

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

Decision No. [2023] NZEnvC 188

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14 of the First Schedule of the Act against decisions of the Queenstown Lakes District Council on Stage 2 of the Proposed Queenstown Lakes District Plan

BETWEEN WAKATIPU EQUITIES LIMITED

(ENV-2019-CHC-065)

(... continued on separate page)

Appellants

AND QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner J T Baines
Environment Commissioner M C G Mabin

Hearing: In Chambers at Christchurch, on the papers

Submissions: S Scott, M Wakefield and R Mortiaux for the respondent
M Baker-Galloway and L McLaughlan for Anderson Lloyd parties
A J Logan for Otago Regional Council
R Wolt for Boxer Hill Trust
W Goldsmith for Waterfall Park Developments Ltd

Last case event: 19 May 2023

Date of Decision: 5 September 2023

Date of Issue: 5 September 2023



DECISION OF THE ENVIRONMENT COURT
Topic 31: National Policy Statement on Highly Productive Land 2022

- A: The Wakatipu Basin Rural Amenity Zone (‘WBRAZ’) of the proposed Queenstown Lakes District Plan (‘PDP’) is not ‘General Rural Zone’ or ‘Rural Production Zone’ for the purposes of cl 3.5(7)(a)(i) of the National Policy Statement for Highly Productive Land 2022 (‘NPS-HPL’).
- B: Nor is the Lifestyle Precinct (‘LP’) sub-zone of the WBRAZ.
- C: Nor is land notified as LP, but down-zoned to WBRAZ by PDP first instance decisions, and now subject to an appeal seeking LP.
- D: Therefore, cl 3.5(7)(a)(i) NPS-HPL does not apply to or affect our consideration of relief in any of the Topic 31 appeals.

REASONS

Introduction

[1] This decision is on certain appeals in Topic 31 in the staged determination of appeals in the review of the PDP.¹ It concerns the proper application, in the consideration of relief in those appeals of the NPS-HPL.²

[2] Topic 31 concerns appeals seeking site-specific relief with respect to the WBRAZ including its Lifestyle Precinct sub-zone (‘Precinct’). It is not in dispute that the appeals by Wakatipu Equities Ltd (ENV-2019-CHC-065) and the others in the List of Appellants each concern land categorised by the New Zealand Land

¹ The relevant appeals are by Wakatipu Equities Ltd and as set out in the List of Appellants.

² The NPS-HPL was approved by the Governor-General under s52(2) of the Resource Management Act 1991 (RMA) on 12 September 2022 and came into force on 17 October 2022.

Resource Inventory as having a Land Use Capability ('LUC') of 1, 2 or 3. That gives rise to the issues those parties seek be determined concerning the proper interpretation and application of the NPS-HPL.

[3] At the request of the parties, the decision is on the papers.³ For ENV-2019-CHC-090 as to the appeal by Waterfall Park Developments Limited ('WPDL'), it supplements the findings to be made in the interim decision that will be issued shortly. For all other appeals in the List of Appellants, this decision will in due course inform our decisions or determinations on their relief.

The issues for determination

[4] As the parties have agreed, the issues for determination are as follows:

- (a) Is the WBRAZ (excepting the LP) to be treated as 'general rural' or 'rural production' for the purposes of cl 3.5(7)(a)(i) NPS-HPL?
- (b) Is the LP (of the WBRAZ) to be treated as 'general rural' or 'rural production' for the purposes of cl 3.5(7)(a)(i) NPS-HPL?
- (c) Does land notified as LP, but downzoned to WBRAZ by the Council's decision, and now subject to an appeal seeking LP, fall within the ambit of the exception in cl 3.5(7)(b)(ii) of the NPS-HPL?

The statutory framework and principles for interpretation

Section 75(3) RMA – district plans must give effect to the NPS-HPL

[5] The court has the same power, duty and discretion as QLDC had in respect of the appealed decisions (s290). District plans must give effect to the NPS-HPL as a national policy statement (s75(3)). Legislation, including both s75(3) RMA

³ Parties proposed that this could be by judge alone determination under s279 of the Resource Management Act 1991 ('RMA'). However, as the issues pertain to the relief we may entertain in each relevant appeal, we consider the better course is that we address this as a decision

and the NPS-HPL, applies “to circumstances as they arise” (s11 Legislation Act 2019 ‘LA’).

[6] Therefore, the court must satisfy itself that any relief pursued in Topic 31 appeals concerning land in LUC 1, 2 or 3 would not compromise the requirement that the PDP gives effect to the NPS-HPL.⁴

Legal principles

[7] The NPS-HPL is secondary legislation within the meaning of the LA and its meaning is to be ascertained from its text and in light of its purpose and context (s10(1), LA). That is also the case for the National Planning Standards 2019 (‘PS’) (provisions of which apply in the interpretation of the NPS-HPL and the PDP).⁵ We are satisfied that those statutory interpretation principles are materially in keeping with the authorities counsel referred to.⁶ However, the interpretive exercise in this case differs somewhat in that we must consider how the NPS-HPL, in tandem with the PS, applies in the consideration of the WBRAZ.

