



**To the Hearing Panel 13 November 2023**

**Addendum to Staff Section 42A Recommending Report**

**Hearing of Application – RM22.434**

Compiled by Josie Burrows, Consultant Planner on behalf of Otago Regional Council

### **Purpose of this addendum**

The recommendation in this addendum to the staff report represents the opinions of the writer and it is not binding on the Hearing Commissioners. The report is evidence and has no greater weight than any other evidence that the Panel will hear and consider. This report should be read in conjunction with the original Section 42A report (s42A report, dated 14 September 2023).

The purpose of this addendum is to present my opinion on the planning considerations as they relate to the additional information received on landscape values and visual amenity, within the functions of the Otago Regional Council (ORC). In this case, that relates to the disturbance of the riverbed, the take of surface water and the discharge of contaminants (sediment) to surface water associated with suction dredging activities; and the construction of slipways.

The assessment of matters relating to activities in relation to the surface of water in rivers (e.g. effects of the bulk of the dredge) is a function of the territorial authority and will be addressed by Ms Kirstyn Royce on behalf of Central Otago District Council (CODC) and Queenstown Lakes District Council (QLDC).

I consider this approach gives clarity to the commissioners and avoids duplication of effort around this important assessment matter.

### **Addendum to Section 42A Report**

#### **Background**

The Applicant has provided Landscape Assessment evidence, prepared by Ms Jessica McKenzie of Vivian and Espie Limited. This has been peer reviewed on behalf of ORC, CODC and QLDC by Mr Richard Denney of DLA Landscape.

#### **Assessment of Effects**

This assessment addresses effects on landscape character and visual amenity that are as a result of the exercise of the consents applied for, that is; disturbance of the riverbed, the take of surface water and the discharge of contaminants (sediment) to surface water associated with suction dredging activities; and the construction of slipways. I acknowledge that some of these effects may be 'felt' or 'received' by persons who are outside of the river environment.

#### Landscape effects

Ms McKenzie has presented a description of the landscape values that contribute to the Clutha River Outstanding Natural Feature (ONF) in paragraph 31 of her evidence. For efficiency, these have not been repeated here.

Ms McKenzie notes that the Regional Plan: Water for Otago (RPW) provides via permitted activity rule 13.5.1.7 for a discharge that results in a conspicuous change in colour or visual clarity of up to 100m downstream of the point of discharge. She considers that there will be a temporary effect to the water quality and clarity as it dissipates; and the dredge will introduce a human element that will have a temporary effect on the degree of naturalness, aesthetic and experiential values in the location where it is operating.

Ms McKenzie states that adverse effects on landscape character will be limited to a small part of the operational area at any one time and the landscape values of the Clutha River / Mata-Au will be largely maintained during operation and fully restored after completion. In paragraph 74 (page 28), Ms McKenzie states "*the adverse effects on landscape character, including natural character are very low at most and the values and natural character of the Clutha River / Mata-Au are preserved*" ('very low' equates to 'less than minor' per the Te Tangi a te Manu: Aotearoa New Zealand Landscape Guidelines).

In his peer review of Ms McKenzie's evidence, Mr Denney states that the landscape report places weight on the permitted activities, but he considers that the difference in scale between the permitted activity and the proposal is underestimated; and he disagrees that the proposal presents an alternative configuration and intensification of an activity that is reasonably anticipated. He agrees that the presence of a sediment plume of up to an additional 100m would have 'low' adverse effect on landscape character as overall it would be a very small change to the values of the river landscape ('low' equates to 'less than minor' or 'minor' per the Te Tangi a te Manu: Aotearoa New Zealand Landscape Guidelines). I note that Mr Denney considers that the general industrial form, noise and limited movement of the commercial vessel would have effects greater than that stated in the Applicant's evidence, however this relates to effects to be assessed by Ms Royce. Overall, he considers that on an assessment scale of the entirety of the proposal area over the consent duration sought, he considers that landscape effects are 'low'; however, from a localised perspective effects on character would be higher but temporary as the dredge and activity move along the river.

Given the scope of my assessment, being those effects relating to the disturbance of the riverbed, non-consumptive take of water, discharge of sediment and construction of slipways on landscape values, I consider, and after review of the landscape evidence from both experts that the adverse effects of the proposal on landscape values will be no more than minor. I discuss this in more detail, and in terms of the policy setting, below.

