landscape capacity*” introduces uncertainty and vagueness. Counsel for Council seeks to delete from the agreed wording within the JWS the text “*However, there may be exceptions where occasional, unique or discrete development protects identified landscape values.*” In response to this change, I note:
- (a) The Council’s s32 records uncertainty around what a specific land use might entail and favours less absolute terminology.
 - (b) The Council’s evidence stresses that the assessment of the landscape schedules has occurred at the level/scale of the PA. The evidence by Ms Gilbert considers that a finer-grained mapping of landscape character units, landscape types or smaller landscapes within PAs would be unlikely to provide appreciable benefits.
 - (c) The pre-amble reflects the evidence in stating that “*the landscape attributes and values identified relate to the PA as a whole and are not intended to describe the relevant attributes and values of specific sites within the PA*”.
- 8 It is reasonable to conclude from the evidence that the identification of landscape values within the landscape schedules is not comprehensive or complete. Reasonable decisions have been made around the scale of the assessments that informed the development of the schedules and I agree this approach does not support statements within the landscape capacity rating system that seek to imply a high level of precision. It is appropriate and responsible to acknowledge with the landscape capacity rating that there may be exceptions where the right sort of development may still protect landscape values. For these reasons I support the wording stated within the JWS.
- 9 I agree that the PA schedule would sit within the PDP. That is the very purpose of having them within a schedule where they are a part of the PDP.

Mapping of the Priority Areas

- 10 Paragraphs 14 and 15 of the JWS records the outcome of discussions between the experts on the application of the Exception Zones and related mapping of the PAs. The experts did not unanimously agree on whether

the mapping of the identified PAs should include or exclude the exception zones, where they fall within an identified PA. It appears scope was a factor in this discussion.

- 11 My EIC is primarily concerned with the wording of the pre-amble as a means to clarify the application of the schedules to any Exception Zone located within a PA. At paragraph 46 I point to the ability for an independent landscape assessment to refer to the schedules for guidance, particularly for activities that are not provided for. The current strategic policy framework places the responsibility for that assessment of what is not provided for on the separate landscape assessment undertaken pursuant to SP 3.3.43 and 3.3.45. In my view the landscape schedules could be a useful guide for such assessments in describing those values within the combined PA exception zone for assessing the receiving environment. I would caution to note that for this approach to be effective, it would need to be consistently applied across the schedules (I'm not sure this is the case).
- 12 Accordingly, my preference would be to retain the PA mapping as including any part of an Exception Zone, where they intersect, and for the pre-amble to address application of the schedule to Exception Zones. Working back in the other direction, the Rural Zone assessments matters within 21.21.A state that:

The assessment matters in 21.21.1, 21.21.2 and 21.21.3:

...

b. are non-exclusive matters for assessment that are identified as potentially relevant provided that:

...

iii. In the case of the Ski Area Sub-Zone, no Assessment Matter is relevant unless the subdivision or development proposal is not anticipated by that Sub-Zone (as provided under Strategic Objective 3.2.5.4(b)).

- 13 As these assessment matters do refer to the Schedules and exempt them from the SASZ, no further changes are required within Chapter 21, as it is already clear when working through the assessment matters, the Schedules are not to apply.

Exception Zones

- 14 On the important issue of plan implementation agreement has been reached on the wording of the preamble, as below.

Application

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

- *The PA schedules apply (as relevant) to any proposal requiring resource consent in the Rural Zone, including the Rural Industrial Sub Zone.*
- *The PA schedules do not apply to proposals requiring resource consent in any other zone, including Exception Zones (see 3.1B.5). They may inform landscape assessments for proposals involving any land within a PA but are not required to be considered.*

15 This wording is broadly consistent with the recommendations at para 54 of my EIC. There are, however, two areas of ambiguity in the wording. The first issue relates to the stated requirement for the schedules to apply to “*any proposal requiring resource consent*” in the Rural Zone. This includes controlled activities, such as “*Retail sales of farm and garden produce and wine grown, reared or produced on-site or handicrafts produced on the site*” that are listed as a controlled activity through Rule 21.4.16. Controlled activities are recognised within the plan as being appropriate for the zone, but due to their limited scale and effects require some degree of control. In this context it does not make sense to require a full-scale assessment of the landscape values within the schedules. Relevantly, SP 3.3.46 directs that the landscape assessment methodology required by SP 3.3.45 be implemented when assessing:

- b. *a resource consent application for the subdivision, use or development of land where:*
 - i. *the application is for a restricted discretionary, discretionary or non-complying activity; and*

16 A second issue arises in the references to the application of the schedules to land within the Rural Zone that contains an Exception Zone. A potential complication (or uncertainty) arises for the Ski Area Sub-Zones (**SASZ**) that are a sub-zone nested within the Rural Zone but are also an Exception Zone. The first bullet is clear in that addressing the Rural Industrial Sub-Zone but not the SASZ.

