

IN THE ENVIRONMENT COURT

ENV-2024-CHC-054

ENV-2024-CHC-055

ENV-2024-CHC-057

AT CHRISTCHURCH

UNDER THE

Resource Management Act 1991 (“Act”)

IN THE MATTER OF

An appeal under Schedule 1, Clause 14(1), of the Act

BETWEEN

THE CARDRONA CATTLE COMPANY

HAWTHENDEN LIMITED

JEREMY BURDON

Appellants

AND

QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

**NOTICE OF DR JOHN COSSENS' WISH TO BE
PARTY TO THE PROCEEDINGS**

TO: The Registrar
Environment Court
CHRISTCHURCH
By email: Christine.McKee@justice.govt.nz

AND TO: The Appellant
By email: maree.baker-galloway@al.nz
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AND TO: The Respondent
By email: dpappeals@qldc.govt.nz

1. I, John James Cossens, wish to be a party to
 - (a) *The Cardrona Cattle Company Limited v Queenstown Lakes District Council* ENV-2024-CHC-055 (“**Cardrona Cattle Appeal**”).
 - (b) *Hawthenden Limited v Queenstown Lakes District Council* ENV-2024-CHC-057 (“**Hawthenden Appeal**”).
 - (c) *Jeremy Burdon v Queenstown Lakes District Council* ENV-2024-CHC-054 (“**Burdon Appeal**”).
2. I made a submission on the subject matter of these proceedings.
3. I am not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991.
4. I am interested in all of the proceedings.
5. I agree to participate in mediation or other alternative dispute resolution processes.

SPECIFIC MATTERS

6. Notwithstanding my interest in all of the proceedings, I have a specific interest in:
 - (a) I support the assertion made in the appeal of *Cardrona Cattle* that the ‘decision version’ of the QLDC Landscape Schedules fails to uphold the fundamental principles of the Resource Management Act, namely that the ‘schedules’ *do not promote the sustainable management of resources in accordance with section 5 of the RMA in that they:*
 - (i) *do not manage the use, development, and protection of natural and physical resources which enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety, as required by section 5 of the RMA;*
 - (ii) *do not sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, as required by section 5 of the RMA;*
 - (e) *do not promote the efficient use and development of natural and physical resources as required by section 7(b) of the RMA;*
 - (f) *do not recognise and provide for, or otherwise acknowledge, and/or prioritise, the property rights of landowners;*

And further,

- (j) *were developed in a fundamentally flawed way, that has proved incapable of resolution through the subsequent hearing, and most likely will also prove incapable of resolution through this appeal process.*
- (b) I support statement made in the *Hawthenden* appeal:
 - (c) *accepting flawed landscape expert methodology culminating in Joint Witness Statements and s 32 Report that, due to an apparent absence of analysis of geological and geomorphological evidence in respect of PA and ONF/L Boundaries, failed to apply a ‘first principles values assessment’ as directed by this Court;*
 - (d) I support the reasons for the *Burdon* appeal relating to *‘insufficient detail and analysis regarding the content of the schedules’*.

REASONS

THE LANDSCAPE SCHEDULES FAIL AT ALL LEVELS OF THE RMA

Failure to promote the basic principle of the RMA

7. The QLDC decisions version of the Landscape Schedules fails at ALL levels of the RMA. As mentioned by *Cardrona Cattle* the schedules fail to uphold the basic principle of the RMA which seeks to manage resources in a sustainable way while enabling people to provide for their social, economic and cultural well-being.

¹ QLDC, Report and recommendations of Hearing Commissioners, Variation to Chapter 21 of the PDP, Landscape Schedules, May 2024 [10]

FAILURE TO MEET THE DIRECTIONS OF THE ENVIRONMENT COURT

Landscape Value Importance not established.