### Visual effects

Of the viewing audiences identified by Ms McKenzie (paragraph 51), I consider only within the 'users of the Clutha River/Mata-Au River and its margins' to be within the jurisdiction of the regional council. The remainder fall for assessment by Ms Royce for the territorial authorities.

Ms McKenzie presents in paragraphs 63 – 70 an assessment of effects on 'users of the Clutha River / Mata Au River and its margins, users of public reserve land and users of the unformed legal road corridors' (as such not all information in those paragraphs relates to my assessment only on users of the Clutha River / Mata-Au and its margins).

Ms McKenzie describes that the dredge and sediment plume will be clearly visible for those in close proximity, and that the dredge and associated sediment plume "*will likely be seen as an unusual element within the river corridor but not one that is necessarily offensive or unexpected*". She notes that dredging is provided for within the Clutha River/Mata-Au as a permitted activity and therefore forms part of the anticipated views and visual amenity of this

stretch of river, albeit at a smaller scale. Due to the transient nature of both the dredge and river users, she considered that views of the dredge and sediment plume will be very limited, and only briefly visible. Further, she references a condition proposed limiting the proximity of dredging to anglers. Overall, Ms McKenzie considers that adverse effects on views and visual amenity will be of a 'low' degree at most ('low' equates to 'less than minor' to 'minor' per the Te Tangi a te Manu: Aotearoa New Zealand Landscape Guidelines).

Mr Denney describes that *“from a water-based activity perspective the nature of the river experience is transitory as moving through the river landscape”*. Mr Denney considers Ms McKenzie's assessment of visual effects on 'users of the river, river margins, reserves, and unformed legal roads' to be *“too narrow”* and references the existing visual amenity values at places such as the Mata-Au Scientific Reserve to be high. He describes that the duration of the effect is a consideration (a visual element of the scale proposed that detracts from scenic natural values for a week, month or year will have a differing impact, which will vary over the seasons of the year and the frequency that it is viewed). Mr Denney's opinion is that visual effects from the aforementioned locations (including users of the river) would vary from 'very low' to 'potentially moderate-high', however does not explicitly state what level of effect is likely for users of the river.

My opinion is that adverse visual effects on users of the river will be less than minor, due to the river users tending to be transitory (e.g., passing by on watercraft, fishing, swimming) and with reference to the permitted baseline for discharges of sediment whereby the proposal seeks to exceed this only on a temporary basis. Proposed conditions 6 – 8 for RM22.434.03 (Appendix A to my s42A report) are important with respect to the conclusion I have drawn here. Those conditions require that there must be no conspicuous change in colour or visual clarity beyond 200 m downstream of the discharge. If there is a conspicuous change in colour or visual clarity past 100m downstream of the discharge, the dredge must cease working until there is no conspicuous change; and that if there is a conspicuous change in colour or visual clarity beyond 200m downstream of the discharge, the discharge must cease and the Consent Holder notify the Consent Authority immediately.

### **S104(1)(b) Relevant Planning Documents**

Ms McKenzie's evidence presents relevant policies of the QLDC Proposed District Plan and the CODC District Plan. I note that, there is no specific assessment against the details of the provisions of the Proposed RPS or Partially Operative RPS in Ms McKenzie's landscape evidence, Mr Sycamore's planning evidence or the legal submission.

Section 6.3 of my Section 42A report presents an assessment against the relevant planning documents listed in section 104(1)(b) of the RMA. In light of Ms McKenzie's evidence and Mr Denney's peer review, I present the following update to the assessment of those relevant planning documents informed by the functions of the regional council.

I note that some of the provisions identified below may also be assessed by Ms Royce and a different conclusion drawn, due to my assessment comprising only those components relevant to the regional council (i.e., water take, discharge, riverbed disturbance, and not, for example, effects of the bulk of the dredge).

**Table 1: Assessment against the relevant planning documents**

<b>Provision</b>	<b>Assessment</b>
<b>Partially Operative Regional Policy Statement</b>	