17 For these reasons, I prefer the wording set out within my EIC for the Application section of the pre-ambble stating that the schedules are not required to be considered on land located within any PA that is also an Exception Zone, as follows:

Application of the schedules to subdivision or development

Schedule 21.22 will only be relevant to resource consent applications for the subdivision, use or development of land within the Rural Zone Priority Areas, where:

- i. the application is for a restricted discretionary, discretionary or non-complying activity (SP 3.3.46)

- ii. any part of the proposal is located on land within the Rural Zone and within an identified PA, as shown on the planning maps (SO 3.2.5.2).
- iii. But are not required to be considered for proposals located on land located within an identified Priority Areas that is also an Exception Zone (refer to 3.1B.5 and 3.1B.6) or not located within the Rural Zone.

- 18 Given the ongoing nature of the District Plan Review, where the current list of Exception Zones may change, I suggest it is more efficient to refer to the Exception Zones as listed within provision 3.1B.5 rather than stating within the landscape schedules what those exceptions are.
- 19 It is important to acknowledge that in situations where the PAs incorporate an Exception Zone, the Councils evidence² is that the landscape schedules have been amended so that the attributes and values within those PAs acknowledge the values associated with the Exception Zones. Again, I would caution to note that for this approach to be effective it needs to be applied consistently across the schedules.
- 20 Consistent with the revised preamble, and the intention of the application of the schedules to just the Rural Zone as a mandatory requirement, a small clarification could be made to address this matter within the preamble text, as follows:

*The landscape capacity ratings used in the PA Schedules, which are described below, are intended to reflect the capacity of the landscape or feature to accommodate various types or forms of development, without compromising the identified landscape values. The definition of landscape capacity applied in the PA Schedules is set out in 3.1B.5(b). The capacity ratings, and associated descriptions, are based on an assessment of each PA as a whole, and are not intended to describe the relevant capacity of specific sites within a PA. **The ratings of landscape capacity do not apply to activities within any Exception Zone identified within 3.1B.6 that is located within a PA.***

(JWS Version, October 2023)

The role of the Schedules in the PDP Strategic Policy Framework

- 21 The landscape evidence for GBTL by Mr Bentley has expressed concern with aspects of the wording within the landscape capacity rating proposed for Rural Living within the West Wanaka ONL where it establishes a directive to manage this activity in a certain way i.e. for visibility to be barely

² Para 5.17, Evidence of Bridget Gilbert (11 August 2023)

discernible. This wording and nature of the direction required for this activity remains an area of contention between the landscape experts. This is not something I considered as part of my EIC and raises broader issues of plan implementation that warrants further analysis.

- 22 Within the notified version of the West Wanaka schedule, the capacity for Rural Living is stated as being:

Rural living - very limited landscape capacity on lower-lying terrain and sited so that it is contained by landforms and vegetation – with the location, scale and design of any proposal ensuring that it is barely discernible from external viewpoints. The exception to this is Roys Peak, where rural living development should be extremely visually recessive. Developments should be of a modest scale; have a low key 'rural' character; integrate landscape restoration and enhancement; enhance public access; and protects the area's ONL values.

- 23 From a policy perspective the role of the schedules is to inform what is being protected, which in the case of the ONF/Ls, is stated within SO 3.2.5.2 as below.

3.2.5.2 *Within the Rural Zone, new subdivision, use and development is inappropriate on Outstanding Natural Features or in Outstanding Natural Landscapes unless:*

- a. *where the landscape values of Priority Areas of Outstanding Natural Features and Outstanding Natural Landscapes are specified in Schedule 21.22, those values are protected; or*

...

- 24 SP 3.3.29 provides the direction to then identify the landscape values and landscape capacity for PAs within Schedule 21.22, and outside of the PAs, through the landscape assessment methodology. The VIF further prescribes how the landscape values and landscape capacity ought to be identified. For ONF/Ls SP 3.3.38 details how the landscape schedules are to be prepared, as below.

3.3.38 *To achieve SP 3.3.37 for each Priority Area:*

- a. *identify the key physical, sensory and associative attributes that contribute to the values of the Feature or Landscape that are to be protected;*
- b. *describe in accordance with SP 3.3.43, and then rate, those attributes; and*

- c. assess and record the related landscape capacity for subdivision, use and development activities including but not limited to:
- i. *commercial recreational activities;*
 - ii. *visitor accommodation and tourism related activities;*
 - iii. *urban expansions;*
 - iv. *intensive agriculture;*
 - v. *earthworks;*
 - vi. *farm buildings;*
 - vii. *mineral extraction;*
 - viii. *transport infrastructure;*
 - ix. *utilities and regionally significant infrastructure;*
 - x. *renewable energy generation;*
 - xi. *forestry;*
 - xii. *rural living.*