Consideration of extraneous documents is not necessary

[8] Counsel invited us to interpret the NPS-HPL and WBRAZ in light of extraneous documents. Counsel for QLDC referred to a guide to the implementation of the NPS-HPL published by the Ministry for the Environment

⁴ It is not disputed that none of the land in the appeals is “identified for future urban development” as defined in Cl 1.3 of the NPS-HPL. Our interpretation of the NPS proceeds on that premise.

⁵ National planning standards prepared under s58D are secondary legislation as prescribed by s58E RMA. They serve to assist achievement of the RMA purpose and to set out requirements or other provisions as to the structure, format or content of regional policy statements and regional and district plans (s58B). They serve to address what the Minister considers is required for various purposes including “national consistency” and supporting the implementation of other national policy and regulatory instruments (s58B). They must give effect to national policy statements (s58C).

⁶ QLDC submissions at [3.2], AL submissions at [26], referring to *Powell v Dunedin City Council* [2005] NZRMA 174 (CA) at [35] and *Brownlee v Christchurch City Council* [2001] NZRMA 539 at [25] and earlier authority including *Canterbury Regional Council v Christchurch City Council* (2001) 7 ELRNZ 97(EnvC) at [32] and [35].

(‘MfE Guide’).⁷ Counsel for Wakatipu Equities Ltd and the other Anderson Lloyd parties⁸ (‘AL’) and WPDL referred to a raft of materials concerning the PDP and the Wakatipu Basin including analyses by experts involved in work for the preparation of the variation that resulted in the WBRAZ, evidence tendered to the court in PDP appeals, and earlier decisions of the court.⁹

[9] The MfE Guide does not have any formal statutory force for interpretive purposes. The other material referred to us strays well beyond the legitimate bounds of statutory interpretation. In any case, we find each of the relevant statutory instruments sufficiently clear without the need to draw from such extraneous sources.

Overview of the NPS-HPL

Objective and policies as to highly productive land

[10] The NPS-HPL has a single objective (in cl 2.1):

Highly productive land is protected for use in land-based primary production, both now and for future generations.

[11] The NPS-HPL specifies several associated policies (cl 2.2), including:

Policy 1: Highly productive land is recognised as a resource with finite characteristics and longterm values for land-based primary production.

⁷ <https://environment.govt.nz/assets/publications/NPS-Highly-Productive-Land-Guide-to-implementation.pdf>. Referred to in QLDC submissions at [7.23].

⁸ The parties in this group are Anthony, Sarah and Samuel Strain, Barnhill Corporate Trustee Limited, DE, ME Bunn and LA Green, Middleton Family Trust, Morven Ferry Limited and Wakatipu Equities Limited.

⁹ Materials of this nature were referred to us by counsel for Strain, Wakatipu Equities Limited, Barnhill Corporate Trustee Limited, Bunn, Green, Morven Ferry Limited, Middleton Family Trust and WPDL.

- Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.
- Policy 5: The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.
- Policy 6: The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement.
- Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.
- Policy 8: Highly productive land is protected from inappropriate use and development.
- Policy 9: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land

[12] Central to the design of the NPS-HPL are directions for the mapping of highly productive land and, following that, its identification in regional policy statements and identification and protection through district plans. As that response to the NPS-HPL will extend over several years, the NPS-HPL includes a transitional regime in cl 3.5(7).

Meaning of highly productive land during the transition under cl 3.5(7)

[13] The definition of “highly productive land” in NPS-HPL takes us to cl 3.5(7), i.e. (emphasis added):

highly productive land means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land).

Cl 3.5(7)(a)

[14] Clause 3.5(7) relevantly reads:¹⁰

Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:

- (a) is
 - (i) zoned general rural or rural production; and
 - (ii) LUC 1, 2, or 3 land

[15] Given that the land in each of the relevant appeals is in one or other of those LUCs, the issues for determination turn on the proper meaning of “zoned general rural or rural production” as it is used in cl 3.5(7)(a)(i). As to that meaning, cl 1.3(4) NPS-HPL relevantly specifies:¹¹

A reference in this National Policy Statement to a zone is: . . .

- (b) for local authorities that have not yet implemented the Zone Framework Standard of the National Planning Standards, a reference to the nearest equivalent zone.

[16] That direction intends that we must examine the WBRAZ (including the Precinct) against the various zone classes specified in PS8.

¹⁰ The exception in cl 3.5(7)(b) does not apply as it is common ground that none of the subject land is “identified for future urban development” and none is “subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle”.