Objective 3.2 Otago's significant and highly valued natural resources are identified and protected, or enhanced where degraded	<p><b>Consistent</b> – The Clutha River / Mata-Au has been identified as an ONF within the Queenstown Lakes District using the process outlined in Schedule 3. The attributes that contribute to the river being identified as an ONF in the Queenstown Lakes District are relevant to the extent of the river within the Central Otago District also.</p> <p>Ms McKenzie's view is that the dredge will introduce a human element which will have a temporary and localised effect on the degree of naturalness, aesthetic and experiential values; and temporary and localised effect on water quality and clarity while the sediment plume dissipates. She considers that adverse effects will be limited to a small part of the operational area at any one time and there will be no lasting effects on landscape character following the completion of dredging at one location. Of relevance to the scope of this assessment is that Mr Denney concurs with Ms McKenzie's assessment relating to the sediment plume.</p> <p>As such, I consider that the proposal will maintain the values (in particular the water quality, strong flow characteristics and aesthetic values relating to intense water colour) that contribute to the natural feature being outstanding; and consider that the ONF will be protected.</p>
Policy 3.2.3 Identifying outstanding natural features, landscapes and seascapes Identify areas and values of outstanding natural features, landscapes and seascapes, using the attributes in Schedule 3.	
Policy 3.2.4 Managing outstanding natural features, landscapes and seascapes Protect, enhance or restore outstanding natural features, landscapes and seascapes, by all of the following: a) In the coastal environment [...] b) Beyond the coastal environment, maintaining the values (even if those values are not themselves outstanding) that contribute to the natural feature, landscape or seascape being outstanding; c) Avoiding, remedying or mitigating other adverse effects; d) Encouraging enhancement of those areas and values that contribute to the significance of the natural feature, landscape or seascape.	
Objective 3.1 The values (including intrinsic values) of ecosystems and natural resources are recognised and maintained, or enhanced where degraded.	<p><b>Consistent</b> – As described above, I consider that the proposal will maintain the amenity and landscape values of the Clutha River / Mata-Au, and with respect to those matters the life-supporting capacity of freshwater will therefore be safeguarded.</p>
Policy 3.1.1 Freshwater Safeguard the life-supporting capacity of fresh water and manage fresh water to: ... d) Maintain or enhance, as far as practicable: ... iv. Amenity and landscape values of rivers, lakes and wetlands; ...	
Policy 3.1.2 Beds of rivers, lakes, wetlands and their margins Manage the beds of rivers, lakes, wetlands, their margins, and riparian vegetation to: ... e) Maintain or enhance, as far as practicable: i. Their natural functioning and character; and ii. Amenity values;	

<p>...</p> <p>Policy 5.4.8 Adverse effects from mineral and petroleum exploration, extraction and processing</p> <p>Manage adverse effects from the exploration, extraction and processing of minerals and petroleum, by:</p> <p>a) Giving preference to avoiding their location in all of the following:</p> <p>...</p> <p>vi. Outstanding natural features and landscapes beyond the coastal environment;</p> <p>b) Where it is not practicable to avoid locating in the areas listed in a) above because of the functional needs of that activity:</p> <p>i. Avoid adverse effects on the values that contribute to the significant or outstanding nature of a) i-iii;</p> <p>ii. Avoid, remedy or mitigate, as necessary, adverse effects on values in order to maintain the outstanding or significant nature of a)iv-viii;</p> <p>iii. Consider first biological diversity offsetting, and then biological diversity compensation, if adverse effects described in b)ii. on indigenous biological diversity cannot be practicably remedied or mitigated;</p> <p>iv. Minimise any increase in natural hazard risk through mitigation measures;</p> <p>v. Consider environmental compensation if adverse effects described in b) ii, other than on indigenous biological diversity, cannot practically be avoided, remedied or mitigated;</p> <p>...</p>	<p><b>Consistent</b> - The site is identified as being within an outstanding natural feature beyond the coastal environment (a)(vi), as per the assessment completed by Ms McKenzie. Provision (a)(vi) requires that preference is given to avoiding the location of mineral extraction in outstanding natural features.</p> <p>Provision (b) provides for activities that have a functional need to be located in areas listed in (a). 'Functional need' is defined in the Partially Operative RPS as "<i>The locational, operational, practical or technical needs of an activity, including development and upgrades.</i>" Suction dredge mining is required to be undertaken within the riverbed, so there is a functional need to be located in the river and ONF. As described earlier, Ms McKenzie considers the effects of the proposed sediment discharge will be 'low' and Mr Denney agrees stating that it will be a "<i>very small change to the values of the river landscape</i>". Based on this assessment, I consider that the adverse effects of the proposal on landscape features will be no more than minor, and I consider that adverse effects are avoided as necessary on the values to maintain the outstanding nature of the Clutha River (in this case relating to the sediment discharge component).</p>
<p><b>Proposed Otago Regional Policy Statement – Non-Freshwater Instrument Components</b></p>	
<p>NFL–O1 – Outstanding and highly valued natural features and landscapes</p> <p>The areas and values of Otago's outstanding and highly valued natural features and landscapes are identified, and the use and development of Otago's natural and physical resources results in:</p> <p>(1) the protection of outstanding natural features and landscapes, and</p> <p>(2) the maintenance or enhancement of highly valued natural features and landscapes.</p>	<p><b>Consistent</b> - Whilst not stated explicitly in Ms McKenzie's evidence as being considered an ONF under the Proposed RPS, APP9 of the Proposed RPS appears to be nearly identical to Schedule 3 of the Partially Operative RPS (difference only being that identification using Schedule 3 is to 'have regard to the following criteria' and APP9 is to be done 'using the following attributes'). As such, it is considered that the Clutha River / Mata-Au would also be considered an ONF with respect to this RPS and NFL-P1.</p>
<p>NFL–P1 – Identification</p> <p>In order to manage outstanding and highly valued natural features and landscapes, identify:</p>	<p>As described above, it is considered that the adverse effects of the proposal on landscape features will be no more than</p>

