

Full Council

6 June 2024

Report for Agenda Item | Rīpoata moto e Rāraki take [3]

Department: Planning & Development

Title | Taitara: Ratification of the Independent Hearings Panel recommendations on the Priority Area Landscape Schedules Variation

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to provide the Council with the Recommendation Report from the Independent Hearings Panel (IHP) for the Priority Area Landscape Schedules Variation to the Proposed District Plan (PDP). A resolution is sought from the Council to adopt the report and recommendations and notify a decision on Chapter 21 (Rural Zone) in accordance with Clause 10 and 11 of the First Schedule of the Resource Management Act 1991 (RMA).

Executive Summary | Whakarāpopototaka Matua

- The Priority Area Landscape Schedules Variation was notified on 30 June 2022. The Proposal seeks to introduce landscape schedules for 29 Priority Areas to Schedule 21.22 and 21.23 of Chapter 21 *Rural Zone* of the Proposed District Plan (PDP).
- The Variation was propagated as the result of an Environment Court decision. That decision was the result of appeals on Stage 1 of the District Plan Review relating to the management of landscapes in the Rural Zone. Further detail is provided on this in the background section of this report.
- As a result of this decision, the Environment Court amended the PDP by adding Policy to Chapter 3 *Strategic Direction* which required landscape schedules to be included for Priority Areas in Chapter 21 *Rural Zone*. This also included policy prescribing a methodology to be used in creating the landscape schedules (known as the Values Identification Framework) and a date for Council to notify the Variation to include the landscape schedules in the PDP.
- A hearing was held for the Variation between October 2023 and November 2023. The Council appointed three commissioners to the Independent Hearings Panel (IHP). This consisted of Jane Taylor (Chair), Peter Kensington and Councillor Quentin Smith.
- The IHP have prepared a Recommendation Report for Council (attached). The IHP have recommended that Council adopt the version of the preambles and landscape schedules attached to the Recommendation Report and that these be included in the PDP as Schedules 21.22 and 21.23.

- The IHP have also recommended that Council implement a formal monitoring process as required by strategic policies 3.3.47 and 3.3.48 to ensure that schedules 21.22 and 21.23 remain efficient and effective in future years.

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report;
2. **Adopt** the Independent Hearings Panel (IHP) Recommendation Report (see Attachment A) and recommendations on the submissions received on the Priority Area Landscape Schedules Variation to the PDP as a Council decision;
3. **Direct** staff to amend the PDP provisions to reflect the recommended changes and to correct minor errors and make changes of minor effect in accordance with Clause 16(2) of the First Schedule of the RMA;
4. **Note** that adopting the report and the recommendations as a Council decision means that the Council also adopts the Independent Hearings Panel's reasons for those decisions as set out in the report;
5. **Note** that adopting the reports and recommendations as a Council decision does not mean that Council has formed a view on other possible future variations mentioned in the report and recommendation;
6. **Authorise** the Manager of Planning Policy to make minor edits and changes to the proposal and correct any formatting issues prior to notification of the decision if required;
7. **Direct** staff to notify the decision in accordance with the First Schedule of the RMA; and
8. **Note** that Council staff are progressing work on the Upper Clutha Landscape Schedules Variation to the PDP which will involve seeking public feedback on material to be incorporated into the PDP at a later date.

Prepared by:



Name: Daniel Hadfield
Title: Senior Policy Planner

16 May 2024

Reviewed and Authorised by:



Name: David Wallace
Title: Planning & Development General
Manager

16 May 2024

Context | Horopaki

Background

1. The Priority Area Landscape Schedules Variation to the PDP is the result of an Environment Court decision. That decision was the result of appeals on Stage 1 of the District Plan Review relating to the management of landscapes in the Rural Zone.
2. In summary, the Environment Court decided that requiring the protection of landscape values of ONL/Fs, and the maintenance of landscape character and the maintenance or enhancement of visual amenity values of RCLs without specifying what those landscape values, character or visual amenity values were, did not provide enough certainty to achieve the policy direction.
3. The Court therefore directed that the landscape values of ONL/Fs and the landscape character and visual amenity values of RCLs, should be identified and included in schedules in the PDP.
4. The Court acknowledged that it would be a significant undertaking to identify the values of all of the landscape because 97% of the district is classified as ONL/F. Rather, the Court went through a process with the landscape architects and planners involved in the hearing and identified the 29 Priority Areas to be included in the schedules first.
5. The Variation implements Policy 3.3.42 of the PDP, which is as follows:
 - *3.3.42 The Council shall notify a proposed plan change to the District Plan by 30 June 2022 to implement SPs 3.3.36, 3.3.37, 3.3.39 and 3.3.40.*
6. Chapter 3 (through SP 3.3.36) identifies 24 Priority Area landscapes within Outstanding Natural Features and Outstanding Natural Landscapes (ONLs, ONFs, or ONL/F). In accordance with SP 3.3.37 of Chapter 3, the schedules describe:
 - a. The landscape attributes (physical, sensory, and associative);
 - b. The landscape values; and
 - c. The related landscape capacity.
7. Chapter 3 (through SP 3.3.39) identifies five Rural Character Landscape Priority Areas within the Upper Clutha. In accordance with SP 3.3.40 of Chapter 3, the schedules describe:
 - d. The landscape attributes (physical, sensory, associative);
 - e. The landscape character and visual amenity values; and
 - f. The related landscape capacity.
8. By identifying the landscape values, landscape character, and visual amenity values, the schedules provide clarity on what is sought to be protected, maintained, or enhanced within each landscape, as required by the policies. This helps to provide more detail to achieve the policy framework and more certainty for resource consent application assessments.