¹¹ Clause 1.3(4) applies because QLDC has not yet implemented the PS Zone Framework Standard. Counsel informed the court that QLDC has an exemption from doing so in Section 17.5 of the PS (for a period of 7 years).

The PS8 zone classes for comparison

[17] We can set aside a number of those zone classes as having no relevance. The PS8 zone classes of potential interest in terms of nearest equivalence to the WBRAZ are:

(a) “General Rural Zone” described as:

Areas used predominantly for primary production activities, including intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.

(b) “Rural Production Zone” described as:

Areas used predominantly for primary production activities that rely on the productive nature of the land and intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.

(c) “Rural Lifestyle Zone” described as:

Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural [sic] and Rural Production zones, while still enabling primary production to occur.

Meaning of “areas used predominantly for” as used in the PS8 zone classes

[18] In PS8 the descriptions of General Rural Zone, Rural Production Zone and Rural Lifestyle Zone each use the phrase “areas used predominantly for”. We find that phrase has its plain ordinary meaning. “Areas” refers to the spatial dimensions of the zone as depicted on the PDP planning maps. “Used” refers to the purpose

served by the zone.¹² “Predominantly” means “mainly”.¹³ The phrase as a whole refers to what the main purpose of the zone in question is.

[19] We find that meaning of the phrase best serves to give effect to the NPS-HPL concerning “highly productive land”. That is in the sense that it would most effectively ensure the proper application of cl 3.5(7), in terms of the objective and policies of the NPS-HPL, pending the completion of the mapping and follow up changes to regional policy statements and district plans as the NPS-HPL directs. In particular, pending that exercise, the risk to be addressed concerns loss of LUC 1, 2 or 3 land that could in due course be mapped and managed as highly productive land through updated district plan controls. Hence, what cls 3.5(7) and 1.3(4) call for is an examination of what the main purpose of the relevant existing district plan zone is to best enable the protective aims of the NPS-HPL to be realised.

When is LUC 1, 2 or 3 land ‘highly productive land’ to which cl 3.5(7) applies?

[20] Land in the appeals that is LUC 1, 2 or 3 is to be treated as highly productive land to which cl 3.5(7) NPS-HPL applies if the district plan zone in which it is located is nearest in equivalence to either PS8 General Rural Zone or Rural Production Zone. The district plan zone must be treated as being nearest in equivalence to one or other of those PS8 zone classes if that zone is used predominantly for (i.e. mainly serves) primary production purposes as those PS8 zone classes describe.

[21] If by such analysis the district plan zone in question is more nearly equivalent to one of the other PS8 zone classes (e.g. Rural Lifestyle Zone), cl 3.5(7) does not apply. That is the case whether or not such land is LUC 1, 2 or 3.

¹² *The New Zealand Oxford Dictionary*, use: 1 cause to act or serve a purpose.

¹³ *The New Zealand Oxford Dictionary*, predominant: 2 being the strongest or main element.

Approach to our analysis of whether cl 3.5(7) applies

[22] There are several steps in our analysis of whether cl 3.5(7) applies to the consideration of the relief in the relevant appeals:

- (a) an initial further question raised by submissions is whether we are to treat the WBRAZ as including the Precinct sub-zone or whether we treat the Precinct separately for the purposes of the NPS-HPL;
- (b) subject to that, our further analysis includes consideration of the following matters that help inform our ultimate answer:
 - (i) the history leading to the inclusion of the WBRAZ in the PDP;
 - (ii) the design of the PDP overall including as to the rural environment; and
 - (iii) the objectives, policies and other provisions of the WBRAZ including the Precinct sub-zone.

Is the Precinct a separate zone from the WBRAZ for the purposes of the NPS-HPL?

Introduction

[23] The importance of the question is in whether the consequences under cl 3.5(7) NPS-HPL would be the same for LUC 1, 2 and 3 land within the Precinct as within the remainder of the WBRAZ.

[24] The PDP refers to the Precinct as a “sub-zone”.¹⁴ For instance, the first paragraph of 24.1 Zone Purpose reads:

¹⁴ Another example of sub-zones is the Ski Area Sub-zones within the Rural Zone. In broad terms they are similarly connected zones in that case providing an essentially self-contained regime for ski field operation and development.

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.

[25] As noted, the NPS-HPL refers to “zone” and directs us to consider which of the zoning classes in PS8 the subject district plan zone is nearest in equivalence to. Neither the NPS-HPL or the PS expressly recognise ‘sub-zones’. PS12 refers to the following spatial planning constructs:

Zones A zone spatially identifies and manages an area with common environmental characteristics or where environmental outcomes are sought, by bundling compatible activities or effects together, and controlling those that are incompatible.

Overlays An overlay spatially identifies distinctive values, risks or other factors which require management in a different manner from underlying zone provisions.

Precincts A precinct spatially identifies and manages an area where additional place-based provisions apply to modify or refine aspects of the policy approach or outcomes anticipated in the underlying zone(s).