8. As well as failing at high levels of the RMA hierarchy, the QLDC landscape schedules also substantially fail the requirements of the Environment Court decisions which directed the need for landscape schedules in the first place. Specifically:

- As highlighted by the Commission, the Environment Court stated *[127] Landscape capacity cannot be known unless there has been an identification of the landscape character values **and their importance** (i.e. knowing what the landscape is valued for and why).*³
- The direction of the Environment Court could not be clearer and yet the most basic requirement of the landscape schedules has not been answered, that is, that the **'importance of values and why they are valued'** has not been recorded in the schedules.
- On the contrary, the recommendations, accepted by the Council, sought that the concept of 'importance' be scrubbed from the schedules when stating *'we recommend that each schedule be amended to remove the "important" references from each of the value headings'*.⁴

It is inconceivable that the Commissioners did not consider that an assessment of the importance of various attributes and values was relevant, for this is the essence of what a 'value' means and what the Environment Court was seeking. For the Court's benefit by common definition 'value' is take to mean ***'the importance or worth of something for someone'***.⁵ What is important to recognize in this well accepted definition is the word 'someone', that is a landscape value is important to 'someone', in this case a resident, landowner or visitor. For the Commission to unilaterally decide that a value should not have any importance attached to it defies logic and the true meaning of 'value'. If there were to be no importance attached to any landscape attribute or value, then there would have been little point in the Environment Court establishing 'priority areas', for again 'priority' in common understanding means ***something that is very important and must be dealt with before other things.***⁶

² Ibid at [17]

³ NZEnvC [2019] 205 [127]

⁴ Commissioner's recommendations report at [134]

⁵ <https://dictionary.cambridge.org/dictionary/english/value>

- The significance of establishing the importance of landscape attributes and values cannot be overstated because it gives direction to landscape assessment in identifying those landscape values to which people have assigned the greatest importance and therefore warrant protecting or maintaining which is at the heart of *Matakana* as referenced by the Environment Court in its Topic 2 decisions.
- There is a further critical reason for establishing the importance of landscape values and one which was discussed at length during the PDP appeals and that is, under the ODP regime great uncertainty and inconsistency resulted where previously landscape consultants were given free reign to decide for themselves what landscape values and attributes were most important which resulted in often arbitrary and confused recommendations. As it stands with the proposed landscape schedules and their failure to document landscape value importance, then this will only continue to perpetuate inconsistency, uncertainty and encourage the endless debate between landscape consultants which is unhelpful and only adds to transactional costs the Environment Court has been seeking to reduce.

Complete Failure to address Cumulative Effects

9. During the PDP appeals and then in the Environment Court decisions there was much discussion concerning the inability of the ODP to address cumulative effects of development and that the decisions version of the PDP did not provide mechanisms for identifying and measuring cumulative effects. Specifically, the Court had said:

[126] As to 'absorption capacity', we prefer the construct of 'landscape capacity' (which we define in Part A). It requires that the plan sets quantifiable tolerances, underpinning its rules, and capable of measurement over time in order that cumulative effects can be assessed as change and development in the relevant Priority Areas of ONE/Ls and RCLs occurs (emphasis added)

10. The words used by Environment Court are plain, 'quantifiable' and 'capable of measurement over time'. Both the Commissioners report and the resulting landscape schedules they have recommended are woefully inadequate when it comes to addressing cumulative effects and their measurement. Unbelievably, the term 'cumulative effects' is NOT mentioned at all in the Commission report and the landscape schedules **do not** provide any means by which changes in landscape values and capacity can be measured. NO quantifiable tolerances have been identified;

⁶ <https://dictionary.cambridge.org/dictionary/english/priority>

NO rating system established which will allow for 'measurement over time'. Instead, the landscape schedules have essentially been developed primitively on the back of often one, sometimes two landscape expert opinions which has long been recognized as an inaccurate form of identifying and measuring cumulative effects. Even Ms Gilbert, co-author of the landscape schedules has said, cumulative effects are notoriously difficult to measure and yet no attempt has been made to provide any quantifiable means of measuring landscape change over time.

11. And finally, the Court also noted the importance of establishing '**benchmarks**' for the measurement of cumulative effects where it said:

[176] In the case of the Upper Clutha RCL Values' Identification Framework, the evidence demonstrates the importance of establishing a proper benchmark for the measurement of additive cumulative degradation of identified character and amenity values through land use change arising through subdivisions and developments over time.