Methodology for Preparing the Landscape Schedules

9. The Court also prescribed the methodology to be followed to prepare the schedules. This was a process the Court undertook with the landscape architects and planners involved in the hearing. The final methodology is referred to as the Values Identification Framework (VIF) and is set out in Chapter 3 of the PDP in Policies SP 3.3.36 to SP 3.3.41.
10. In addition to the VIF, the policies require best practice landscape assessment methodology be used for the identification of landscape values, landscape character and visual amenity values. This proposal has adopted best practice landscape assessment methodology through the guidance of Te Tangi a Te Manu (TTatM).
11. A team of three landscape architects were commissioned to prepare the landscape schedules for Council. This included Bridget Gilbert (author) Helen Mellsop (author/peer reviewer) and Brad Coombes (peer reviewer). The VIF and best practice methodologies were applied, and public consultation was used to inform the content of the schedules. Mana whenua provided input on mana whenua values and input was also provided by experts from other related specialties (i.e., ecology, tourism, heritage, and geomorphic).

Notification

12. The Priority Area Landscape Schedules Variation was notified on 30 June 2022. The Variation received 208 submissions and 37 further submissions. This equated to over 4,600 total submission points.

Key Themes Raised by Submitters

13. Submissions ranged from supporting the Variation to opposing the Variation in its entirety. Many submissions also sought amendments to the schedules. In summary, submissions canvassed a broad range of themes which included:
 - Application of the schedules;
 - Detailed content of the schedules;
 - Terminology and definitions;
 - Preparation and consultation on the variation;
 - Mapping of Priority Areas and landscape classification lines;
 - Amendments to the landscape capacity ratings, in particular the category of 'no landscape capacity'; and
 - Miscellaneous points.

Hearing

14. The hearing for the Landscape Schedules was split between Queenstown and Wānaka. The Queenstown hearings were held 16-19 October and 24 October 2023, and 6-9 November 2023 in Wānaka.

15. Council engaged two landscape experts and one planning expert to assess the submissions and provide evidence and recommendations on the relief sought by submissions, and to appear at the hearing on behalf of Council. The landscape experts were Ms Bridget Gilbert and Mr Jeremy Head and the planning expert was Ms Ruth Evans. Simpson Grierson provided legal counsel.

Key Recommendations

16. The recommendations of the IHP are set out in the report (Attachment A). The recommended provisions (i.e., the landscape schedules) are available in Appendix 4 of the Recommendation Report. The recommendation does not constitute a decision under the RMA. A local authority must make a decision on the provisions and matters raised in submissions.
17. The IHP has recommended that the Council adopt the version of the preambles and landscape schedules attached to the Recommendation Report from the IHP appended to this report.
18. The IHP recommended minor changes to the landscape schedules and pre-amble text from the Council's Reply evidence. This mostly consists of additional minor changes to the content but has not fundamentally altered the scheme and intention of the schedules.
19. The IHP has also recommended that Council implement a formal monitoring process as required by Strategic Policies 3.3.47 and 3.3.48 to ensure that Schedules 21.22 and 21.23 remain efficient and effective in future years.

Upper Clutha Landscape Schedules Variation

20. The Priority Area Landscape Schedules are accompanied by maps which identify the geographic area where the specific landscape schedule applies. These maps were incorporated by reference into the PDP.
21. It is noted that Council staff are preparing the Upper Clutha Landscape Schedules Variation to the PDP. This will be taken to the Council for a notification request on the 22 June 2024 Council meeting. This Variation will introduce additional landscape schedules and will require additional maps to be incorporated by reference into the PDP.
22. Clause 34 of Schedule 1 of the Resource Management Act 1991 sets out a specific process for material incorporated by reference in a district plan. This process requires Council to give public notice and provide the opportunity for the public to give feedback on the material before the Variation is notified.
23. The Planning Policy Manager has delegation to undertake the Clause 34 process, which will occur prior to the 22 June Council meeting enabling the material to form part of the notified Variation.