[26] There is a degree of overlap in those descriptions. Zones and precincts each spatially identify and manage areas.¹⁵ However, the PS signals that a precinct would tend to sit within the zone it serves. That is:

(a) a zone would tend to prescribe the overarching objectives and intentions for an area by way of “outcomes” and related controls; and

¹⁵ We do not further consider ‘overlays’ as they are not in issue. However, overlays as defined would appear to serve a different qualifying purpose in relation to zones than do precincts. Common examples of these in district plans include special natural, cultural, heritage or landscape overlays (“values”) or natural hazard overlays (“risks”) that may serve to restrict what may otherwise be enabled.

- (b) a precinct may then refine or otherwise modify that by way of further “place-based” provisions and refinements of the zone’s policy approach.

Submissions

QLDC and ORC

[27] Counsel for QLDC and ORC treat the WBRAZ and Precinct as separate zones for the purpose of applying the NPS-HPL. That is they submit that cl 3.5(7) NPS-HPL applies to the WBRAZ except in the Precinct.

[28] Counsel for QLDC submit that, by design, the WBRAZ and the Precinct operate separately. They refer to the fact that the Zone Purpose statement describes the Precinct as being applied to specific areas of land within the broader WBRAZ that have capacity to absorb additional rural living development. They point out that Obj 24.2.5 and its supporting policies provide direction to support enablement of ‘rural living’ in certain areas throughout the Basin. They submit that the Precinct serves a distinctly different purpose than does the remainder of the WRBAZ, as reflected in objectives, policies and rules.¹⁶

Other parties

[29] For AL, Ms Baker-Galloway submits that the Precinct is not a standalone zone but exists only as an overlay or precinct within the parent WBRAZ.¹⁷ Counsel for Boxer Hill Trust (‘BHT’) and WPDLC adopt those submissions.¹⁸

¹⁶ QLDC reply at [2.1]-[2.4].

¹⁷ Submissions for AL, dated 28 April 2023, at [12].

¹⁸ Submissions for BHT, dated 28 April 2023, at [15], [17]; submissions for WPDLC, dated 28 April 2023, at [3].

The Precinct is not a separate zone for the purposes of the NPS-HPL

[30] We find the better interpretation is that the Precinct is not a separate zone for the purposes of the NPS-HPL. While it is not unnecessarily unsound for the PDP to provide for sub-zones (at least pending QLDC's implementation of the PS Zone Framework Standard), we find that on a proper reading of the NPS-HPL the WBRAZ is to be treated as a single zone that includes the Precinct.

[31] That is because the Precinct is designed as a nested component of the WBRAZ subject to its overarching purposes. Those purposes are essentially as are expressed in SO 3.2.5.8 and Obj 24.2.1 as to the maintenance or enhancement of the landscape character and visual amenity values "of the Basin". Reinforcing the integrated nature of the WBRAZ and its Precinct, SO 3.2.5.8 commences "Within the Wakatipu Basin Rural Amenity Zone". Similarly, the 24.1 Zone Purpose statement explains:

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.

[32] We acknowledge that the Precinct has its own Obj 24.2.5. However, that objective includes a proviso that reinforces the overarching purpose of the WBRAZ in those matters (i.e. "provided landscape character and visual amenity values are maintained or enhanced"). Nor is the Precinct self-contained in regard to associated policies and rules, accepting that the Precinct provides greater enablement of rural living opportunities than other areas of the WBRAZ. We discuss relevant rules later in this decision. It is sufficient to record that several Ch 24 and 27 rules as to the control of activities apply WBRAZ-wide, including within the Precinct. Those rules are intended to serve the overarching objectives of the WBRAZ.

[33] Therefore, the Precinct does not meet the specifications for “zones” in PS12.

[34] On the other hand, the Precinct comfortably accords with the specifications for “precincts” in PS12 in that it spatially identifies and manages those sub-areas of the Basin where additional place-based provisions apply to modify or refine aspects of the WBRAZ’s policy approach. In relation to the Precinct, the WBRAZ is what PS12 refers to as the “underlying zone”. That is in the sense that the zoning maps encompass the Precinct within the WBRAZ being the rural environment zone for the Basin.

[35] Nothing in the NPS-HPL (nor the associated PS) invites an interpretation of cl 3.5(7) that would treat the Precinct separately from the WBRAZ of which it is part.

Implications for comparative analysis of WBRAZ with PS8 zoning classes

[36] It follows that we treat the WBRAZ as a whole, including the Precinct, when determining whether the zone is predominantly used for primary production purposes. We record however, that we would have reached the same conclusion for the WBRAZ whether or not we counted the Precinct as a component of it. That is because we find that the WBRAZ is not nearest in equivalence to either PS8 General Rural Zone or Rural Production Zone as it is not used predominantly for primary production activities.

