

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**Decision No. [2023] NZEnvC 189**

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First  
Schedule of the Act

BETWEEN A FEELEY, E BORRIE & LP  
TRUSTEES LIMITED

(ENV-2019-CHC-21)

Appellants

AND QUEENSTOWN LAKES DISTRICT  
COUNCIL

Respondent

Court: Environment Judge J J M Hassan  
Environment Commissioner J T Baines

Hearing: at Queenstown on 28 and 29 September 2022

Appearances: I Gordon for the appellants (via AVL)  
S J Scott and R P Mortiaux for the respondent  
D Hanan and Dame E Hanan and M Hosie for the  
s274 parties

Last case event: 1 November 2022

Date of Decision: 6 September 2023

Date of Issue: 6 September 2023

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**INTERIM DECISION OF THE ENVIRONMENT COURT  
Topic 31: Feeley – LCU 23: Millbrook**

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- A: The appeal is allowed in part. The Site is to be re-zoned Wakatipu Basin Lifestyle Precinct zoning, subject to specified modifications to Chs 24 and 27.
- B: Directions are made for the preparation of a final set of provisions to be prepared for the court's approval, including directions enabling further submissions concerning a proposed additional policy for inclusion in Ch 24.

## REASONS

### Introduction

[1] A Feeley, E Borrie and LP Trustees Ltd ('Feeley') own a 6.2 ha parcel of land, on the outskirts of Arrowtown, at 508 Arrowtown-Lake Hayes Road ('the Site') at its junction with McDonnell Road.<sup>1</sup>

### *The Site and environs*

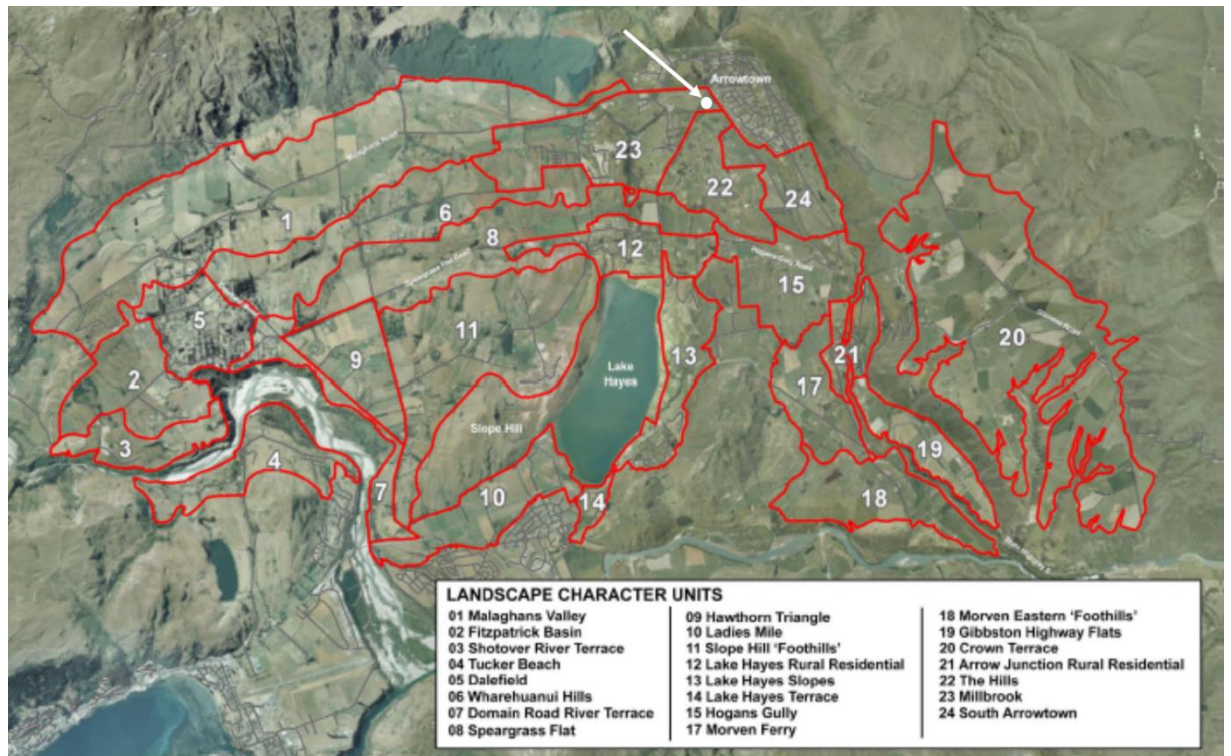
[2] The Site is a triangular shape, bordered by the two noted public roads and, to the south and south-east, Hills Resort and rural-lifestyle land. It has an open and predominantly rural character and includes a large established dwelling, a second residential unit and some associated improvements. Across Arrowtown-Lake Hayes Road to the west are the open spaces of Millbrook Park and cricket ground extending towards Millbrook Resort. Across McDonnell Road to the north is the built up escarpment edge of Arrowtown. Overlooking the Site across Malaghans Road to the north-west is the bush-clad Feehly Hill Scenic Reserve.

[3] The Site was proposed to be included in the Wakatipu Basin Rural Amenity Zone ('WBRAZ') under the notified Wakatipu Basin variation to the proposed Queenstown Lakes District Plan ('PDP'). Under Sch 24.8, the Site is included in

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<sup>1</sup> The Site is legally described as Section 9 BLK VII Shotover Survey District.

'land use character unit' LCU 23 Millbrook. Its position within that LCU is generally shown as a white dot in the below reproduction of the LCU map in Sch 24.8:



[4] Sch 24.8 includes descriptions of the identified landscape characteristics and visual amenity and other attributes of each LCU. This narrative also includes a rating of each LCU's "capability to absorb additional development" (in some cases with separate ratings for identified parts of a LCU). That is according to a six point qualitative rating scale ("Very Low", "Low", "Moderate-Low", "Moderate", "Moderate-High" and "High"). In the decision version of the PDP, Sch 24.8 ascribes the Site to have a High capability rating. That compares to a Moderate rating for the balance of the LCU 23.

### *The original now abandoned relief*

[5] Feeley submitted in opposition to that proposed WBRAZ zoning. It was

confirmed by QLDC decisions on the variation.<sup>2</sup> Feeley appealed that decision and their appeal was allocated to ‘Topic 31’ as part of the court’s staged consideration of PDP appeals.

[6] In their notice of appeal, as in their original submission on the variation, Feeley sought a mix of zoning treatments for the Site:<sup>3</sup>

- (a) for a swathe of the Site adjacent to Malaghans Road, they sought a change to Lower Density Suburban Residential zoning. That anticipated enabling development of rows of residential housing of similar density to that at the foot of the escarpment on the Arrowtown side of Malaghans Road. As an adjunct to that relief, they sought an extension of the Arrowtown ‘urban growth boundary’ (‘UGB’) to encompass this swathe;
- (b) for the balance of the Site, Feeley sought that the former Rural Residential zoning be reinstated subject to a building restriction area along the Arrowtown-Lake Hayes frontage of the Site.

[7] That relief was opposed by QLDC and s274 parties, Dame Elizabeth, David and Judith Hanan (‘Hanan Family’).

[8] Following court-facilitated mediation, Feeley modified their relief to pursue WBRAZ Precinct sub-zoning subject to some bespoke provisions. Notably, those included an exemption to the 75m setback rule under the Precinct sub-zone for the first 250m of the McDonnell Road frontage from the junction with Arrowtown-Lake Hayes Road. They anticipate that this modified relief would

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<sup>2</sup> Report and recommendations of Independent Commissioners regarding mapping of Wakatipu Basin and Arrowtown (includes Stage 1 submissions not previously heard), Report 18.7, Area E – Eastern Basin, Commissioners Nugent, Dimery, Robinson and Smith.

<sup>3</sup> The appeal also sought any “similar relief with like effect which addresses the Appellant’s concerns”, “consequential amendments which arise from the Appellant’s submission, the reasons for the appeal or the relief sought” and such other relief “as the Court considers appropriate”.

yield in the order of six rural living sites under a subdivision and development of the Site. They also sought some associated changes to Sch 24.8 including to acknowledge that the Site “has moderate-high capacity for development without compromising the immediate or wider landscape values of the Basin”.<sup>4</sup>

[9] Feeley did not offer any evidence in support of their original relief and nor did any other party. Therefore, we treat that relief as abandoned in favour of the modified relief.

***The modified relief***

[10] No party challenged whether there is jurisdictional scope for the modified relief. In terms of the extent to which it would enable development of the Site, it is somewhere between the status quo WBRAZ zoning and what was pursued by the initial relief in the appeal. We find the modified relief is within jurisdictional scope.

[11] QLDC supports the modified relief. So does Banco Trustees Limited, McCulloch Trustees 2004 Limited and others (‘Banco’), as a s274 party. Banco also appealed against the WBRAZ zoning of their neighbouring land and that is to be the subject of a separate Topic 31 decision.

[12] The Hanan Family oppose the modified relief. They own a nearby holiday home at 82 McDonnell Road.<sup>5</sup> Ms Judith Hanan also owns a dwelling at 69 McDonnell Road.<sup>6</sup>

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<sup>4</sup> Opening submissions for the appellants, at [8].

<sup>5</sup> Dame Elizabeth Ann Hanan and Mr John Murray Hanan, Ms Judith Hanan, Mr David Hanan.

<sup>6</sup> Their s274 notices were on behalf of Dame Elizabeth Ann Hanan and the late Mr John Murray Hanan, Ms Judith Hanan, Mr David Hanan.

## **Statutory framework and principles**

[13] As we set out in Annexure 1, our ultimate task in determining this Topic 31 appeal is to determine what is the most appropriate zoning outcome, in essence as measured by reference to achievement of relevant PDP objectives. Annexure 1 sets out our related findings and analysis concerning the RMA statutory framework and legal principles and the PDP framework of relevant objectives and policies.

## **Zoning outcome options**

[14] Our determination of the most appropriate zoning outcome is in terms of a spectrum between the following broad options:

- (a) the ‘status quo option, i.e. maintaining the status quo WBRAZ zoning across the Site; or
- (b) the ‘modified relief option’ i.e. changing the present WBRAZ zoning to one of WBRAZ Precinct, but with the additional setback concession and other modifications sought by the appellants.