12. Quite clearly, the landscape schedules have failed to provide a single cumulative effect benchmark (measurable over time) for any of the Priority Area Landscape Schedules. In the proposed district plan appeal hearings, even Ms Gilbert, considered that a 'cumulative effect' required a benchmark to show whether a tipping point had been reached:

A cumulative effect is an additional effect that takes the landscape beyond a 'tipping point' - which would normally require a benchmark against which the effects are to be measured. Such benchmarks might include the character envisaged in the District Plan, or the 'capacity' of a landscape to accommodate development before compromising its valued characteristics and qualities.⁷

⁷ UCES v QLDC. 2019, NZEnvC 205, decision 2.2, [194]

FAILURE TO MEET THE OBJECTIVES AND POLICIES OF THE PROPOSED DISTRICT PLAN

Conflation of protectionist ideology across all land of the Upper Clutha

13. More particularly, the thrust of the decision made by Independent Commissioners which focused on the ‘*protection*’ of **all** rural landscapes and to put a ‘*metaphorical line in the sand*’ is wrong. The Commissioners recommendation’s report stated,

We are also mindful of the submission on behalf of the Upper Clutha Environmental Society Incorporated that the overarching objective of the relevant Chapter 3 strategic policies and the associated Values Identification Framework is to protect rural landscape values from inappropriate levels of development. To this end, we are cognisant that this Variation, which seeks to give greater clarity as to the landscape attributes and values sought to be protected in areas of ONF, ONL and RCL that are subject to development pressure, is vitally important in terms of “deciding the fate of rural landscapes for generations to come”. We concur that the schedules, and in particular the high level assessment of landscape capacity, should, if appropriately constructed, be instrumental in establishing a metaphorical “line in the sand” for appropriate levels of development in the ONF, ONL and RCL landscapes⁸

14. The Commissioners have taken the protectionist view of the UCESI too literally, and indeed, **IT IS NOT** the overarching objective of Chapter 3 policies to protect rural landscapes from inappropriate levels of development. Chapter 3 simply **does not** say that. Rather, the overarching direction for Chapter 3 (as written) is:

This chapter sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District’s special qualities:

15. The decision report conflated the protection of ONL/ONF landscapes with the protection of **all** landscapes, including section 7(c) amenity landscapes identified as rural character landscapes (RCL) in the PDP. Whereas in fact, Chapter 3 did not seek the protection of all landscapes, but rather, in the case of the rural character landscapes sought that landscape character and visual amenity is to

⁸ QLDC, Report and recommendations of Hearing Commissioners, Variation to Chapter 21 of the PDP, Landscape Schedules, May 2024 [10]

be maintained or enhanced.

3.2.5.5 Within Rural Character Landscapes, adverse effects on landscape character and visual amenity values from subdivision, use or development are anticipated and effectively managed, through policies and rules, so that: a. landscape character is maintained; and b. visual amenity values are maintained or enhanced.

16. The Commissioners, while limiting their jurisdiction and scope in other areas, did not confine themselves when it came to putting a *'metaphorical line in the sand'* for appropriate levels of development in the ONL, ONF and RCL. It is submitted this was clearly outside their remit and strayed into policy already set through many Environment Court appeals and decisions. Again, for whatever reason the Commissioners placed too much emphasis on the protectionist views of the UCESI and their long time consultant, Ms Lucas when they quoted her as saying, *'Addressed at the national scale, the district's rural landscapes are in total outstanding for their dramatic natural landscape attributes based on geomorphic character complemented by vegetated naturalness'*.⁹ Clearly, this is wrong, as the district's rural landscapes are not **all** outstanding.

Failure to identify areas that can accommodate rural living opportunities.

17. The proposed landscape schedules have also glaringly failed to achieve the objectives and policies of the PDP chapters and made it harder to undertake reliable landscape assessment. For example in chapter 3.0:

3.3.22 - Provide for rural living opportunities in areas identified on the District Plan web mapping application as appropriate for rural living developments. (relevant to SO 3.2.1, 3.2.1.8, 3.2.5, 3.2.5.1 - 3.2.5.7) – This is a singular and critical failure of the landscape schedules in that for the Upper Clutha they have identified **NO** rural living opportunities as identified on we mapping applications as being suitable for appropriate rural living developments.

3.3.33c has not been met – 'through associated District Plan rules setting measurable spatial or other limits, and related assessment matters, as to cumulative subdivision and development including as to location, quantity, density and design'.

⁹ Ibid at [17]

3.3.35iii has not been met - *the landscape capacity of that landscape character area is assessed so as to soundly inform a determination that the requirements of SP 3.3.23 are met;*

3..3.47-48 - It is simply impossible for Rural Zone Landscape Monitoring 3.3.47-48 to be met by the current make-up of the landscape schedules where no landscape value or attribute scales have been developed which would allow for landscape monitoring to take place. The only mechanism currently available to the Council to monitor cumulative effects would be the notoriously unreliable expert opinion based methodology.