History of the WBRAZ

[37] In the development of the PDP, the WBRAZ is a relative latecomer. Its genesis as a variation in the plan review is discussed in the court’s first Topic 30 decision in *Barnhill Corporate Trustee Ltd v Queenstown Lakes District Council*.¹⁹

¹⁹ *Barnhill Corporate Trustee Ltd v Queenstown Lakes District Council* [2022] NZEnvC 58 at [3]-

[38] As originally notified, the PDP did not treat the Wakatipu Basin as a separate planning unit. Land of the Basin was included in the PDP’s Rural Residential and Rural Lifestyle Zones. Concerns about that approach were raised by the IHP²⁰ who heard submissions in Stage 1 of the plan review. The nub of their concerns was that the full discretionary activity status accorded to subdivision under the Rural Residential and Rural Lifestyle Zones would not allow for proper careful assessment of development and could give rise to the related “potential to cumulatively and irreversibly damage the character and amenity values” of the Basin contrary to the PDP’s strategic intentions.²¹

[39] Picking up on the IHP’s recommendations, QLDC commissioned the *Wakatipu Basin Land Use Planning Study*.²² That underpinned and informed a variation that proposed to replace the former zones with what is now the WBRAZ.

Overall design of approach of the PDP to the ‘rural environment’

[40] In PDP Part 1: Introduction, it is explained that the rural environment is split “into several zones to allow different provisions to apply to each”. That is to allow development in each zone “to be reflective of the effects anticipated” by the PDP (with “District Wide Matters” applying over all zones) (provision 1.6.10).

[41] Queenstown-Lakes District is internationally renowned for its landscapes. Its economy is predominantly visitor-based and heavily reliant on effective

[8].

²⁰ The independent hearings panel comprised Denis Nugent (Chair), Rachel Dimery, Trevor Robinson and Quentin Smith.

²¹ *Barnhill Corporate Trustee Ltd* at [4] referring to an extract from para [8] of the 1 July 2016 Minute of the panel that heard submissions on the notified PDP provisions, as quoted by QLDC Hearing of Submissions on Proposed District Plan, Report and Recommendations of Independent Commissioners Regarding Chapter 24 and Wakatipu Basin Planning Maps, Report 18.1 at [101].
<https://www.qldc.govt.nz/media/kqzdfmuj/report-18-1-chapter-24-wakatipu-basin.pdf>.

²² *Wakatipu Basin Land Use Planning Study*, Final Report March 2017, prepared for Queenstown Lakes District Council by Barry Kaye, Kelvin Norgrove and Bridget Gilbert.

landscape protection. Related to that, the PDP recognises there are competing priorities in the management of the District’s so-termed “rural environment”. For instance, in Ch 3 Strategic Direction 3.1A Strategic Issues refers to:

Strategic Issue 2: Growth pressure impacts on the functioning and sustainability of urban areas, and risks detracting from rural landscapes, particularly its outstanding natural features and outstanding natural landscapes.

[42] Furthermore, the PDP’s enablement of agricultural land uses is qualified, as is reflected in strategic objective SO 3.2.1.7 (emphasis added):

Agricultural land uses are enabled **provided those** uses are consistent with:

- a. the protection of the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes;
- b. the maintenance of the landscape character of Rural Character Landscapes and the maintenance or enhancement of their visual amenity values; and
- c. the maintenance of significant nature conservation values.

[43] The PDP also recognises that there is a helpful synergy between landscape protection and the enablement of farming. For example, the introduction to Ch 6: Landscapes & Rural Character (under 6.2 Values) contains the following statements (emphasis added):

The District’s landscapes are of significant value to the people who live in, work in or visit the District. The District relies in a large part for its social and economic wellbeing on the quality of the landscape, open spaces and the natural and built environment. Those landscapes also have inherent values, particularly to Tangata Whenua. ...

The open space or open character of rural land are key elements of the landscape character that can be vulnerable to degradation from subdivision, development and non-farming activities. **The prevalence of large farms and landholdings contributes to the open space and rural working character of the landscape.**

The predominance of open space over housing and related domestic elements is a strong determinant of the character of the District's rural landscapes.

[44] As aspects of that design, the PDP includes mapping overlays over the various zones for a variety of protective and other purposes including in relation to:

- (a) outstanding natural features and landscapes ('ONFL'); and
- (b) rural amenity landscapes.

The five general zoning classes for the rural environment and purposes

[45] With the addition of the WBRAZ, the PDP now provides for five classes of zone for its rural environment. Dedicated zone chapters are included in the PDP (their provisions applying in conjunction with Ch 27: Subdivision and Development). In summary those zones and their described purposes (from introductory text in each chapter) are as follows:

Zone	Chapter	Purpose
Rural	21	The purpose of the Rural Zone is to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity.
Rural Residential	22	... provide residential living opportunities on the periphery of urban areas and within specific locations amidst the Rural Zone. In both zones a minimum allotment size is necessary to maintain the character and quality of the zones and the open space, rural and natural landscape values of the surrounding Rural Zone.
Rural Lifestyle		
Gibbston Character	23	The purpose of the Gibbston Character zone is to provide primarily for viticulture and commercial activities with an affiliation to viticulture within the confined space of the Gibbston Valley.