## **Further background to PDP provisions**

### ***The WBRAZ as modified by decisions and consent orders***

[15] The WBRAZ was notified as a variation in the staged consideration of appeals in relation to the PDP. As originally notified, the WBRAZ included a “Lifestyle Precinct” sub-zone that allowed for greater relative rural living development than in the balance of the WBRAZ.

[16] Following court-facilitated mediation, the substance of the Precinct’s relevant provisions was resolved through consent orders.<sup>7</sup> As is described in the PDP Zone Purpose statement, within the Precinct:

... sympathetically located and well-designed rural living development which achieves minimum and average lot sizes, is anticipated, while still achieving the overall objectives of the [WBRAZ].

[17] As a result of the court’s Topic 30 decisions, a more nuanced approach is now applied to those parts of the WBRAZ outside the Precinct (“Topic 30 Decisions”).<sup>8</sup> This is according to what Sch 24.8 identifies as the relative landscape capacity of particular LCUs or parts of LCUs to absorb additional development. For instance, for those areas rated as having a Moderate, Moderate-High or High landscape capacity, there is greater opportunity now provided for subdivision and development than for areas identified as having less capacity. In all cases, that is subject to the intention to maintain or enhance landscape character and visual amenity values.

***Focus on landscape character and capacity and visual amenity values***

[18] The Topic 30 Decisions have also largely determined the WBRAZ’s objectives, policies and other provisions. The overall framework of the WBRAZ is now settled and is part of the context for our determination of Topic 31 appeals as we discuss.

[19] Strategic objectives for the WBRAZ include maintaining or enhancing the landscape character and visual amenity values of the Basin and its LCUs as

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<sup>7</sup> The following consent orders have been issued concerning the WBRAZ provisions: *Airbnb Australia Pty Limited & Ors v Queenstown Lakes District Council*, dated 28 May 2021; *Aircraft Owners and Pilots Association (NZ) Incorporated & Ors v Queenstown Lakes District Council*, dated 27 July 2021; *Barnhill Corporate Trustee Limited & Ors v Queenstown Lakes District Council*, dated 6 August 2021; *Airbnb Australia Pty Limited & Ors v Queenstown Lakes District Council*, dated 30 January 2023.

<sup>8</sup> *Barnhill Corporate Trustee Limited & Ors v Queenstown Lakes District Council* [2022] NZEnvC 58; [2023] NZEnvC 41; [2023] NZEnvC 91.

identified in Schedule 24.8. That is reinforced by Obj 24.2.1 in Ch 24 concerning the Wakatipu Basin. Those objectives are also to not exceed the landscape capacity of each LCU and the Basin as a whole (SO 3.2.5.8). Those objectives concerning landscape character and visual amenity values are supported by policies:

- (a) to ensure subdivision and development maintains or enhances the landscape character and visual amenity values identified in Sch 24.8 LCUs (Pol 24.2.1.3); and
- (b) to maintain or enhance the landscape character and visual amenity values of the WBRAZ including the Precinct and surrounding landscape context by controlling the colour, scale, form, coverage, location (including setbacks) and height of buildings and associated infrastructure, vegetation and landscape elements (Pol 24.2.1.4).

[20] Those provisions have a significant role in our determination of the most appropriate zoning outcome for the Site.

***Purposes of LCUs as part of the WBRAZ***

[21] The design of the WBRAZ, including the LCUs in Sch 24.8, arose from an underpinning Wakatipu Basin Land Use Study (‘WBLUS’). The introductory explanatory text to Sch 24.8 describes its purpose in the following terms:

... a tool to assist with the identification of the landscape character and amenity values that are to be maintained or enhanced within each landscape character unit, and across the Wakatipu Basin more generally.

...

... Across each unit there is likely to be variation in landform, development and vegetation patterns, which will require consideration and assessment through consent applications. The descriptions also acknowledge that there will be change, through future development and use, particularly within the Lifestyle Precinct.



The descriptions are based on the scale of the relevant landscape character unit, and should not be taken as prescribing the values and/or capacity of specific sites. The descriptions are intended to be read collectively to inform landscape decision-making in the Wakatipu Basin, by highlighting the important elements that are to be maintained or enhanced within certain landscape character units.

## **The evidence**

### ***Landscape and planning experts***

[22] We heard from three landscape experts – Ms Yvonne Pfluger (called by Feeley), Ms Helen Mellsop (called by QLDC) and Mr Phillip Blakely (called by the Hanan Family). We heard from two planning experts – Mr John Kyle (who had filed the appeal on behalf of Feeley) and Mr Marcus Langman (called by QLDC).

### ***Lay evidence***

[23] The Hanan Family also called evidence of the concerns and perspectives of several local residents. Dame Elizabeth and David Hanan gave evidence on their own behalf. They also called evidence from Mr Mark Hosie. Furthermore, the Hanan Family adduced several affidavits from Arrowtown residents or representatives of residents' associations or groups.<sup>9</sup>

### **Site visits**

[24] According to an itinerary proposed by the parties, the court visited a number of viewpoints, including from public reserves, local streets and walkways and private property. This included a view of the Site from the home of one of the witnesses for the s274 parties, Mr Mark Hosie. His balcony is in an established

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<sup>9</sup> These included affidavits of Barry McMeeken, Colin and Jean MacNicol, David Palmer, Garry and Heather Wallis, Gregory and Shirleen Potter, Jillian and Edwin Tremain, John Harrington, Jonathon Newson, Jude Hanan, Karen Vercoe, Kate Hanan, Kenneth Swain, Keven Mahoney, Lawrence Shirkey, Leo Toshach, Margaret Austin, Mary Hosie, Susan Rowley, Phillipa Macaulay, Robert Gatley, Robyn Wilson, Roger Wilson, Sandra Keay, Stephen and Joanne Blakie, Stephen and Pam Rogers, Valerie Couper.

Arrowtown neighbourhood overlooking the Site from an escarpment.

### **The landscape experts' opinions**

#### ***Ms Pfluger and Ms Mellsop***

[25] Ms Pfluger and Ms Mellsop applied a similar methodology in their assessments of landscape character and visual amenity values. Appropriately, that extended beyond the boundaries of LCU 23 to encompass the wider landscape setting. Ultimately, they agreed that the 'High' development capability rating specified for the Site in Sch 24.8 should be changed to be 'Moderate-High'.<sup>10</sup>

[26] In her rating of that capacity, Ms Pfluger considers that the consented Arrowtown South development and Arrowtown Lifestyle Retirement Village have already changed the rural edge of Arrowtown. That wider context is part of why she considers that the scale of development enabled under a Precinct rezoning would be absorbed without an adverse impact on landscape character. In particular, she considers that the Site has a high ability to absorb residential development (considering that capacity to allow for five additional dwellings without adverse effects on the landscape character and openness experienced from Arrowtown-Lake Hayes Road or the residential areas of Arrowtown). She characterised this development potential as being akin to Millbrook to the west and the Hills Resort Zone to the south. She considers that the modified relief option would enable a rural-lifestyle character to be maintained in terms of which "individual dwellings are set within open space, evoking a parkland character throughout the Site".

[27] Ms Mellsop supports the amendments proposed by Mr Kyle to the LCU 23 description in Sch 24.8 commenting that these "more accurately reflect the landscape character and visual amenity values that need to be maintained or

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<sup>10</sup> Mellsop EIC, at [5.4]-[5.5], Pfluger rebuttal, at [8]. In her EIC, Ms Pfluger attributed a High rating to the Site.

enhanced”.<sup>11</sup>

[28] Ms Pfluger and Ms Mellsop support the modified relief option as more appropriate than the status quo option. They agree that the modified relief option would be effective for achieving the intentions of the WBRAZ in terms of maintaining or enhancing landscape character (both of LCU 23 and the Basin as a whole) and of visual amenity values. That is in particular in regard to the proposal to allow for the concession of a 20m setback for the first 250m of McDonnell Road from its intersection with the Arrowtown-Lake Hayes Road (both supporting the standard 75m setback for remaining road frontages). Ms Pfluger further commented that removal of the remaining mature pine trees along McDonnell Road would ensure that views to the Remarkables Range are opened up for the public and residents compared to the existing situation.<sup>12</sup>

***Mr Blakely***

[29] Mr Blakely considers that the development capability rating for the Site in Sch 24.8 should be reduced to ‘Low’.<sup>13</sup> He identified the visual prominence of the Site at the junction of three roads and at the primary entrance of Arrowtown as having particular significance. He offered a strong view that the “entrance to Arrowtown is no place to locate rural living opportunities”.<sup>14</sup>

[30] In his opinion, the setbacks proposed under the modified relief option would not be effective and development under this option would diminish the Site’s qualities of openness and rural character “to a moderate-high degree” and degrade landscape character and amenity values.<sup>15</sup> He offered the example of the “emerging Rural Amenity Lifestyle Zone at the western end of Tucker Beach Road”. He explained that this is being developed in accordance with the Precinct

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<sup>11</sup> Mellsop EIC, at [3.1].

<sup>12</sup> Pfluger EIC, at [69]-[72].

<sup>13</sup> Blakely EIC, at [61].

<sup>14</sup> Blakely EIC, at [19].

<sup>15</sup> Blakely EIC, at [19].

provisions and opined that rural character in this location “is weak or no longer exists”.<sup>16</sup> He also offered the view that the modified Precinct option would create an adverse precedent for further development on the western side of McDonnell Road”.<sup>17</sup>

[31] He considers that maintaining the status quo WBRAZ zoning would better maintain existing landscape character and associated qualities and values.

### **The planning opinions**

[32] The planners, Mr Kyle and Mr Langman, also have substantially similar opinions as to why the modified relief option is the most appropriate. Drawing from Ms Pfluger’s evidence, Mr Kyle concludes that Precinct zoning is “more consistent with”<sup>18</sup> QLDC’s land use approach in the Basin (the WBLUS) than the status quo option. He considers that landscape values would remain protected and the resultant development would:<sup>19</sup>

... integrate successfully with the land surrounding the site and it would present as a logical transition between the hard urban edge of McDonnell[sic] Road and the Millbrook development to the west.