18. In chapter 6.0, there is an important aspect in the introductory comments where it says:

*While acknowledging these rural areas have established rural living and development, and a substantial amount of further subdivision and development has already been approved in these areas, the landscape values of these areas are vulnerable to degradation from further subdivision and development. Areas where rural living development is at or is approaching the finite capacity of the landscape need to be identified if the District's distinctive rural landscape values are to be sustained. **Areas where the landscape can accommodate sensitive and sympathetic rural living developments similarly need to be identified***

19. Fair to say, these areas where the landscape can accommodate sympathetic development **have not been identified**. Rather, incredulously, across the whole Upper Clutha Basin, an area far larger than the Wakatipu Basin, **NOT A SINGLE** area has been identified within that vast landscape as being capable of some rural living development. Not even the UCESI considered this to be the case and during the PDP appeals had proposed a number of 'rural precincts' which the society considered could accommodate further rural living development.

20. Interestingly, the recommendation by Commissioners hearing submissions on the Wakatipu Basin Rural Zones, paused deliberations on the basis that:

[102] The Hearing Panel recommended to the Council that a detailed study of the floor of the Wakatipu Basin was required, among other things, to:

"Determine whether, given the residual [sic] development already consented, there is any capacity for further development in the Wakatipu Basin floor and, if there is, where it should be located and

what form it should take¹⁰

21. And yet, even though in the Landscape Schedules there was no landscape capacity benchmarks, no measurable spatial limits and no areas identified as having capacity for further development, the Commissioner's were satisfied they had sufficient information to accept that the strategic objectives and policies of the PDP would be met by the Landscape Schedules. This conclusion was inherently wrong.

Failure to enable accurate cumulative effects assessment to be undertaken.

22. And finally, the proposed landscape schedules as currently constructed make it extremely difficult to accurately answer Chapter 21 assessment matter 21.21.1.4 Cumulative Effects

For the implementation of relevant policies including SP 3.3.23, SP 3.3.29, SP 3.3.31, SP 3.3.43, SP 3.3.45, SP 3.3.46, 6.3.3.1, 6.3.2.7, 6.3.3.5, 21.2.1, 21.2.1.1, 21.2.1.11, 21.2.9, 21.2.9.1, 21.2.9.2 and 21.2.9.3, in considering a subdivision or development proposal, whether located within or outside any Outstanding Natural Feature or Outstanding Natural Landscape, the Council will have regard to:

- a. **the soundness of the methodology applied for the consideration of cumulative effects on landscape values** including as to:
- i. **whether the assessment applies measurable spatial or other limits to inform its conclusions concerning those effects (including matters of location, quantity, density and design treatment);**
 - ii. **how it accounts for contribution to those effects from existing, consented or permitted development within the relevant landscape character area;**
- b. **the outcome of an assessment of landscape capacity undertaken in accordance with SP 3.3.29 and SP 3.3.45 that is relevant to the proposal being considered;**
- c. **the contribution existing, consented or permitted subdivision or development (including unimplemented but existing resource consents that are likely to be implemented) makes to landscape capacity; and**
- d. **the effect the proposal would have on landscape values and landscape capacity.**

¹⁰ report-18-1-chapter-24-wakatipu-basin, Feb 2019, [100-102]

Failure to provide landscape capacity benchmarks and measurable spatial limits

23. In all of these areas above, the landscape schedules should have provided landscape capacity benchmarks, measurable spatial limits and measurable landscape capacity against which an applicant should have been able to assess their own rural development proposal. Disappointingly, the Council's DV landscape schedules provide none, and from the author's personal experience of undertaking AEE's for rural subdivision under the PDP it has made it very difficult to evaluate the cumulative effects of a proposal without such measurable limits and benchmarks.

FAILURE TO ADDRESS FLAWS IN COMMUNITY LANDSCAPE VALUE CONSULTATION

24. It is submitted that the Hearing Commission were in error in their determination that matters relating to the landscape schedule consultation were 'out of scope' of their jurisdiction. It seems incongruous that the Commission would accept and hear evidence on landscape methodology leading to the development of the landscape schedules but not on landscape schedule 'consultation' when the two are inextricably linked if best practice landscape methodology is to be engaged. But it is submitted that consultation and methodological failures in developing the landscape schedules are very much within the remit of the Environment Court in its de novo function as a part of these appeals now before the Court.