WBRAZ	24	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.
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[46] The Rural Zone and Gibbston Character Zone each closely compare with the described predominant purposes of the PS8 General Rural Zone and Rural Production Zone. That is in the primacy they accord to enablement of farming and viticulture respectively. In the case of the Gibbston Character Zone, Obj 23.2.1 recognises synergy between protection of landscape character and values and the enablement of viticulture and other activities, i.e:

The economic viability, character and landscape values of the Gibbston Character Zone are protected by enabling viticulture and other appropriate activities that rely on the rural resource of the Gibbston Valley and managing the adverse effects resulting from other activities locating in the Zone.

[47] The purposes of the other rural environment zones materially differ in those terms. In the Rural Residential and Rural Lifestyle zones, primacy is given to providing residential living opportunities. In the WBRAZ, primacy is given to maintaining or enhancing the character and amenity of the Basin (while providing for rural living and other activities).

Relevant design elements of the WBRAZ

[48] The WBRAZ applies to the mapped dimensions of the Wakatipu Basin as are broadly depicted in the following Figure 1 (which is a reproduction of the map in Sch 24.8 of the 24 identified Landscape Character Units ('LCUs') of the Basin):

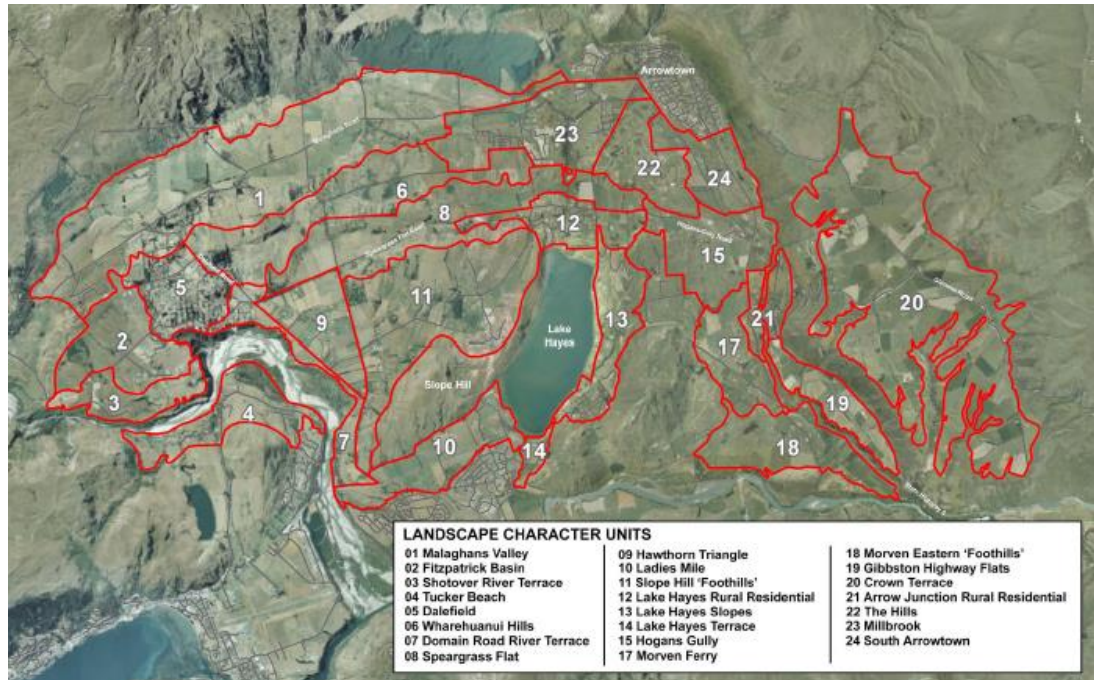


Figure 1 – Map of LCUs in PDP Sch 24.8

Objectives

[49] There are five objectives and several associated policies prescribed for the WBRAZ:

- (a) Obj 24.2.1 as noted is that landscape character and visual amenity values in the Wakatipu Basin are maintained or enhanced;
- (b) Obj 24.2.2 is that non-residential activities maintain or enhance amenity values;
- (c) Obj 24.2.3 is that reverse sensitivity effects are avoided or mitigated where rural living opportunities, visitor and tourism activities, community and recreation activities occur;
- (d) Obj 24.2.4 is that subdivision and development, and use of land, maintains or enhances water quality, ecological quality, and recreation values while ensuring the efficient provision of infrastructure;
- (e) Obj 24.2.5 is that rural living opportunities in the Precinct are enabled, provided landscape character and visual amenity values are maintained or enhanced.