[33] As for amenity values and the quality of the environment (ss 7(c), (f) RMA) he considers these are “largely derived from landscape qualities”<sup>20</sup> and would be adequately maintained under the modified relief option. He noted that there would be a robust framework of rules for managing the effects of subdivision and development. In his opinion, resultant use “would be quite low key in terms of effects on visual qualities and matters relating to amenity values such as noise

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<sup>16</sup> Blakely EIC, at [19]. We note that Mr Blakely also offered some perspectives on the UGB and precedent risk but leave those perspectives aside as straying beyond Mr Blakely’s expertise and in any case no longer being in issue given the abandonment of this initial relief.

<sup>17</sup> Blakely EIC, at [62].

<sup>18</sup> Kyle EIC, at [6.2].

<sup>19</sup> Kyle EIC, at [6.2].

<sup>20</sup> Kyle EIC, at [6.6].

generation are not likely to be in any way out of character with the surrounding environs”.<sup>21</sup>

[34] Mr Kyle also explained how the options compared in terms of enablement of development of the Site:<sup>22</sup>

- (a) under the status quo option, no subdivision could occur unless the landowner was prepared to make, and was successful with an application as a non-complying activity;
- (b) under the modified relief option, a six-lot subdivision of the Site could be accommodated in a way that accorded with minimum lot size and averaging, and set back standards.

[35] Mr Langman substantially agreed on these matters, offering the opinion that the appellants’ preferred option is the most appropriate “ to achieve the higher order objectives in the PDP, and the provisions of the higher order planning instruments”.<sup>23</sup>

[36] The planning witnesses also concur about the drafting of various recommended changes to the PDP provisions so as to implement modified relief option. Mr Langman also concurred about the changes proposed by Mr Kyle to the text of Sch 24.8 in regard to LCU 23: Millbrook that are generally as follows:<sup>24</sup>

- (a) under “sense of place”, modifications to the third paragraph to the effect of removing the reference to the Site having closer association with the adjacent urban area of Arrowtown;
- (b) under “potential landscape issues and constraint associated with additional development”:

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<sup>21</sup> Kyle EIC, at [6.6].

<sup>22</sup> Kyle EIC, at [5.8].

<sup>23</sup> Langman EIC, at [3.3].

<sup>24</sup> Kyle EIC, App B at 3.

- (i) “ensuring urban residential development is constrained within defensible boundaries and does not sprawl westwards from Arrowtown”;
  - (ii) ensuring no westwards’ sprawl of the “existing development character within the Millbrook Special Zone”; and
  - (iii) maintaining “the openness and semi-rural/parkland character of the approaches to Arrowtown on Malaghans and Arrowtown-Lake Hayes roads”.
- (c) under “environmental characteristic to be maintained and enhanced”, adding a last sentence “Reinforcing a robust and defensible edge to Arrowtown”;
- (d) under “capability to absorb additional development” changing the rating of the Site from “High” to “Moderate High”.

### **The evidence of local residents**

#### ***David Hanan***

[37] Mr David Hanan gave evidence as well as representing the s274 parties. In evidence, he emphasised that the Arrowtown community has a strong desire for the land west of McDonnell Road to remain rural. He characterised QLDC as not having genuinely engaged with the community in the development of the WBRAZ (contrasting this with his experience in previous Environment Court decisions and through the various stages of the PDP review). He put this strongly as a perception that many have, that QLDC has been party to a circumvention of the democratic process by now supporting the modified relief.<sup>25</sup>

[38] He considers that the modified relief option would lead to buildings blocking views of neighbours across the street and degrade views from Feehly Hill. More broadly, he is concerned it would degrade landscape values, the rural

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<sup>25</sup> D Hanan affidavit, dated 4 August 2022.

environment and the outlook and amenity values of neighbours (allowing for “very large and imposing homes”).

***Judith Hanan***

[39] In her affidavit, Judith Hanan remarked on the importance of the entrance to the village of Arrowtown. She expressed frustration at the continuing attempts of developers to revisit what the community felt was settled in terms of the extent of development occurring on the important rural edge of Arrowtown along McDonnell Road.<sup>26</sup>

***Dame Elizabeth Hanan***

[40] As a close neighbour of the Site, Dame Elizabeth Hanan considers the development that would be enabled under a Precinct rezoning would be “a step too far”<sup>27</sup> in terms of density and layout and would degrade landscape, visual amenity and rural amenity values. She also raised concerns about urban sprawl, particularly insofar as development would be enabled to cross to the other side of McDonnell Road. She considers it would “compromise the natural and Arcadian pastoral character of the landscape in McDonnell Road to a high degree” and affect “the defined soft edge gateway to Arrowtown”.<sup>28</sup> She does not consider this would be mitigated by the proposed setbacks.<sup>29</sup>

***Susan Rowley, Chairperson, Arrowtown Village Association***

[41] In her affidavit, Susan Rowley as Chairperson of Arrowtown Village Association (‘AVA’), explained their leadership role in relation to the *Shaping Our Future; Arrowtown Community Visioning Report, 2017 Review*. She said AVA deemed the appellants’ “property development proposal” as “against the aspirations” of

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<sup>26</sup> Affidavit of Judith Mary Hanan, dated 6 September 2022.

<sup>27</sup> E Hanan EIC, at [11].

<sup>28</sup> E Hanan EIC, at [14].

<sup>29</sup> E Hanan EIC.

the Arrowtown community. Specifically, she referred to vision statements in the noted report, particularly as to maintaining and protecting the current Arrowtown urban boundary and the risk that insensitive development or intensification presents to the present fine and easily erodible balance.<sup>30</sup>

***Mark Hosie***

[42] Mark Hosie is a resident of Shaw Street, Arrowtown (which is on an escarpment overlooking the Site) and a member of the Arrowtown Village Association and several local clubs. He gave evidence of community views and concerns, based on his engagement with a number of residents. His pre-filed statement attached several affidavits of residents.<sup>31</sup> He described the community being “staggered” by the number of developer applications that have been made in recent years for various styles of housing development on the western side of McDonnell Road.<sup>32</sup> He characterised the community as being “hugely disappointed” with what he called a QLDC capitulation to developers.<sup>33</sup> He referred to the WBLUS and its related PDP variation as a part of this, with the PDP having initially proposed Rural Amenity zoning (as opposed to the WBRAZ regime now proposed).

[43] Mr Hosie explained that he was a “review panel member” of an initiative that resulted in *Shaping Our Future; Arrowtown Community Visioning Report, 2017*. He commented that QLDC had endorsed and agreed to support this initiative, and the document emphasises containment of Arrowtown within urban boundaries and within greenbelts and retaining “the rural amenity values along McDonnell Road”.<sup>34</sup> He observed that, when “consulted and informed”, the Arrowtown community “has made it quite clear they have no wish to see the greenbelts of rural

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<sup>30</sup> Rowley affidavit, dated 7 September 2022.

<sup>31</sup> M Hosie EIC, dated 8 September 2022.

<sup>32</sup> M Hosie EIC, dated 8 September 2022 at [27].

<sup>33</sup> M Hosie EIC, dated 8 September 2022 at [29].

<sup>34</sup> M Hosie EIC, dated 8 September 2022 at [46].



land around Arrowtown turned into housing”.<sup>35</sup> He commented on consistent feedback he receives of a “severe lack of communication or consultation” from QLDC.<sup>36</sup>

***Other views expressed by affidavit***

[44] Various residents giving their views by affidavit rather than in person would appear to have nursed some misunderstandings of the matters for determination in the appeal. For instance, a number referred to the proposal being for a subdivision rather than a zoning choice. Nevertheless, we can elicit some relevant themes. These include:

- (a) frustration with QLDC and a sense of being let down;
- (b) desire to avoid and protect the quiet contained feeling of Arrowtown as a village, and avoid further urban creep to the western side of McDonnell Road and loss of rural amenity, from both public viewing points (e.g. Feehly Hill) and local streets;
- (c) concerns about incremental landscape degradation and loss of Arrowtown heritage values;
- (d) concerns regarding loss of views and outlook from residents, for example from Cotter Avenue (which has views over the Site); and
- (e) concerns about pressures on infrastructure from continued development.

**The court’s preliminary observations prior to the adjournment**

[45] Following the testing of evidence and before making directions for closing submissions, the court made some preliminary observations as are set out in Annexure 2. In essence, these signalled to parties that the court’s “line of travel” was towards “a modified Precinct zoning as a change to the status quo”. We return

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<sup>35</sup> M Hosie EIC, dated 8 September 2022 at [47].

<sup>36</sup> M Hosie EIC, dated 8 September 2022 at [65].

to those observations later in this decision.

## **Submissions**

### *Feeley*

[46] Mr Gordon submitted that the case for the modified relief option was strongly supported by the landscape opinions of Ms Pfluger and Ms Mellsop. In essence, their evidence (as well as the WBLUS) allows the court to be satisfied that bespoke Precinct relief would maintain the landscape character and visual amenity values of the Basin.<sup>37</sup>

[47] As for the concession sought to allow for only a 20m setback for the first 250m along McDonnell Road from the Arrowtown-Lake Hayes Road, Mr Gordon explained that this was to try to overcome development constraints that would otherwise apply, given the triangular shape of the Site bordering two public roads. He noted however, Ms Pfluger's opinion that this concession would not have a significant landscape consequence. In particular, he explained that the various proposed setback and dimension requirements, together with topography constraints, would mean only three dwellings and entrances could be located off McDonnell Road. Furthermore, over a distance of 250m, only two building platforms would likely be at a minimum of 20m from the road boundary.<sup>38</sup>

### *QLDC*

[48] Ms Scott and Ms Mortiaux noted that QLDC would have been opposed to the appellants' original relief but support the modified relief option. That support is "contingent on" the amendments to the LCU 23 description in Sch 24.8 as proposed by Mr Kyle. Counsel further submitted that the changes to the LCU recommended by Mr Kyle would better reflect the role of the appeal site within

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<sup>37</sup> Opening submissions for the appellants, at [38].

<sup>38</sup> Appellants' reply submissions, at [24].

the wider LCU. Acknowledging that the modified relief was agreed prior to receiving the Hanan Family's evidence, counsel submitted that it would respond to a number of issues raised in those parties' evidence and representations.<sup>39</sup>

### ***Representations for the s274 parties***

[49] Mr Hanan argued that land on the western side of McDonnell Road had reached a threshold or tipping point in terms of retaining rural character. He commented that such landscapes and associated productive soils are highly valued and would be virtually eliminated by Precinct zoning. He further argued that Precinct zoning would degrade the valued Arrowtown UGB and put the village at risk through urban sprawl. He noted that the Arrowtown community was strongly opposed to what the appellants propose. He argued that the appellants' proposal would also fail to protect open character as described in LCU 23. He also made a number of other points including as to the limited economic value of what is proposed, natural hazard risks associated with liquefaction, and other matters.