Analysis and Advice | Tatāritaka me kā Tohutohu

24. This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002. These options are set out below:

25. **Option 1: Accept the Hearings Panel’s Recommendation**

Advantages:

- The Variation has been through a thorough process under Schedule 1 of the Resource Management Act (1991). Commissioners of the Hearings Panel are qualified decision-makers with the benefit of reviewing submissions and further submissions, hearing expert evidence from submitters, and Council staff in the form of an officer’s recommendation. It is considered that the Commissioners have reached a robust recommendation;
- The submissions and the hearing process gave people the opportunity to support or oppose the Variation and be heard in relation to their submissions;
- Would advance the Variation towards being made operative; and
- The Variation implements the direction from the Environment Court (as described above).
- Accepting the IHP’s Recommendation would not result in a substantial degree of variance from the notified landscape schedules.

Disadvantages:

- It is not considered that there are any disadvantages. Council appointed the Commissioners to hear and make recommendations on the submissions received.

26. **Option 2: Reject the IHP’s recommendations in full or in part and re-hear submissions on the Variation to the PDP**

Advantages:

- This option would allow the Council to appoint new Commissioners to re-hear submissions on any aspect of the recommendation it was unhappy with. It would allow Council to clearly signal concerns with the decisions or the process of deciding submissions without being drawn into the merits of the decisions or submissions.

Disadvantages:

- A rehearing would be required because changing the recommendations without undertaking a further hearing would not demonstrate procedural fairness or natural justice to those who have inputted into the process, and submitters who have participated in good faith.
- This option would result in considerable cost as new Commissioners would have to be appointed and Council experts would need to be engaged.
- Additional Council, applicant and submitter resources would be required to rehear the Variation. This would not be the most efficient remedy, given that parties unhappy with the decisions or process can appeal to the Environment Court on a de novo basis (which means to start at the beginning).

27. This report recommends **Option 1: Accept the Hearings Panel’s Recommendation** for addressing the matter for the above reasons.
28. Once the decision is notified the rules would have legal effect.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

29. This matter is of medium significance, as determined by reference to the Council’s Significance and Engagement Policy 2021 because the landscapes are an important part of the district’s well-being and are of broad interest to the community.
30. The persons who are affected by or interested in this matter are broad given the prominence and importance of these landscapes within the district. The proposal will impact residents and ratepayers of the district, property owners within Priority Areas, members of the community seeking to protect these landscapes, and people (including visitors to the district) using these areas for recreational purposes.
31. The Council has undertaken pre-notification consultation. This consultation was undertaken via the Council’s Let’s Talk page between 9 March 2022 and 3 April 2022. Further detail on the consultation undertaken for the Variation is available in the Section 32 report.

Māori Consultation | Iwi Rūnaka

29. The Council has undertaken consultation with Aukaha and Te Ao Marama as part of the development of the landscape schedules, as required by Schedule 1 Clause 4A. Iwi also made a submission on the Proposal and appeared at the Hearing to speak to their submission and share their comments on the Variation.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

32. This matter relates to the Strategic/Political/Reputation risk category. It is associated with RISK10056 Ineffective provision for the future planning and development needs of the district within the QLDC Risk Register. This risk has been assessed as having a moderate residual risk rating.
33. The approval of the recommended option will allow Council to implement additional controls for this risk. This will be achieved by introducing additional provisions to the PDP to ensure that the landscape values of ONL/F identified as Priority Areas will be protected from inappropriate subdivision, use or development, and that the landscape character and amenity of RCLs will be maintained or enhanced.

Financial Implications | Kā Riteka ā-Pūtea

34. There has already been considerable investment in preparing the landscape schedules for notification. There are no further budget or cost implications that would arise from adopting the decision in line with Option 1.

Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera

35. The following Council policies, strategies and bylaws were considered as part of the development of this Proposal:

- Proposed District Plan: in that the variation directly relates to its provisions. [Proposed District Plan \(qldc.govt.nz\)](#)
- Significance and Engagement Policy 2021
- Climate and Biodiversity Action Plan 2022 – 2025
- Spatial Plan 2021

36. The recommended option is consistent with the principles set out in the named policy/policies.

37. This matter is included in the Long Term Plan/Annual Plan as part of ongoing implementation and maintenance of the District Plan.

Legal Considerations and Statutory Responsibilities | Ka Ture Whaiwhakaaro me kā Takohaka Waeture

38. The process for dealing with plan changes and variations is set out in the First Schedule of the Resource Management Act 1991. This includes a requirement for decisions on submissions to be issued within two years.

Local Government Act 2002 Purpose Provisions | Te Whakatureture 2002 o te Kāwanataka ā-Kiaka

39. Section 10 of the Local Government Act 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. The proposal is intended to provide for a better regime to protect or manage the District's landscapes which relate to the four well-beings of the community, now and in the future. As such as the recommendation in this report is appropriate and within the ambit of Section 10 of the Act.

40. The recommended option:

- Can be implemented through current funding under the Long-Term Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and

- Would not significantly alter the intended level of service provision for any significant activity undertaken by or on behalf of the Council or transfer the ownership or control of a strategic asset to or from the Council.

Attachments | Kā Tāpirihaka

Attachment A – Priority Area Landscape Schedules Variation Recommendation Report

Attachment is circulated separately.