Policies

Policies to implement Obj 24.2.1

[50] Policies pertaining to Obj 24.2.1 are directed to the maintenance or enhancement of landscape character and visual amenity values of the Basin and its LCUs. For example, Pol 24.2.1.6 is:

Provide for farming, commercial, community, recreation, tourism related and other non-residential activities that rely on the rural land resource, subject to maintaining or enhancing landscape character and visual amenity values.

Policies to implement Obj 24.2.3

[51] Policies pertaining to Ob 24.2.3 on reverse sensitivity give essentially equal recognition to the range of anticipated activities in the WBRAZ, including productive farming and rural living and non-residential activities:

24.2.3.2 Ensure reverse sensitivity effects on rural living and non-residential activities are avoided or mitigated.

24.2.3.3 Support productive farming activities such as agriculture, horticulture and viticulture in the Rural Amenity Zone by ensuring that reverse sensitivity issues do not constrain productive activities.

Policies to implement Obj 24.2.4

[52] Pertaining to Obj 24.2.4, the following policy as to improvement of the water quality of Lake Hayes pertains to productive farming as a use of land as well as to subdivision, development and other uses:

24.2.4.2 Restrict the subdivision, development and use of land in the Lake Hayes catchment, unless it can contribute to water quality improvement in the catchment commensurate with the nature, scale and location of the proposal.

Policies to implement Obj 24.2.5

[53] The policies associated with Obj 24.2.5 as to the Precinct provide a comparatively more favourable policy setting for rural living development than for the balance of the WBRAZ. However, that is also qualified with reference to the maintenance or enhancement of landscape character and visual amenity values (Pol 24.2.5.1 – 24.2.5.3).

Associated rules on enabled activities

[54] As we have described, parts of the WBRAZ are recognised to have “capacity to absorb rural living development”. Greatest relative enablement is provided in Precinct areas in which “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 (24.1 Zone Purpose). In the balance of the WBRAZ, enablement of subdivision, use and development is attuned to assigned landscape capacity ratings within particular LCUs (and some areas within them) (Pols 24.2.1.1A, 24.2.1.1B). That rating is according to a six-point evaluative scale (i.e. Very Low – High).

[55] Consistent with the primary purpose of maintaining or enhancing landscape character and visual amenity values, the enablement of primary production is qualified in associated rules. Farming activity and farm buildings are a permitted activity. However, a farm building that exceeds a maximum gross floor area of only 50m² defaults to a restricted discretionary activity (r 24.5.13). Discretion is available to decline a consent application for a larger farm building if it is adjudged to be in an inappropriate location or unacceptable character, scale and form or external appearance. Other classes of permitted activity as to retail sales of farm produce and roadside stalls signal some preference for small cottage farming in the WBRAZ. However, other classes of permitted activity (subject to standards) include residential, residential visitor accommodation and small scale commercial recreational activities (Table 24.1).

[56] A range of residential density and lot size standards apply. These are included in Ch 24 and paralleled in Ch 27 in regard to subdivision (e.g. rr 27.5.9, 27.5.20, 27.5.21, 27.5.18A). Within the Precinct these are relatively more enabling of rural living development (rr 24.5.1.1, 24.5.1.2). In the remainder of the WBRAZ, there are a mix of standards designed to apply within a number of specified LCUs (r 24.5.1.6) that are typically enabling of subdivision for rural living development rather than primary production purposes. The default non-complying activity minimum net 80 ha standard applies elsewhere in the WBRAZ (r 24.5.1.5). Insofar as that is a much larger minimum lot size, it is somewhat consistent with enablement of continuing farming activities. However, as noted, that is subject to the purpose of the WBRAZ which pertains to the maintenance or enhancement of landscape character and visual amenity values.

[57] On our analysis of those provisions, they are essentially consistent with the described purpose of the WBRAZ. They do not assign that any primacy, in a purposive sense, to primary production activities but rather contemplate farming as one of the range of activities that are enabled. That enablement is qualified however by the primary purpose of the WBRAZ as to the maintenance or enhancement of landscape character and visual amenity values.

Submissions

QLDC and ORC

[58] As we have noted, the submissions for QLDC and ORC proceed on the basis that the Precinct should be treated as separate from the balance of the WBRAZ for the purposes of consideration of cl 3.5(7). For the reasons we have given, we do not accept that to be the proper interpretation of the NPS-HPL. Their approach is misdirected in that it does not treat the WBRAZ as a whole in comparison to the PS8 zoning classes.