[50] Going somewhat beyond the scope of matters on appeal, he advocated for a return to the Rural Amenity zoning that predates the WBRAZ. That is in contrast to Mr Blakely's opinion that WBRAZ is appropriate (as opposed to the appellants' preferred option of modified WBRAZ Precinct zoning).

### ***Appellants' closing***

[51] Mr Gordon's closing submissions focus in particular on matters which the court signalled as important in its preliminary observations just prior to the adjournment (to which we return shortly).

### ***Modification of position concerning setback from McDonnell Road***

[52] In light of the court's preliminary observations on this aspect, counsel

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<sup>39</sup> Opening submissions for QLDC, at [2.4], [2.5].

proposed the addition of the following rule to Ch 24 (explaining that it was developed and is agreed by Mr Kyle and Ms Mellsop):<sup>40</sup>

24.5.9.4 For the site(s) in the triangular Precinct located at the intersection of Arrowtown-Lake Hayes Road and McDonnell Road, the minimum setback of any building from the McDonnell Road boundary shall be 20m, except where there are three or more residential building platforms on this frontage, in which case every second residential building platform shall be set back from the road frontage by not less than 50m to obviate the effect of uniform linearity in building location. This rule shall apply for a distance of 250 m along McDonnell Road, measured from the centre of the intersection with Arrowtown-Lake Hayes Road.

[53] As for the proposed relaxation of the Precinct's 75m setback from roads, Mr Gordon noted Pol 24.2.1.15.c. In essence, it pertains to the consideration of setback relaxation for Precinct subdivision. The policy refers to the existence of other setbacks and the dimensions of the site. Pertinent to those considerations, he pointed out that the Site includes setbacks from two intersecting road boundaries and has an atypical triangular shape. He made a related submission that there would be no adverse precedent consequences.<sup>41</sup>

*Number of dwellings*

[54] In light of the court's preliminary indication that there should be no more than six dwellings on the Site, Mr Gordon recorded that this is accepted by Feeley and they propose the following associated rule for inclusion in Ch 24 (and to be repeated as to subdivision in Ch 27):<sup>42</sup>

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<sup>40</sup> Appellants' reply submissions, at [6].

<sup>41</sup> Appellants' reply submissions, at [11]-[15].

<sup>42</sup> Appellants' reply submissions, at [17].

#### **24.5.9.4A Maximum Number of Dwellings**

24.5.9.4A For the site(s) in the Precinct located at the intersection of Arrowtown-Lake Hayes Road and McDonnell Road a maximum of six residential dwellings shall be allowed.

Non-Compliance Status – NC

[55] Mr Gordon explained the deliberate intention to assign non-complying status to any breach of this rule, as prohibition would be out of step with the balance of the PDP and the imposition of a higher threshold ought to be sufficient.<sup>43</sup> Counsel added that, as drafted, the new rule would:<sup>44</sup>

... ensure that a relatively high ratio of open space to built features is retained, along with a sense of relative spaciousness as sought by Ms Mellsop. It is appropriate for implementing the open space elements of the landscape character and visual amenity policies of the Precinct zone.

### **Evaluation and determination of the most appropriate zoning outcome**

#### ***Confirmation of our preliminary observations***

[56] We confirm as our findings the preliminary observations that we made to parties prior to the close of the hearing and which are set out in Annexure 2. We supplement those findings as follows, leading us to find that the modified relief option is the most appropriate (subject to some identified refinements) and hence that we allow the appeal in part.

#### ***The Site has Moderate-High development capability***

[57] We find that the Site should be accorded a Moderate-High development capability rating in Sch 24.8 (as opposed to its present High rating and the Low

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<sup>43</sup> Appellants' reply submissions, at [20].

<sup>44</sup> Appellants' reply submissions, at [22].

rating preferred by Mr Blakely).

[58] Landscape assessment and evaluation, including as to development capability rating, involve matters of judgement on matters of degree or significance.

[59] As we have noted, in deriving his “Low” development capability rating of the Site, Mr Blakely gave significant weight to the visual prominence of the Site in relation to the primary road entrance to Arrowtown. A difficulty we find with his approach is that there is no associated PDP policy direction that the Site should be reserved or treated as a form of gateway treatment for Arrowtown. In some of his observations, Mr Blakely indicated that he did not agree with some fundamental aspects of the design of the WBRAZ. For instance, that was in his observations about what is occurring by way of rural lifestyle development at the western end of Tucker Beach Road. However, the discipline of landscape assessment and evaluation includes giving due weight to the design intentions of the planning instrument in issue, in this case those now settled intentions for the Basin as are specified in relevant WBRAZ objectives and policies. We are not assisted by opinions from landscape experts that do not respect those parameters.

[60] That is one reason why we prefer the evaluative opinions on these matters of Ms Pfluger and Ms Mellsop. We find they each applied sound landscape assessment methodologies, including in taking account of a landscape setting extending beyond the boundaries of LCU 23. We accept their opinions in finding that the appropriate development capability rating for the Site as part of LCU 23 is Moderate-High.

[61] In deriving that rating, we have also had particular regard to the evidence of the various lay witnesses called by the Hanan Family. A number of them have experienced incremental loss of the once much more contained village of Arrowtown. That has included, for example, the creeping of residential development over and down the escarpment so as to now run along the northern side of McDonnell Road. They seek to stop incremental loss of amenity values as part of maintaining what remains of the village and rural qualities of their environment. They seek that the present open rural character of the Site remains intact. Under any subdivision or development of the Site that resulted in a significant increase in the number of dwellings on it, those witnesses and others they represent will experience further loss, rather than maintenance or enhancement of their amenity values and the qualities of the environment.

[62] However, amenity values and environmental qualities are also to be considered from a broader community perspective of what the PDP seeks to achieve. More particularly, community aspirations are reflected in the PDP's relevant objectives and policies (now beyond dispute) as have been considered by the landscape and planning experts. We find that the expectations of some residents as to the development potential for the Site do not reflect the intentions of the PDP. Furthermore, the conceptual plans presented by Mr Hanan to illustrate potential development of the Site under the modified relief option were not an accurate representation. Rather, we have drawn from the evidence of the landscape experts for those purposes.

[63] To assist us to put all evidence in context, and according to the itinerary recommended by parties, we viewed the Sites from various locations within Arrowtown, along McDonnell Road and from the seating area at Feehly Hill Scenic Reserve. That confirmed our impression from the evidence that six rural living sites may well be the upper limit of the Site's development potential in terms of the PDP's intentions. In particular, our viewing of the Site from those localities reinforced to us the presence there now of two dwellings as well as the Site's natural attributes (including its unusual triangular shape, and the small ridge and

contours of the Site). We expressed some concern that the modified Precinct provisions proposed by Feeley in opening submissions would pose some risk of exceedance of this landscape capacity. Helpfully, in closing, counsel for Feeley offered a new rule 24.5.9.4A. That is to the effect that any more than a maximum total of six would be a non-complying activity. On the basis that rule would render any more than four dwellings over the existing two (or more than six in total) a non-complying activity to be tested against the PDP's objectives and policies, we are satisfied this concern is addressed.

[64] We find the modified relief option would assist to achieve relevant PDP objectives. Considered in those terms, we find that the modified relief option would maintain landscape character and visual amenity values. That is both with respect to LCU 23 and the Basin as a whole.

[65] By the measure of the PDP's relevant objectives and policies, we largely agree with Ms Pfluger, Ms Mellsop and the planning experts. We find there is capacity for the Site to accommodate development to a greater extent than is anticipated for the WBRAZ generally and similar to what is anticipated for the Precinct sub-zone.

[66] Our findings on those matters inform our consideration of relevant provisions of the modified relief option.

***Other recommended changes to Sch 24.8 are generally appropriate***

[67] With one important exception, we find the other refinements that Mr Kyle proposes to the description of LCU 23 in Sch 24.8 to be appropriate in light of the evidence. We deal with that exception first.

*Additional text as to maintaining openness and semi-rural/parkland character is not appropriate*

[68] Mr Kyle recommended that the following also be added to the description of "Potential landscape issues and constraint associated with additional



development”:<sup>45</sup>

Maintaining the openness and semi-rural/parkland character of the approaches to Arrowtown on Malaghans and Arrowtown-Lake Hayes roads.

[69] Such a statement in Sch 24.8 could be misread to supplement the PDP’s objectives and policies which are beyond challenge. The PDP does not include any related objective or policy intention to maintain such a gateway in this locality or for that matter “semi-rural/parkland character” (whatever that means) to the road approaches to Arrowtown. In terms of plan integrity, it is important that Sch 24.8 does not become a form of proxy for policy direction. Whether or not the PDP’s intentions should encompass directions to protect the gateway to Arrowtown is a matter for QLDC as the planning authority to consider and address with their constituents through planning processes.

[70] Therefore, we do not accept that this addition should be made to Sch 24.8.

*Additions to Sch 24.8 concerning sprawl and defensible boundaries are appropriate*

[71] Mr Kyle recommends various refinements to the narrative in Sch 24.8 as pertains to the risks of sprawl and the importance of maintaining defensible boundaries.

[72] He recommends that Sch 24.8 identify the following as an “issue”:<sup>46</sup>

Ensuring urban residential development is constrained within defensible boundaries and does not sprawl westwards from Arrowtown.

[73] That is together with his recommendation that the text in Sch 24.8 as to the maintenance or enhancement of environmental characteristics be amended by the

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<sup>45</sup> Kyle EIC, App B at 3.

<sup>46</sup> Kyle EIC, App B at 3.

addition of:<sup>47</sup>

Reinforcing a robust and defensible edge to Arrowtown.

[74] As we have discussed, several local residents gave evidence as to their concerns about arresting sprawl and the incremental loss of containment of the village of Arrowtown. We shortly discuss the importance of reinforcing this through setback controls along McDonnell Road.

[75] Therefore, we find those recommended additions should be made to Sch 24.8. That is together with Mr Kyle's recommended text as to ensuring existing development character does not sprawl westwards and southwards into existing 'more rural' areas within the Millbrook Special Zone. We did not receive significant evidence on that matter, but we accept it is generally in accordance with the evidence to make that further refinement also.