25. The Commission held that:

The scope of the proposal is therefore limited to the content of the schedules, including the way the schedules describe the landscape attributes and landscape values (ONFs and ONLs) or the landscape character and visual amenity values (RCLs), and the related capacity of the landscape within each of the 29 PAs. The Variation does not change any objectives or policies in the PDP or seek to introduce new objectives or policies.

This position of the Commission seems at odds with their earlier comment about being prepared to 'put a line in the sand' with regard to rural development and also to hear evidence and expert opinion on landscape methodology. Based upon the pleadings of Ms Gilbert, co-author of the landscape schedules, the Commission found:

We find, accordingly, that the methodology employed by the Council, subject to our findings below, was appropriate given the scale and magnitude of the exercise required, and that the resulting

*output achieves the purpose of the relevant strategic policies.*¹¹

FAILURE TO ENABLE EXPERT EVALUATION OF LANDSCAPE SCHEDULE DEVELOPMENT METHODOLOGY

26. Besides accepting the evidence of Ms Gilbert, the Commission also pointed to the general agreement on methodology from the expert conferencing – ‘*Expert conferencing and the resulting Joint Witness Statements have confirmed general agreement with Ms Gilbert that the process adopted has indeed been ‘fit for purpose*’¹² And yet, this could not possibly be so because the Council went to great effort to ensure ‘methodology’ was NOT a topic of the expert conferencing.¹³ I get a sense that the landscape ‘experts’ did not want to rock the boat and but for a small minority, most were silent on the matter of methodology and prepared to let it ride, for they considered there is more to be gained by persisting with ‘expert opinion’ rather than engaging with the community to establish landscape values. Why were the landscape experts silent on methodology?
27. The failure of the Commission to hear and consider evidence on the landscape value consultation and its acceptance of a flawed landscape assessment methodology resulted in the poorly conceived landscape schedules which eventuated. As day follows night, so execution follows methodology, and in this case self-titled best practice methodology. But as we shall see ‘best practice methodology’ was not followed.

FAILURE TO ENGAGE BEST PRACTICE LANDSCAPE METHODOLOGY

28. To consider best practice landscape attribute and value development, one needs to start with a general understanding of landscape attributes and values. Landscape attributes are much more tangible, physical elements more easily identified, whereas landscape values are ostensibly an understanding of human perception. It is not controversial that a ‘value’ is generally defined as

the importance or worth of something for someone:

For them, the house's main value lay in its quiet country location.

place/put/set a value on *They are known to place/put/set a high value on good presentation.*¹⁴

¹¹ Commissioner’s recommendations report at [101]

¹² Ibid at [101]

¹³ Memorandum On Behalf Of Queenstown Lakes District Council Regarding Expert Witness Conferencing Arrangements, 14 Sept 2023

¹⁴ <https://dictionary.cambridge.org/dictionary/english/value>

29. The NZILA Landscape Assessment Guidelines defined and described ‘landscape’ and ‘landscape values’ in detail. Some of its most relevant commentary in regard landscape values and connection to community is:

- (a) *Landscapes are not the sole preserve of landscape assessors. On the contrary, everyone experiences landscapes and has heart-felt views about them.*
- (b) *Landscape values are the various reasons a landscape is valued—the aspects that are important or special or meaningful. Values may relate to each of a landscape’s dimensions—or, more typically, the interaction between the dimensions. Values can relate to the landscape’s physical condition, meanings associated with certain landscape attributes, and a landscape’s aesthetic or perceptual qualities. Importantly, landscape values depend on certain physical attributes. Values are not attributes but are embodied in attributes.*
- (c) *Landscape values are the various reasons a landscape is valued—the aspects that are important or special or meaningful.*
- (d) *Values are ascribed by people. Even natural values, which may be referred to as ‘intrinsic’, are ascribed by people*
- (e) *Contested landscape values are often at the heart of resource management issues. Differences in how landscape values are perceived can reflect different interests and perspectives.*
- (f) *Consultation with the wider community is also essential but there are different ways in which it might be undertaken. Such methods may include, for example: the use of stakeholder workshops, community charettes, co-design, online tools, public meetings, and formal submissions. Communities may be engaged in preparing the assessment or, alternatively, a draft assessment may be carried out first as a tool for engagement with communities*