(relevant to SO 3.2.5, 3.2.5.1)

- 25 For the ONF/Ls it is clear from the language used within SP 3.3.38 that the landscape schedules would 'assess', 'describe', or 'assess and record'. In terms of landscape capacity, the 'recording' of the landscape capacity has been the subject of debate amongst the experts and through the JWS agreement has been reached on the formulation of a suitable rating system. Nothing within the strategic policy framework or the VIF requires landscape values, attributes or landscape capacity to 'direct' or 'manage' the effects relating to the activities for which the landscape capacity has been recorded (using the rating system).
- 26 That makes sense, as the purpose of the landscape schedule is to inform what is being protected through the SOs that set out how the statutory purpose is being achieved along with establishing the desired goals. The role of the strategic policies is to provide the direction as how those objectives would be achieved (i.e. as methods). Insertion of direction within the landscape schedule creates unnecessary tension within the overall scheme of the PDP policy framework as to what is being achieved. For example, do the directions that currently exist within the schedules override the policy direction, supplement the policy direction or provide some other meaning?
- 27 Taking the example of landscape capacity for Rural Living within the West Wanaka ONL, the strategic policy framework directs that landscape capacity for rural living be assessed and recorded. Through the outcomes of the JWS the rating system provides a part of the recording function. In my view the assessment function would be met by describing the areas to which that rating applies, such as the lower lying terrain. The balance of the assessed landscape capacity is equally problematic in that it also 'directs'

the management of effects arising from activities in relation to Roy's Peak “, *where rural living development should be extremely visually recessive*”, and “*developments should be of a modest scale; have a low key ‘rural’ character; integrate landscape restoration and enhancement; enhance public access; and protects the area’s ONL values*”. Most of this text is dedicated to managing effects and is not ‘recording’ landscape capacity.

- 28 To resolve this tension and meet the purpose required from the landscape schedules, I consider it important for any directive placed within the schedules relating to the management of the effects of a particular activity be removed so that landscape capacity is recorded for each activity in a way relevant to the values or attributes within the particular landscape. At the very least, the schedules should have consistent language.
- 29 On a related matter, I understand the Commission have been concerned to understand the relationship between the scheduled and non-scheduled landscapes, insofar as evidence is asserting that future planning proposals would be treated more onerously within the PAs than outside of the schedules.
- 30 From a policy perspective, the intent of the policy framework is clear that there is to be no higher tests applied to subdivision, use or development occurring with the PAs. This is established through SP 3.3.44, as below.

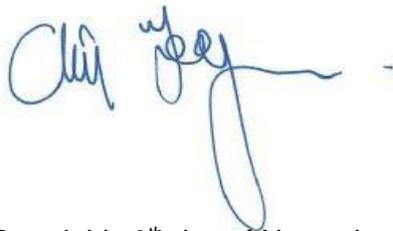
3.3.44 Where any or any part of an Outstanding Natural Feature, Outstanding Natural Landscape or a Rural Character Landscape is not identified as a Priority Area in Schedule 21.22 or 21.23, this does not imply that the relevant area:

- a. is more or less important than the identified Priority Areas in terms of:*
 - i. the landscape attributes and values, in the case of an Outstanding Natural Feature or Outstanding Natural Landscape;*
 - ii. landscape character and visual amenity values, in the case of a Rural Character Landscape; or*
- b. is more or less vulnerable to subdivision, use and development.*

- 31 A further and adverse outcome from many of the currently worded statements on landscape capacity are that through the addition of pseudo policy tests on matters such as visibility (to take one example), there would be a higher bar applied to activities occurring within the PAs than outside, signalling greater importance in terms of landscape values.
- 32 Stepping back, one important outcome from inclusion of the landscape schedules containing statements relating to landscape capacity is that the PDP would provide greater certainty on the appropriateness for identified

activities within identified locations (at the level of the PA). When looked at as a package and once the landscape schedules are embedded into the PDP, the statements relating to landscape capacity would direct planning outcomes for particular activities. To use the example of rural living, if one PA identifies very little capacity to absorb this type of activity but another does, the plan would have the obvious potential to direct investment in the direction of those landscapes with greater capacity to absorb such activity. From a planning perspective this helps to address what has been a vexed issue within plan policy relating to the management of cumulative effects occurring within the District's landscapes.

- 33 Subject to the one significant caveat around pseudo policy creeping to the schedules, I do not regard the landscape schedules as being inherently more onerous; the same policy tests are applied across the scheduled and non-scheduled landscapes. By design, the schedules provide an expression of the values and landscape capacity within the PDP that is not available to the non-scheduled land, and in doing so provide clearer direction on the outcomes expected for the scheduled areas.



Dated this 8th day of November 2023

Chris Ferguson