<p>(1) the areas and values of outstanding and highly valued natural features and landscapes in accordance with APP9, and</p> <p>(2) the capacity of those natural features and landscapes to accommodate use or development while protecting the values that contribute to the natural feature and landscape being considered outstanding or highly valued.</p>	<p>minor. The wording of NFL-P2 states that adverse effects on the values that contribute to the natural feature are to be avoided.</p> <p>While not being completely avoided (i.e. adverse effects have been assessed as being no more than minor), my understanding is that it may be acceptable to allow activities that have minor or transitory adverse effects in outstanding areas and still give effect to the relevant policies, where their avoidance is not necessary (or relevant) to protect the natural features<sup>1</sup>.</p> <p>Due to the level of effect of the sediment discharge allowed via the permitted activity rule, the transient nature of the works and the level of effect being considered no more than minor, I consider that the proposed discharge will still enable the values of the ONF will be protected.</p>
<p>NFL-P2 – Protection of outstanding natural features and landscapes</p> <p>Protect outstanding natural features and landscapes by:</p> <p>(1) avoiding adverse effects on the values that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding, and</p> <p>(2) avoiding, remedying or mitigating other adverse effects.</p>	
<p><b>Proposed Otago Regional Policy Statement – Freshwater Instrument Components</b></p>	
<p>LF-FW-P11 – Identifying outstanding water bodies</p> <p>Otago’s outstanding water bodies are:</p> <p>(1) the Kawarau River and tributaries described in the Water Conservation (Kawarau) Order 1997,</p> <p>(2) Lake Wanaka and the outflow and tributaries described in the Lake Wanaka Preservation Act 1973,</p> <p>(3) any water bodies identified as being wholly or partly within an outstanding natural feature or landscape in accordance with NFL-P1, and</p> <p>(4) any other water bodies identified in accordance with APP1</p>	<p><b>Consistent</b> – The Clutha River / Mata-Au is to be considered an outstanding water body under clause (3) because it is identified as an outstanding natural feature in accordance with NFL-P1.</p> <p>LF-FW-P12 provides direction initially to the relevant regional and district plans to include the identified outstanding values of the outstanding water body; and then that adverse effects on those values are protected.</p> <p>Given the details of the outstanding water body have not yet been included in a regional plan (it is understood this will occur in the Proposed Otago Land and Water Plan), and the linking word between (1) and (2) is ‘and’, it is not considered that assessment against this provision is required at this time.</p>
<p>LF-FW-P12 – Protecting outstanding water bodies</p> <p>The significant and outstanding values of outstanding water bodies are:</p> <p>(1) identified in the relevant regional and district plans, and</p> <p>(2) protected by avoiding adverse effects on those values.</p>	

## Part 2 of the Act

An assessment against the relevant matters of national importance from Section 6 of the RMA are set out in section 10.2 of the Section 42A report. In addition to this, the following matter of national importance has been assessed.

<sup>1</sup> Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38

*(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.*

An assessment of effects based on the landscape and visual assessment evidence prepared by Ms McKenzie and peer reviewed by Mr Denney has been completed.

An assessment of the relevant provisions of the Partially Operative and Proposed Regional Policy Statement provisions has been completed, and I consider that the proposal is consistent with the provisions of those documents.

Overall, I consider that the outstanding natural feature being the Clutha River / Mata-Au will be protected and the proposal is not an inappropriate use of the riverbed.