FAILURE TO DETAIL COMMUNITY LANDSCAPE VALUES

30. So the NZILA guidelines make it plain landscape and landscape values are inextricably linked with people, most notably communities, residents, landowners and visitors. In the assessment and development of the landscape schedules the QLDC chose to consult with the community in preparation of the schedules and yet inexplicably in their consultation **DID NOT** ask a single question about landscape values. The consultation also fell down in other regards:

- (a) Landscape values could not be ascribed to landowners and residents within the PA’s
- (b) Responses could not be differentiated on the basis of gender, age, or more importantly

location and place of residence.

- (c) Response numbers concerning individual PA's were too low to be meaningful
- (d) The Council sought 'feedback' on the landscape schedules without providing the draft schedules to give feedback on.

31. The end result of the flawed community consultation is that **no meaningful information on community landscape values** could be fed into the development of the landscape schedules. In effect, the experts were flying blind and so the process once again became 'expert driven'. It should be noted that the little usable data from the community consultation was not used by the consultants until **after** the final schedules were produced. In the end, unsurprisingly, there is **not a single element** of the PA landscape schedules which highlights what landscape values the community hold dear and what they consider important.

FAILURE TO DETAIL ANTICIPATED CHANGE TO PA LANDSCAPE ATTRIBUTES AND VALUES

32. A further failing of the Commissioners recommendations and the final landscape schedules is that they are not forward looking in that they do not suggest how the landscapes may look in the future nor how the community desires them to look. There are many references by the commissioners and the authors of the schedules that the schedules represent a 'snapshot' of landscape attributes and values at a given time, that is, now.¹⁵ This seems an unrealistic approach given the significant change the landscapes of the Upper Clutha are undergoing and will continue to undergo. For example, there is a noticeable 'greening' of the basin as significant plantings of both native and exotic shelter and amenity trees and plants takes place. This will undoubtedly have an ever increasing effect on landscape values, landscape character and screening. More consented dwellings will also affect landscape characteristics. It would seem extremely difficult to assess and monitor cumulative effects when little analysis appears to have been done as to how the landscapes of the Upper Clutha might look in the future. There has been little mention of how the future environment and landscape might develop, if not all, landscape assessments for rural development must be predictive and forward looking. As the NZILA Guidelines rightly point out:

¹⁵ Commissioner's recommendations report at [38]

*Landscape values include potential values. Landscape management is not limited to maintaining existing values but includes realising new values and restoring those values that have been lost or degraded.*¹⁶

FAILURE TO PROVIDE ANALYSIS OF LANDSCAPE ATTRIBUTES AND VALUES AT AN APPROPRIATE SCALE

33. In a related matter, the council were at pains to point out that the landscape schedules were at necessary 'high level' which consultant decided for themselves and as a result the schedules were not aimed at being directive. This arbitrary decision seems at odds with the directions and desired outcomes of the Environment Court. To improve consistency and certainty, the Court explicitly sought that the PDP be more directive when stating.

[113] However, the principles we have discussed favour a greater degree of direction than the DV provides.

[117] However, we are of course concerned with the issue of the most appropriate approach in terms of policy direction, in relation to ONF/Ls and RCLs. It is in that sense that we find the principles in the other noted authorities call for a more sophisticated approach than the DV presently provides.

[118] Furthermore, we bear in mind several limitations of resource consent application processes for responding to ss6(b) and 7(c) in the absence of effective district plan direction.

*[237] The evidence demonstrates that, for Upper Clutha RCL areas, the ODP needs to give better direction on landscape character and important visual amenity values. That needs to be by way of supplementary SOs that apply to the Upper Clutha RCL.*¹⁷

34. A further matter of clear direction from the Environment Court in which the Commission recommendation and resulting landscape schedules have completely failed to address concerns the total absence of any direction of rural subdivision to areas capable of supporting it. As previously alluded to, the landscapes schedules and expert evidence has concluded that there is **NO LOCATION** in the rural zone of the Upper Clutha basin that can support further subdivision. This seems a fanciful and unrealistic proposition. It needs to be borne in mind what the Environment Court had said on this matter:

¹⁶ NZILA Landscape Guidelines, 2021, [5.08]

¹⁷ UCES v QLDC. 2019, NZEnvC 205, decision 2.2, [113,117-118]

[234] We find SO 3.2.5.2 inherently uncertain. One aspect of that uncertainty is that **"the ability to absorb change" cannot be sensibly tested without any clear direction being given in the DV on how cumulative effects, and hence absorptive capacity, can be sensibly gauged on a case-by-case basis. A further uncertainty is in what the SO seeks, by way of its related intention of "directing new subdivision, use and development to occur in those areas that have" that absorptive capacity.** The ODP cannot realistically achieve that unless it has rules that, in tandem with zone mapping, effectively preclude new subdivision, use and development in one locality and enable it in another. As we have discussed, **a major failing of the DV is that the Upper Clutha RCL does not make such distinctions.**

35. It would appear the PDP and landscape schedules continue to fail to make distinctions between locations within the Upper Clutha which can and can't absorb further development. And so because the Council and schedule authors seek to rely on the case by case basis of the discretionary regime (so criticized during the PDP appeals) uncertainty and inconsistency will continue to plague decision making as it did under the ODP. Keeping the landscape schedules at what the Commission and schedule authors called a 'high level' is not the 'appropriate scale' the Court was seeking and simply offers an excuse for a landscape assessment which lacks depth and detail.

FAILURE TO IDENTIFY AND PREVENT SUBCONSCIOUS BIAS AMONGST QLDC LANDSCAPE EXPERTS

36. The *Hawthenden* appeal questions the appropriateness of having had Councillor Smith as a Commissioner. However, it is also submitted that the appointment of landscape consultants Ms Helen Mellsop and Ms Bridget Gilbert to the role of developing the landscape schedules has opened the door for unconscious and perceived bias to creep in. Ms Mellsop and Ms Gilbert were heavily involved in the PDP appeals, fronted much of the expert landscape evidence for the Council and were strong proponents of the landscape regime laid out for the Upper Clutha under the PDP and which in the end was so criticized by appellants and the Environment Court. So it seemed extraordinary and inappropriate for the Council to then turn around and give the same two landscape consultants the task of preparing the landscape schedules. It is submitted these two landscape consultants brought with them the same ideology that had shaped their opinions during the PDP appeals and their subconscious bias has been clearly exposed by the fact that they could find **NO** areas within the whole of the Upper Clutha basin suitable for rural living development.

FAILURE TO PREVENT LANDSCAPE CAPACITY RATINGS BEING ‘WEAPONISED’ AS A MEANS TO OPPOSE RURAL SUBDIVISION

37. There is an inconsistency in the finding of the Commissioner’s and Council expert witnesses in that they considered that the landscape schedules were by necessity ‘high level’ and that also applied to the ‘landscape capacity ratings’ which were by design ‘PA wide’. In reality and practice at an application level, the capacity ratings are already being used as a tool to unilaterally limit development and so their utility to achieve the purpose desired by the Court is compromised.
38. The best way to highlight this is by specific application and the Court is referred to a 2024 application for a 2 lots subdivision in the rural zone RM230523. Ms Mellsop (co-author of the landscape schedules) was the landscape peer reviewer for the Council and had this to say in her report:

15. The notified schedule of values for the RCL states that it has a very limited capacity to absorb additional rural living development. It further states that any additional rural living should be set well back from roads, integrated by existing landform and vegetation, and should maintain public views across open land to surrounding landforms. The proposed platform on Lot 2 is not set well back from Mount Barker Road and is not screened by existing landform. In addition, the proposed screen planting would not maintain public views across the open land.

16. However, my main concern with the proposal is that it would extend the precedent effect created by the recent subdivision to the west, with a smaller lot and a denser pattern of dwellings spaced across the outwash plain. There are no particular landscape characteristics that distinguish this site from the other 20ha lots within the eastern triangle, and the characteristics of the application could be replicated in many other parts of this area.