[76] We direct that those refinements be made to Sch 24.8.

***More than six house sites should be a non-complying activity***

[77] One key point of difference between WBRAZ or Precinct zoning concerns development density expectations. Under the policies now refined through the court's Topic 30 decisions, the former policy as to the maintenance of a 80 ha minimum site area outside the Precinct has been removed. This is replaced with more nuanced and targeted policy directions. In regard to residential density controls, the different activity standards that would apply under a WBRAZ or Precinct zoning of the Site would be as follows (with breach rendering the activity non-complying):

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<sup>47</sup> Kyle EIC, App B at 3.

- (a) under WBRAZ, not more than one residential unit per 80 ha net site area (r 24.5.1.5);<sup>48</sup>
- (b) under Precinct, no more than one residential unit per hectare on average of the net site area (r 24.5.1.2).

[78] Other rules also bear upon the anticipated development capacity. Notably, those include standards for setbacks from public roads as we discuss shortly. However, in broad terms, it can be observed that significantly different development capacity can be expected on the 6.2 ha Site under the status quo and modified relief options.

[79] We find that the Site has capacity for six house sites in total, perhaps as an upper limit. To clarify, we refer to the total number of house sites, not six sites additional to the present existing house and buildings on the Site.

[80] That finding supports a choice of Precinct sub-zoning over WBRAZ zoning.

[81] That finding concerning the development capability of the Site is on the basis of the limited evidence before us. In essence, that evidence is sufficient to satisfy us that development of the Site of up to six residential units would be compatible with the intentions of the PDP, particularly as to the maintenance or enhancement of landscape character and visual amenity values.

[82] However, that evidence was not so precise as to lead us to conclude that six must be a rigid cut off. For instance, we were invited to consider only a conceptual plan to illustrate “potential subdivision and lot layout” as produced by Ms Pfluger.<sup>49</sup> This illustrates the potential for six lots. That includes a home lot 1 of the existing dwelling and buildings and five other lots depicting five associated

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<sup>48</sup> Rule 24.5.1.6 does not apply.

<sup>49</sup> Pfluger EIC, Figure 4.

building platforms.

[83] Rather, we find that anything additional to a total of six house sites or building platforms would need to be carefully tested for whether it would be contrary to the PDP's relevant objectives and policies. That is to say, care must be taken to avoid any incremental development that would fail to maintain landscape character and visual amenity values including of LCU 23. That leads us to find that, under any zoning outcome option, there should be a rule to prescribe exceedance of six house sites as a non-complying activity. We find the rule proposed by Mr Gordon in closing submissions (as r 24.5.9.4A)<sup>50</sup> to be appropriate for those purposes.

#### ***Setback treatment along McDonnell Road***

[84] The PDP currently prescribes different standards for setback of any building from any public road boundary with breach of this standard rendering an activity a restricted discretionary activity. For formed roads, the minimum setback is 75m in the Precinct and 20m in the WBRAZ (r 24.5.9.1). As we have noted, a feature of the modified relief option is for a concession to be applied such that the minimum setback for the first 250m of the McDonnell Road frontage from its junction with Arrowtown-Lake Hayes Road would be reduced to 20m (i.e. the setback applicable for the WBRAZ).

[85] As the RDA classification signals, the PDP anticipates that it may sometimes be acceptable to allow for reduced setbacks. Reasonable scope for that is provided for under the prescribed matters to which discretion is restricted under r 24.5.9.1. Those include matters such as building location, character, scale and form and external appearance, landscaping and planting (and if relevant as to effects on electricity infrastructure).

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<sup>50</sup> Appellants' reply submissions, Annexure at 1.

[86] We largely accept the evidence of Ms Pfluger and Ms Mellsop in finding that a setback concession can be made along the first 250m of McDonnell Road. It would not be appropriate to extend it further than that. In particular, as Mr Langman pointed out, there is an attractive rock outcrop on the Site further along McDonnell Road. In that locality, the 75m setback under r 24.5.9.1 should apply.<sup>51</sup> However, we find on the evidence that the setback concession sought by Feeley is generally appropriate. In particular, the concession would allow for better use of the natural attributes of the Site to maintain landscape character and visual amenity values, including in the siting of buildings and the development of associated landscaping.

[87] We accept Mr Gordon's submissions that allowing for a setback concession for the first 250m of the McDonnell Road frontage is at least not inconsistent with the policy intentions of Ch 24. Counsel referred to Pol 24.2.1.15.c. That is not directly relevant in that it is about maintaining views of ONF/Ls. Nevertheless, it recognises that "for some sites, compliance with a prescribed road setback standard is not practicable due to the site size and dimensions, or the application of other setback requirements to the site". Furthermore, we do not identify any other policies in Chs 24 or 27 that would suggest that it would not be appropriate to allow for the concession sought.

[88] We find that that the setback concession should be refined by providing for staggered setback treatment as was illustrated by Ms Pfluger's conceptual "potential subdivision and lot layout" plan.<sup>52</sup> That plan illustrated a staggered setback treatment, with some building platforms closer to the road frontage than others. We asked Ms Pfluger to explain why she had illustrated this and she responded:<sup>53</sup>

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<sup>51</sup> Langman EIC, at [3.2].

<sup>52</sup> Pfluger EIC, Figure 4.

<sup>53</sup> Transcript, p 42.

...[T]he reason why we did it on the plan that we staggered them was that it would be a better amenity outcome for the sites themselves to have them... offset but I think it would also probably be a better outcome from McDonnell Road if they're not all in a row.

[89] We find that this staggered treatment would help maintain the amenity values and environmental qualities experienced by local residents in the vicinity. In particular, it would help to differentiate the Site from the more urban form of the strip on the opposite side of McDonnell Road beneath the escarpment. It would also be in keeping with changes that Mr Kyle recommended for inclusion in Sch 24.8 as to maintaining a robust and defensible edge to Arrowtown.

[90] Those findings as to the value of effective setback treatment of buildings from McDonnell Road tend to favour a choice of Precinct over WBRAZ zoning. That is in the sense that the more concessional 20m setback under the WBRAZ is not well suited to the McDonnell Road frontage, given the value of clearly distinguishing development of the Site from the urban form on the Arrowtown side of McDonnell Road so as to assist to maintain a robust and defensible edge to Arrowtown. From another viewpoint, the status quo option would need to have been modified by suitable amendment to the 20m setback for the WBRAZ under r 24.5.9.1. That was not tested in evidence, however.

[91] For completeness, we record that precedent risk as such, or the lack of it, is not of particular significance in the context of our determining the most appropriate zoning option for a site under the PDP. Rather, that is more typically a factor that may be relevant in a resource consent application context, in particular where an activity is classed as non-complying. In such a context, it can be relevant to consider whether consenting the activity would impact adversely in a precedent sense including in harming public confidence in the consistent administration of the planning instrument. Plan integrity is relevant here, but more in terms of whether a zoning outcome option would assist to achieve relevant PDP objectives and policies. We find that the modified relief option, including the setback concession as we have modified it, would be the most appropriate option in those

terms.

***Revised and new rules and new policy on setbacks***

[92] To implement the setback concession under the modified relief option, Mr Kyle proposed amendments and additions to relevant rules of Chs 24 and 27. As we have noted, in his closing submissions, Mr Gordon indicated how this set of rules might be amended to provide for a staggered treatment of the setback (his amendments being to r 24.5.9.4 although they would need to also extend to the equivalent Ch 27 rule (r 27.7.18.3)).

[93] The drafting proposed by Mr Kyle for rr 24.5.9.1 and 27.7.18.1<sup>54</sup> (i.e. to add cross-referencing to the proposed new rr 24.5.9.4 and 27.7.18.3) is appropriate. His proposed drafting of rr 24.5.9.4 and 27.7.18.3 provides a good basis for our adjustments to allow for staggering of the setback treatment. Our amendments to his proposed rules are as follows:

24.5.9.4 For the site(s) in the triangular Precinct located at the intersection of Arrowtown-Lake Hayes Road and McDonnell Road and within 250m of that intersection (measured-from the centre of the intersection with Arrowtown-Lake Hayes Road), the minimum setback of any building from the McDonnell Road boundary shall be 20m provided that the minimum setback shall be 50m where any building on any adjacent site in the Precinct along that part of the frontage is or is proposed to be setback at less than 50m but not less than 20m from that frontage. ~~This rule shall apply for a distance of 250 m along McDonnell Road, measured from the centre of the intersection with Arrowtown-Lake Hayes Road.~~

27.7.18.3 For the site(s) in the triangular Precinct located at the intersection of Arrowtown-Lake Hayes Road and McDonnell Road and within 250m of that intersection (measured-from the centre of the intersection with Arrowtown-Lake Hayes Road) the minimum setback of any building

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<sup>54</sup> Kyle EIC, App B at 1 and 2.

platform from the McDonnell Road boundary shall be 20m provided that the minimum setback shall be 50m where any building on any adjacent site along that part of the frontage in the Precinct is or is proposed to be setback at less than 50m but not less than 20m from that frontage. ~~This rule shall apply for a distance of 250 m along McDonnell Road, measured from the centre of the intersection with Arrowsmith Lake Hayes Road.~~

[94] Subject to those amendments, we find that those new and amended rules would assist the achievement of relevant PDP objectives, notably Obj 24.2.1 and Obj 24.2.5 (as is intended under s75 and 76, RMA). In particular, their inclusion would assist the maintenance of visual amenity values including of LCU 23 and the surrounding landscape encompassing McDonnell Road.

[95] However, we find that there should be an associated policy. That is to better serve the RMA intention that rules also implement and achieve policies (ss 75, 76 RMA). It is important that the new and amended rules are applied on the basis of a clear understanding of the policy intention. To those ends, our provisional view is that the following policy (or to similar intent) should be included in Ch 24:

24.2.1.15A            Require buildings, or building platforms identified through subdivision, to maintain a staggered setback from McDonnell Road for all sites of the triangular Precinct that are located within 250m of the intersection of McDonnell Road and Arrowsmith-Lake Hayes Road.