*In my opinion, the Cardrona River/Ballantyne Road RCL has a very limited capacity to absorb additional rural living development. In combination with existing and consented development, I consider the single additional lot would result in low-moderate adverse cumulative effects on landscape character and visual amenity values. However my view is that it would create a strong precedent for future subdivision of surrounding lots, and that this is likely to lead to significant cumulative adverse landscape effects over time.*¹⁸

¹⁸ H Mellsop, Landscape Peer Review, RM230523, [August 2023]

39. It is immediately apparent that there are a number of concerns with Ms Mellsop's peer review statements. Firstly, Ms Mellsop does not acknowledge (as she should have) her role as co-author of the landscape schedules, and secondly, that only limited weight can be assigned to the schedules because of stage in the RMA schedule 1 process. However, Ms Mellsop does neither. However, more concerningly, Ms Mellsop takes what has been described as a high level, PA wide landscape capacity rating, and applies it to a particular individual application in an area characterised as 'rural living' and which might be considered as capable of absorbing additional rural living development. This example highlights an attempt to weaponize the capacity ratings against future rural development in a specific location, and as many case examples will show, it is not the first time Council landscape experts and planners have attempted to use the landscape capacity ratings inappropriately.

SUMMARY

40. Unequivocally, the Landscape Schedules have fundamentally failed the most basic principles and policies of the RMA, the Local Government Act and the QLDC Proposed District Plan. In brief, the schedules have:
- (a) Failed to promote the basic principles of the RMA
 - (b) Conflated protectionist ideology across all land of the Upper Clutha
 - (c) Failed to meet the directions of the Environment Court
 - (i) Landscape Value Importance not established.
 - (ii) Completely Failed to address Cumulative Effects
 - (d) Failed to meet the objectives and policies of the Proposed District Plan
 - (i) Failed to identify areas that can accommodate rural living opportunities.
 - (ii) Failed to enable accurate cumulative effects assessment to be undertaken.
 - (iii) Failed to provide landscape capacity benchmarks and measurable spatial limits
 - (e) Failed to address flaws in community landscape value consultation
 - (f) Failed to enable expert evaluation of landscape schedule development methodology
 - (g) Failed to engage best practice landscape methodology
 - (h) Failed to detail community landscape values
 - (i) Failed to detail anticipated change to PA landscape attributes and values
 - (j) Failed to provide analysis of landscape attributes and values at an appropriate scale
 - (k) Failed to identify and prevent subconscious bias amongst QLDC landscape experts
 - (l) Failed to prevent landscape capacity ratings being 'weaponised'.

41. Further, the QLDC have not delivered on what they said they would do. Namely,
- (a) The initial staff report to the QLDC Planning and Strategy Committee in Nov 2021 sought approval to undertake community consultation on landscape values based on the following:
 - (i) The purpose of the consultation would be to:
 - i. *Inform the community of the process and to make clear the specific aspect of landscape that is being considered. This will include having technical experts present to explain and answer questions.*
 - ii. *To obtain views on the values held for each of the identified landscapes within the community.*
 - iii. *Consultation with the whole community is proposed due to the importance of the subject*
 - iv. *Carry out early consultation seeking values input from the community¹*
 - (b) None of these consultation methods happened and the community was only consulted after the landscape schedules had been developed in draft form, experts did not engage and inform the community, and no reliable landscape value consultation eventuated.
42. It is also worth noting that Ms Gilbert, co-author of the Landscape Schedules had previously commented on the need for an Upper Clutha Landscape Study to identify those areas which may or may not be suitable for rural living development when she said
That said, given the amenity landscape context of the RCL areas and their associated sensitivity to landscape change and vulnerability to cumulative adverse effects, I have a sympathy with the suggestion by UCES15 that a study is undertaken within the Upper Clutha Basin to determine those areas that might be suited to additional rural living and those areas that are not.
43. However, disappointingly, Ms Gilbert, much like the QLDC and its ‘consultation’, has not delivered on that sentiment in the landscape schedules she co-authored and has not identified ‘*those areas that might be suited to additional rural living and those areas that are not*’.

¹ Report to the QLDC Planning and Strategy Committee, Nov 2021

RELIEF SOUGHT

44. As outlined above, the QLDC landscape schedules have universally failed the RMA, the Environment Court, the QLDC Proposed District Plan objectives and policies, the landscapes of the district, and most damningly, have failed the community.

45. As a result, the only realistic relief sought here is that the landscape schedules must be withdrawn, fair and reliable community consultation undertaken, the errors outlined above corrected, and the failures of the schedules rectified.

DATED at Wanaka this 23rd day of August 2024



Dr John Cossens

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