[96] However, we allow for confined supplementary closing submissions by memorandum in our directions later in this decision. One reason for that is that the addition goes somewhat further than the planning evidence. In addition, the court is underway in the writing of a decision in the Banco and Hanan appeals in ENV-2019-CHC-16 and 45 on sites further along McDonnell Road where a similar issue arises. We see potential merit in having a consistent policy on staggering applying where appropriate in this part of the Basin.



## **Evaluation of options with reference to PDP objectives and other matters**

[97] We found the evaluations undertaken by Mr Kyle and Mr Langman of the zoning options with reference to PDP objectives and policies and other relevant matters sound and reliable. We have relied on that evidence as assisting our own evaluation. We note that we evaluate the modified relief option in light of the various refinements we have discussed as needing to be made to that option.

### ***Higher order considerations***

[98] As for the analysis of the options by reference to higher order policy instruments, we accept Mr Langman's analysis and conclusions. As for matters concerning efficiency, we accept Mr Kyle's opinion in finding that a modified relief option would be more efficient than maintaining the status quo option. That is particularly in that it would better enable development of the Site for rural living opportunities, subject to appropriate controls. Whilst a redevelopment in the order of six lots is relatively modest in terms of the measures of economic wellbeing, it is relatively better in those terms than the status quo.

[99] Those higher order considerations favour the modified relief option to some extent.

[100] Mr Langman presented a thorough evaluation of the zoning options by reference to relevant PDP objectives and policies (as we summarise in Annexure 1).<sup>55</sup> Again our evaluation by reference to those provisions leads us to find that the modified relief option is the most appropriate. Our reasons are as follows.

### ***Obj 24.2.1***

[101] Landscape character and visual amenity values in the Wakatipu Basin would

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<sup>55</sup> For example, while we have considered the following provisions, we leave them aside from discussion, as none has significance for the choice of the most appropriate option, Pols 24.2.1.1A, 24.2.1.1B, 24.2.1.2 – 24.2.1.11.

be maintained under either the modified relief option or the status quo option. In a relative sense, neither of the options advocated by parties is inferior in response to this objective. However, the 75m setback under the Precinct has some advantages for those parts of the Site having particular sensitivity – particularly the rock outcrop. In addition, given the value of a staggered setback along McDonnell Road, we find that the noted provisions of the modified relief option would be more effective in maintaining visual amenity values.

***Pol 24.2.1.1X***

[102] The amendments to LCU 23 description in Sch 24.8 as recommended by Mr Kyle will better implement this policy for achievement of Obj 24.2.1 than would the status quo option.

***Pol 24.2.1.1***

[103] The modified relief option would assist to maintain landscape character and visual amenity values and ensure landscape capacity is not exceeded. Hence it would assist to implement this policy (and is not inferior to the status quo option in these respects).

***Pol 24.2.1.14***

[104] Both options are compatible with this policy. We find on the evidence that the modified relief option can ensure the intended outcomes as to maintaining a defensible edge between areas of rural living in the Precinct and the balance of the Rural Amenity Zone.

***Pol 24.2.1.15***

[105] Both options are compatible with this policy. We find on the evidence that, the modified relief option would allow appropriate controls to maintain views of ONF/Ls in the ways specified.

***Obj 24.2.5***

[106] On the basis of our evidential findings, particularly as to the suitability of the Site for rural living opportunities, we find that the modified relief option would better assist to achieve this objective.

***Pols 24.2.5.1 – 24.2.5.6***

[107] For the same reasons, we find that the modified relief option would better assist to implement these policies for the purposes of achieving Obj 24.2.5.

***Objs 27.2.1 and 27.2.2***

[108] We find both options would suitably assist to achieve these objectives.

**Other matters**

[109] The preferences that some residents expressed for how the Site should be treated strayed somewhat beyond the scope of the appeal. Some of this evidence reflected associated frustrations about the quality or otherwise of their experiences of QLDC engagement in the development of the WBRAZ (including in response to appeals). Our role is a confined one in the determination of appeals. Beyond that, we are neither a planning authority nor auditor of QLDC engagement with its community. In any case, nor would it be appropriate for us on the evidence received to offer any findings let alone make associated directions or recommendations. However, without implying any criticism of QLDC or its officers, as that would be unfair, we have recorded these matters in some detail so that they can be received and considered by those concerned.

## Conclusion and directions

### *Outcomes*

[110] For the reasons we have given, we allow the appeal in part by determining that the most appropriate zoning is the modified relief option, being as modified as follows (provisionally in regard to proposed new Pol 24.2.1.15A).

#### *Changes to the Zone mapping*

[111] The WBRAZ mapping is to be modified to show the Site as Precinct sub-zone in place of the present WBRAZ zoning.

#### *Modifications to Sch 24.8 in regard to LCU 23*

[112] Sch 24.8 is to be modified in the manner proposed by Mr Kyle with the exception of his additional text as to maintaining openness and semi-rural/parkland character. That additional text will not be included in Sch 24.8.

#### *New r 24.5.9.4A Maximum Number of sites*

[113] New r 24.5.9.4A as to the maximum number of sites, as set out at [55], is to be included in Ch 24.

#### *New rr 24.5.9.1, 24.5.9.4, 27.7.18.1 and 27.7.18.3 as to setback from Malaghans Road*

[114] Chs 24 and 27 are to be modified by the new and additional rr 24.5.9.1, 24.5.9.4, 27.7.18.1 and 27.7.18.3 as we have set out (i.e. in modification of the drafting recommended by Mr Kyle).

#### *Provisional new Pol 24.2.1.15A*

[115] Our determination that the modified zoning option should include a new Pol 24.2.1.15A is provisional. It is on the basis of our evidential findings, which

are final. However, as the planning evidence did not include a recommended policy of this kind, we allow parties limited opportunity to make supplementary submissions on it. Those submissions can address whether and on what basis Pol 24.2.1.15A should be included as part of the modified relief option.

### ***Directions***

[116] QLDC is directed to confer with the appellants and file for the court's approval an updated set of planning maps and provisions formatted and suitable for inclusion in the PDP. That is to include Pol 24.2.1.15A on a provisional basis unless the court has by then issued a further determination in light of any submissions filed according to directions to follow.

[117] As a first step towards making directions for the finalisation of provisions for inclusion in the PDP, QLDC is directed to file **within 21 working days** a reporting memorandum proposing a timetable for those purposes including for any submissions concerning provisional Pol 25.2.1.15A. The court anticipates that any timetable would allow time for parties to consider the court's decision in the Hanan and Banco appeals in ENV-2019-CHC-16 and 45 expected to issue within the next two or so weeks.

### ***Provisionally we find costs should lie where they fall***

[118] All parties conducted their cases with due efficiency. We commend the unrepresented s274 parties for their approach in those terms. As such, the court's provisional view is that this is not an appropriate case for an order as to costs.

For the court:



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**J J M Hassan**  
**Environment Judge**



## Annexure 1

### Relevant PDP objectives and policies

#### Statutory framework including relevant objectives and policies in regard to Topic 31 appeals

##### Introduction

[1] We set these matters out in this Annexure as these are common to several Topic 31 appeals.

##### Statutory framework and principles

[2] The statutory framework and related principles for our determination of the appeal was not in significant contention.

[3] Counsel for QLDC has helpfully summarised these matters in their opening submissions for this and other Topic 31 appeals.<sup>56</sup> Those submissions draw from earlier decisions of this Court in determining other PDP Topics, notably *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* (another rezoning appeal).<sup>57</sup> It is convenient to refer to those submissions in quoting the same extracts (maintaining some of the emphasis given by counsel for QLDC):<sup>58</sup>

In our de novo consideration of the appeal, we have the same powers, duties and discretions as QLDC (and its independent commissioners) had in regard to the decision appealed (s 290, RMA). We have regard to the appealed decision (s 290A).

**In terms of the directions in s 32, RMA, our evaluation is essentially concerned with which of Option A or Option B is the most appropriate for**

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<sup>56</sup> Opening submissions for QLDC, at [5]-[6].

<sup>57</sup> *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* [2021] NZEnvC 189.

<sup>58</sup> Opening submissions for QLDC, at [5.2] referring to *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* [2021] NZEnvC 189 at [27]-[30].

**achieving relevant PDP objectives.** Those objectives are now beyond challenge (including those to be included in the PDP in implementation of other Environment Court decisions in the review).

Insofar as BFDL now seeks a bespoke new policy and rules, as additional LDSR provisions, we include them in our consideration of the most appropriate provisions for achieving relevant PDP objectives (s 32(1)(b), RMA). **We evaluate the requested rules under Option B with regard to the actual and potential effect on the environment of the activities they would enable, including any adverse effect (s 76(3), RMA).** Our perspective on effects encompasses predicted future effects, bearing in mind that zoning serves to enable choices for future land use, development and protection.

In addition to s 32, RMA, other matters for consideration include the provisions of pt 2, the territorial authority's functions (under s 31, RMA) and national policy statements (s 74(1) RMA). ...

- [4] In summary, for each of the relevant Topic 31 appeals:
- (a) there is a range of **options** for evaluation as advanced by parties and generally falling between:
    - (i) the ‘status quo’ of the zoning regime (and its associated provisions) as applied by the ‘decision version’ of the PDP that is subject to appeal; and
    - (ii) the zoning outcome (including associated provisions) pursued by way of relief on appeal;
  - (b) we evaluate those options to determine **what is the most appropriate for achieving the relevant PDP objectives.** Most of the relevant objectives are now determined by the court’s decisions in other related Stages (particularly as they pertain to PDP Chapters 3 (Strategic Directions), 24 (Wakatipu Basin) and 27 (Subdivision and Development)). However, we also consider provisions determined by our Topic 30 Decisions as appropriate for inclusion in the PDP even if QLDC has not yet incorporated them into the updated PDP; and

- (c) our evaluation encompasses what the evidence reveals as the actual and potential effect on the environment of the activities they would enable, including any adverse effect (s 76(3), RMA).

### **Relevant PDP framework of objectives and policies**

[5] We start with those provisions or extracts of particular relevance in providing a framework for our evaluation of options for what is most appropriate for achieving relevant PDP objectives. These are particularly in:

- (a) Chapter 3: Strategic Direction;
- (b) Chapter 24: Wakatipu Basin; and
- (c) Chapter 27: Subdivision and Development.

[6] The geographic focus is the Wakatipu Basin, and hence the objectives and policies of Ch 24 have particular significance in our evaluation.

### ***Ch 3: Strategic Direction***

[7] As described in 3.1 Purpose, Ch 3:

...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.

[8] These are then listed to include:

... lakes, rivers, alpine and high country landscapes free of inappropriate development.”

[9] As required by the court's Topic 30 Decisions, Ch 3 is to include the following strategic objective SO 3.2.5.8:



Within the Wakatipu Basin Rural Amenity Zone:

- a. the landscape character and visual amenity values of the Basin and of its Landscape Character Units as identified in Schedule 24.8 are maintained or enhanced; and
- b. the landscape capacity of each Landscape Character Unit and of the Basin as a whole is not exceeded.

[10] The appropriateness of development is to be assessed with reference to “landscape character” and “landscape capacity”.

[11] Ch 3 includes or will include related definitions (in 3.1B.5) of ‘landscape capacity’ and ‘rural living’, as follows:

- (a) as updated by the court’s Topic 30 Decisions, ‘landscape capacity’ is defined to mean as follows:
  - b. Landscape capacity’:
    - i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means the capacity of a landscape or feature to accommodate subdivision and development without compromising its identified landscape values;
    - ii. in relation to a landscape character area in a Rural Character Landscape, means the capacity of the landscape character area to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values;
    - iii. in relation to those parts of the Wakatipu Basin Rural Amenity Zone that are identified in Schedule 24.8 to have Moderate capacity, means the capacity of the landscape character unit to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values;
    - iv. in relation to those parts of the Wakatipu Basin Rural Amenity Zone that are identified in Schedule 24.8 to have Very Low, Low or Moderate-Low capacity, means the capacity of the landscape character unit and that of the Basin as a whole to accommodate subdivision and development without

compromising its identified landscape character and while maintaining its identified visual amenity values.

(b) 'rural living' is defined as follows:

- d. 'Rural Living' means residential-type development in the Wakatipu Basin Rural Amenity Zone, a Rural Character Landscape or on an Outstanding Natural Feature or in an Outstanding Natural Landscape, including of the nature anticipated in a Rural Residential or Rural Lifestyle Zone but excluding residential development for farming or other rural production activities.

## ***Chapter 24 – Wakatipu Basin***

### *24.1 Zone Purpose*

[12] This Zone Purpose statement (as modified by the court's Topic 30 Decisions) would be as follows:

This chapter applies to the Wakatipu Basin Rural Amenity Zone (Rural Amenity Zone) and its sub-zone, the Wakatipu Basin Lifestyle Precinct (Precinct). The purpose of the Zone is to maintain or enhance the character and amenity of the Wakatipu Basin, while providing for rural living and other activities.

The Rural Amenity Zone is applied to areas of the Wakatipu Basin which have either reached, or are nearing a threshold where further landscape modification arising from additional residential subdivision, use and development (including buildings) is not likely to maintain the Wakatipu Basin's landscape character and visual amenity values. There are some areas within the Rural Amenity Zone that have a landscape capacity rating to absorb additional development of Moderate, Moderate-High or High. In those areas limited and carefully located and designed additional residential subdivision and development is provided for while maintaining or enhancing landscape character and visual amenity values.

Other activities that rely on the rural land and landscape resource are contemplated in the Rural Amenity Zone including recreation, commercial and tourism activities. Farming activities are enabled while noting that farming is not the dominant activity in many locations.

The Precinct is applied to specific areas of land within the broader Rural Amenity Zone that have capacity to absorb rural living development. These areas have a variety of existing lot sizes and patterns of development, with landscape character also varying across the Precinct. This includes existing vegetation, including shelterbelts, hedgerows and exotic amenity plantings, which characterise certain areas. Within the Precinct, sympathetically located and well-designed rural living development which achieves minimum and average lot sizes, is anticipated, while still achieving the overall objectives of the Rural Amenity Zone.

While the Rural Amenity Zone does not contain Outstanding Natural Features or Outstanding Natural Landscapes, it is a distinctive and high amenity value landscape located adjacent to, or nearby to, Outstanding Natural Features and Outstanding Natural Landscapes. There are no specific setback rules for development adjacent to Outstanding Natural Features or Outstanding Natural Landscapes. However, all buildings (except small farm buildings) and subdivision require resource consent to ensure that inappropriate buildings and/or subdivision does not occur adjacent to those features and landscapes.

Escarpment, ridgeline and river cliff features are identified on the District Plan web mapping application. Buildings proposed within the prescribed setback of these features require assessment to ensure the values of these landscape features are maintained.

Integral to the management of the Rural Amenity Zone and Precinct is Schedule 24.8, which defines 24 Landscape Character Units. These Landscape Character Units are a tool that assists with the identification of the Basin's landscape character and visual amenity values that are to be maintained and enhanced.

Proposals in areas rated to have Very Low, Low or Moderate-Low development capacity are to be assessed against the landscape character and amenity values of the landscape character unit they are located within, as well as the Wakatipu Basin as a whole.

Proposals in areas rated to have Moderate development capacity are to be assessed against the landscape character and amenity values of the landscape character unit they are located within. Controls on the location, scale and visual effects of buildings are used to provide a design led response to the identified character and values.

[13] When considering our findings on the various Topic 31 appeals in the Wakatipu Basin, we must keep in mind the settled positions expressed in our Topic 30 decisions.<sup>59</sup> In this context, it is relevant to point out that the Proposed Plan does not simply promote a rigid preservation of the status quo in terms of land uses and patterns of development. Rather, the Proposed Plan envisages the potential for changes in land use so long as they do not compromise identified landscape values.

*Obj 24.2.1*

[14] This overarching objective is:

Landscape character and visual amenity values in the Wakatipu Basin are maintained or enhanced.

*Policies to achieve and implement Obj 24.2.1*

[15] As amended by the court's Topic 30 Decisions, the policies to achieve and implement Obj 24.2.1 include:

24.2.1.1X Identify in Schedule 24.8 and on the planning maps the landscape capacity of areas outside of the Precinct to absorb subdivision and residential development according to the following rating scale:

- a. Very Low capacity;
- b. Low capacity;
- c. Moderate-Low capacity;
- d. Moderate capacity;
- e. Moderate-High capacity; and
- f. High capacity.

24.2.1.1 Subdivision or residential development in all areas outside of the Precinct that are identified in Schedule 24.8 to have Very Low, Low

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<sup>59</sup> *Barnhill Corporate Trustee Ltd & Ors v Queenstown Lakes District Council* [2022] NZEnvC 58, [2023] NZEnvC 41, [2023] NZEnvC 91.

or Moderate-Low capacity must be of a scale, nature and design that:

- a. is not inconsistent with any of the policies that serve to assist to achieve objective 24.2.1; and
- b. ensures that the landscape character and visual amenity values identified for each relevant Landscape Character Unit in Schedule 24.8 and the landscape character of the Wakatipu Basin as a whole are maintained or enhanced by ensuring that landscape capacity is not exceeded.

24.2.1.1XX Subdivision or residential development in all areas of the Wakatipu Basin Rural Amenity Zone outside of the Precinct that are identified in Schedule 24.8 to have Moderate capacity must be of a scale, nature and design that:

- a. is not inconsistent with any of the policies that serve to assist to achieve objective 24.2.1; and
- b. ensures that the landscape character and visual amenity values of each relevant LCUs as identified in Schedule 24.8 is maintained or enhanced by ensuring that landscape capacity is not exceeded.

24.2.1.1A Within those areas identified as having a landscape capacity rating of Moderate, do not allow any new residential development and subdivision for residential activity that is not located and designed so as to:

- a. avoid sprawl along roads;
- b. maintain a defensible edge to and not encroach into any area identified as having Moderate-Low, Low or Very Low landscape capacity rating;
- c. minimise incremental changes to landform and vegetation patterns associated with mitigation such as screen planting and earthworks which adversely affect important views of the landform and vegetation character identified for the relevant Landscape Character Units in Schedule 24.8; and
- d. not degrade openness when viewed from public places if that is identified in Schedule 24.8 as an important part of the landscape character of the relevant area, including as a result

of any planting or screening along roads or boundaries.

- 24.2.1.1B Ensure the following outcomes in the consideration of any proposal for subdivision or residential development:
- a. in the part of LCU 3 described in Schedule 24.8 as ‘Fitzpatrick Road South’:
    - i avoid all development on the elevated knoll landform near Fitzpatrick Road and on the south facing elevated slopes along the southern margins of the area (above the Shotover River cliffs); and
    - ii minimise the visibility of development in views from Tucker Beach, the Queenstown Trail and Fitzpatrick Road.
  - b. in the part of LCU 11 described in Schedule 24.8 as ‘East of Lower Shotover Road’ minimise the visibility of development in views from Lower Shotover Road, the Queenstown Trail and Slopehill Road;
  - c. in LCU 15 described in Schedule 24.8 as ‘Hogans Gully’ minimise the visibility of development from McDonnell Road, Centennial Avenue, Hogans Gully Road and the Queenstown Trail, and from elevated public places outside the Zone including from the Crown Range Road and Zig Zag lookout;
  - d. in LCU 22 described in Schedule 24.8 as ‘Hills’:
    - i minimise the visibility of development from McDonnell Road, Centennial Avenue, Hogans Gully Road and the Queenstown Trail; and
    - ii ensure development is visually recessive from elevated public places outside the Zone including from the Crown Range Road and Zig Zag lookout.
  - e. in the part of LCU 23 described in Schedule 24.8 as ‘Millbrook Malaghans Road South’:
    - i ensure no development is visible from Malaghans Road;
    - ii confine development to the flat land on the south side of the roche moutonnée near Malaghans Road;
    - iii ensure all access is only from the Millbrook Resort

- Zone; and
- iv. visually integrate any development with the Millbrook Resort Zone.
- f. in the part of LCU 23 described in Schedule 24.8 as ‘Millbrook Arrowtown Lake Hayes East’:
- i avoid built development on the low-lying land adjacent to Butel Road and Arrowtown Lake Hayes Road;
  - ii confine development to locations where existing landform or vegetation features serve to limit visibility and provide for visual integration with the Millbrook Resort Zone.
- 24.2.1.2 Ensure subdivision and development is designed (including accessways, services, utilities and building platforms) to minimise inappropriate modification to the natural landform.
- 24.2.1.3 Ensure that subdivision and development maintains or enhances the landscape character and visual amenity values identified in Schedule 24.8 - Landscape Character Units.
- 24.2.1.4 Maintain or enhance the landscape character and visual amenity values of the Rural Amenity Zone including the Precinct and surrounding landscape context by:
- a. controlling the colour, scale, form, coverage, location (including setbacks) and height of buildings and associated infrastructure, vegetation and landscape elements.
- 24.2.1.5 Require all buildings to be located and designed so that they do not compromise the landscape and amenity values and the natural character of Outstanding Natural Features and Outstanding Natural Landscapes that are either adjacent to the building or where the building is in the foreground of views from a public road or reserve of the Outstanding Natural Landscape or Outstanding Natural Feature.
- 24.2.1.9 Control earthworks and vegetation clearance to minimise adverse effects on landscape character and visual amenity values.
- 24.2.1.10 Enable residential activity within approved and registered building platforms subject to achieving appropriate standards.

- 24.2.1.11 Provide for activities that maintain a sense of spaciousness in which buildings are subservient to natural landscape elements.
- 24.2.1.14 Ensure subdivision and development maintains a defensible edge between areas of rural living in the Precinct and the balance of the Rural Amenity Zone.
- 24.2.1.15 Require buildings, or building platforms identified through subdivision, to maintain views from roads to Outstanding Natural Features and the surrounding mountain Outstanding Natural Landscape context, where such views exist; including by:
- a. implementing road setback standards; and
  - b. ensuring that earthworks and mounding, and vegetation planting within any road setback, particularly where these are for building mitigation and/or privacy, do not detract from views to Outstanding Natural Features or Outstanding Natural Landscapes; while
  - c. recognising that for some sites, compliance with a prescribed road setback standard is not practicable due to the site size and dimensions, or the application of other setback requirements to the site.

*Obj 24.2.5 as to enablement of rural living opportunities in the Precinct*

[16] Obj 24.2.5 is:

Rural living opportunities in the Precinct are enabled, provided landscape character and visual amenity values are maintained or enhanced.

*Policies to achieve and implement Obj 24.2.5*

[17] Policies to achieve and implement Obj 24.2.5 include:

- 24.2.5.1 Provide for rural living, subdivision, development and use of land in a way that maintains or enhances the landscape character and visual amenity values identified in Schedule 24.8 – Landscape Character Units.



- 24.2.5.2 Ensure that any development or landscape modification occurs in a sympathetic manner in both developed and undeveloped areas, by promoting design-led and innovative patterns of subdivision and development that maintain or enhance the landscape character and visual amenity values of the Wakatipu Basin overall.
- 24.2.5.4 Implement lot size and development standards that provide for subdivision and development while ensuring the landscape character and visual amenity values of the Precinct, as identified in Schedule 24.8 – Landscape Character Units, are not compromised by the cumulative adverse effects of development.
- 24.2.5.5 Encourage the retention and planting of vegetation that contributes to landscape character and visual amenity values of the Precinct, particularly where vegetation is identified as an important element in Schedule 24.8, provided it does not present a high risk of wilding spread.
- 24.2.5.6 Require buildings, or building platforms identified through subdivision, or any vehicle access located within a prescribed Escarpment. Ridgeline and River Cliff Features setback as identified on the District Plan web mapping application, to maintain the values of those features, including by:
- a. ensuring that any buildings, earthworks and landform modification are located and designed so that the values of the feature are maintained; while
  - b. recognising that for some sites compliance with the prescribed setback is not practicable due to the site size and dimensions, presence of existing buildings, or the application of other setback requirements

### *Schedule 24.8*

[18] Schedule 24.8 sets out some twenty-four related landscape character units. It is prefaced by the following commentary:

Schedule 24.8 – Landscape Character Units identifies and describes 24 landscape character units, all of which are within the Wakatipu Basin. The schedule is a tool

to assist with the identification of the landscape character and amenity values that are to be maintained or enhanced within each landscape character unit, and across the Wakatipu Basin more generally.

The landscape character unit descriptions contain both factual information and evaluative content. The description of each landscape character unit must be read in full. Each description, as a whole, expresses the landscape character and visual amenity values of that unit.

Although the landscape character unit descriptions apply to specific areas within the Wakatipu Basin that share similar landscape or settlement pattern characteristics, they do not uniformly describe the landscape character of any unit. Across each unit there is likely to be variation in landform, development and vegetation patterns, which will require consideration and assessment through consent applications. The descriptions also acknowledge that there will be change, through future development and use, particularly within the Lifestyle Precinct.

The descriptions are based on the scale of the relevant landscape character unit, and should not be taken as prescribing the values and/or capacity of specific sites. The descriptions are intended to be read collectively to inform landscape decision-making in the Wakatipu Basin, by highlighting the important elements that are to be maintained or enhanced within certain landscape character units

[19] Chapter 24 provides further guidance for addressing landscape issues by using Assessment Matters linked to the values and elements specifically identified for each LCU in Schedule 24.8.

### ***Ch 27 Subdivision and Development***

[20] The Ch 27 objectives and policies are primarily directed towards the more specific intentions of subdivision design and control. These provisions effectively apply subject to the strategic directions in Ch 3 and the directions given in regard to landscape and visual and other amenity values concerning the Wakatipu Basin in Ch 24. Nevertheless:

(a) Obj 27.2.1 is:

Subdivision that will enable quality environments to ensure the District is a desirable place to live, visit, work and play.

(b) Obj 27.2.2 is:

Subdivision design achieves benefits for the subdivider, future residents and the community.

[21] The associated rules allow for proper consideration of related matters, including in regard to landscape character and amenity values identified for LCUs in Sch 24.8 (e.g. r 27.9.3.3).

## Annexure 2

### **Record of the Court's preliminary observations prior to the adjournment as recorded on the transcript<sup>60</sup>**

... The Court is mindful of the investment that many Arrowtown residents, particularly those who have lived in the village for some time, have in that town and their sense of things changing adversely over time or being lost, values being lost, and/or of battling on but feeling institutions are not engaged. Whether or not the Court has observations to make in due course in its decision about what we have heard on those matters, there is a discipline that we as a Court must apply. We must carefully listen to each of the parties before us, as we have striven to do, according to due process and fairness principles. We must decide matters on the evidence and we must do that according to the RMA directions in this plan appeal process.

On this occasion, those disciplines lead us to overwhelmingly see what is likely to be the most appropriate response by way of zoning outcome, but it is subject to some qualifiers that mean the ultimate choice here will be reserved until our final decisions. In principle, the line of travel is towards a modified Precinct zoning as a change to the status quo.

In essence and in summary, on the key issues as fairly summarised by Mr Gordon as to landscape and the environment, in terms of the evidence we prefer the opinions of Ms Mellsop and Ms Pfluger and the associated planning opinions of Mr Kyle and Mr Langman. That does not imply criticism of Mr Blakely who impressed us as an honest informed, straightforward witness. Nor does it imply any disrespect for the genuine concerns, opinions and views as have been clearly offered by the various lay witnesses on these matters. It fundamentally pertains to how the experts have approached methodologies and our preference is for the methodologies employed by Ms Mellsop and Ms Pfluger ... and associated with that, the planning expertise of the other witnesses I have noted.

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<sup>60</sup> Transcript, pp 210-213; partial quote.

On the matter of the number of dwellings on the site, Mr Blakely's evidence offers some assistance and we draw a somewhat slight different perspective on that from that conveyed by Mr Gordon. The issue is not so much in the Court's view that the subject site has reached a tipping point. From our careful consideration of all the evidence and in light of our several site visits now, it is not a tipping point that has been reached but an indication of a development capacity that is important to be respected going forward.

Seven dwellings is too many. We are not happy to leave to legal chance any potential for that to occur by stealth or by cunning means or any other thing. If there is an issue of uncertainty in the law, including as to the interface with existing use rights, it will be a premise for any precinct zoning that there be rules to make clear what the limits of dwelling capacity of the site are.

Secondly, notwithstanding and well having considered Mr Gordon's observations around precedent, with respect we would say the issue of precedent is slightly more complex as the Court sees it at this time.

It is not simply a question of considering the noted policy, 24.2.1.15 and its reference to views of [Outstanding Natural Features and Landscapes]; the issue here is that we are considering whether or not there should be change in status quo from the current zoning to a Precinct zoning along this locality on this Site in relative proximity to McDonnell Road and the Arrowtown townships.

Returning briefly to the evidence of Mr Blakely in regard to the subject site, the Court would observe that, if one compares a view over the subject site towards the escarpment versus towards Feehly Hill, there is a different impression, and that impression includes one of dwellings in the mid-view along one access and not on the other, and that has a relatively different impact in consideration of further dwellings in the foreground.

Those matters we consider can well be covered by way of a limit on the number of dwellings. But if one turns to the McDonnell Road frontage, the expert evidence does indicate an appropriate finding on the Court's part would be as to the importance of a staggered edge. So we consider it is important for that matter to be considered in closing submissions in terms of what would be rendered non-complying as opposed to leaving that matter to discretion.

Now, Ms Pfluger's illustration indicated that (and the Court has not got a present view on this; it is a view that the Court will form in due course) that somewhere between 30-50m for one of those lots may be appropriate, and that of course is on the assumption that it's within that 250-metre length of that frontage, leaving aside and assuming that 70 metres applies for the balance.

So finally, returning to Mr Langman's opinion on precedent, I don't recall Mr Langman referring to the policy referred to by Mr Gordon, nevertheless, the Court's perspective is that precedent is an important aspect that should be firmly backed by our final decision to avoid any misunderstanding of the Court having any impression of what's appropriate along McDonnell Road.

We conclude in returning again to Mr Hanan's final remarks, and say the Court's impression was that they fairly capture a strong community-based sentiment that is genuine. An aspect of a community being aghast concerns lack of engagement, as they feel has been occurring – I leave aside whether it's a fair feeling – the important point is that it is a feeling and it is an impression the community, and members of the community, I should say, have. Alongside that is grief for loss of open character and ruralness that is part of an historic context that connects people to where they call home. Those matters do not lead the Court to a different view from what I have set out as to the likely most appropriate line of travel on the evidence and in light of the statutory specifications, in terms of the most appropriate zoning outcome. But, the Court will consider what assistance it may offer all concerned in any observations it should fairly make in light of everything said in our decision in due course.

So those are the matters that the Court will leave the appellant to consider, leaving our final decision reserved.