[59] Counsel for QLDC examine the design elements of those parts of the WBRAZ outside Precinct areas in terms of what they signify as to development

expectations. They submit that these favour treating the WBRAZ (other than the Precinct) as nearest in equivalence to the PS General Rural Zone.²³

[60] Counsel refer to the deliberate inclusion of a 80 ha minimum lot size standard in the originally notified Wakatipu Basin variation. They characterise this as a deliberate shift in the regulatory regime that strongly indicates that additional rural living is not anticipated in these areas of the WBRAZ.²⁴ Counsel note the reference to provision for farming in Pol 24.2.1.6 and the fact that this is a permitted activity further supported by the reverse sensitivity Pol 24.2.3.3.²⁵

Other parties

[61] AL, BHT and WPDL submit that the nearest PS8 equivalent to the WBRAZ is Rural Lifestyle Zone with the consequence that cl 3.6(7) NPS-HPL does not apply to the Basin. Counsel characterise the WBRAZ as incompatible with the PS's descriptions of the Rural General and Rural Production Zones in that these are used primarily for a production purpose.²⁶

[62] Counsel for AL further submit that the WBRAZ should not be considered in a vacuum but with reference to other PDP rural environment zones and their purposes (in addition to Ch 26 Earthworks). Furthermore, they analyse the applicable standards and other rules as to maximum gross floor area and maximum volumes for earthworks across zones, submitting that those in Ch 24 do not enable farming activities to the extent that would be reasonably anticipated in an area "used predominantly for farming". Rather, in their submission it more closely resembles those of an area "used predominantly for a residential lifestyle within a rural environment". They point out that the Ch 24 density standards for subdivision and residential development are similar to those for the Rural Lifestyle

²³ QLDC submissions dated 4 April 2023, at [7.21].

²⁴ QLDC submissions dated 4 April 2023, at [7.13]-[7.20].

²⁵ QLDC submissions dated 4 April 2023, at [7.18].

²⁶ AL submissions dated 28 April 2023, at [13].

Zone, in many parts of the WBRAZ. That includes many of the LCUs outside of the Precinct.²⁷

[63] Mr Goldsmith makes similar submissions for WPDL.²⁸ He also invites the court to take judicial notice of the fact that that range of lot sizes does not accord with the size of landholdings one would expect to find in the General Rural Zone where land is used predominantly for primary production activities.²⁹

The WBRAZ is not used predominantly for primary production activities

[64] Through the lens of the objectives and associated policies and related rules, we find that the WBRAZ is not used predominantly for primary production activities. That is the case for each subset of those activities described in PS8.

[65] Plainly that is the position within the Precinct. We find it is also the position for the balance of the WBRAZ. That is not to say the WBRAZ does not enable and encourage farming. Rather, it seeks to enable that as a permitted activity and extend it some protection from reverse sensitivity threats. But that is as part of a collection of anticipated activities all of which are subject to the direction to maintain or enhance the landscape character and visual amenity values of the Basin and its LCUs. Encouragement and enablement of farming is in recognition of the value it has for maintaining landscape character and visual amenity values. In essence, the centrality of “rural amenity” in the WBRAZ title reflects its core purpose.

[66] What remains of the Basin’s productive farming heritage is an important component of the landscape character that the WBRAZ seeks to maintain or enhance. As the court has previously observed, it remains character-defining. However, the predominant purpose of the WBRAZ is to maintain or enhance

²⁷ AL submissions at [50]-[59], Appendix 2.

²⁸ WPDL submissions, at [8].

²⁹ WPDL submissions, at [27].

landscape character and visual amenity values. Insofar as farming activities are enabled, that is on an expressly qualified basis that is not in keeping with either of the PS8 classes that trigger cl 3.5(7), i.e. General Rural Zone and Rural Production Zone.

[67] The history whereby the WBRAZ came to be included in the PDP is of some relevance as further supporting that interpretation. As we have noted, the independent commissioners who heard submissions in Stage 1 did not raise concern as to whether the prior zoning treatment of the Basin was inadequate in providing for productive farming. Indeed neither Rural Residential nor Rural Lifestyle zoning is particularly enabling of that. Rather, they were concerned that the full discretionary activity status accorded by that former zoning would cumulatively cause loss of landscape character and amenity values contrary to the PDP's strategic intentions. The *Wakatipu Basin Land Use Planning Study* was very much focussed on those same concerns and is the foundation of the notified WBRAZ. The changes made to that notified WBRAZ do not change its designed purpose in those terms. Rather they have served to reinforce and refine them.

[68] In particular, that is in terms of significantly qualifying and confining the application of the former universally applied 80 ha minimum net site area standard as a trigger to non-complying subdivision.

[69] The 80 ha non-complying subdivision regime continues to apply to some LCUs within the Basin. However, as the court's interim decision in *Barnhill Corporate Trustee Ltd* records, the only parts of the Basin where there remain lots in excess of 160 ha is in LCU 1: Malaghans Valley and LCU 20: Crown Terrace.³⁰ We infer from our evidential findings in our Topic 30 decisions that the Basin's productive farming is now essentially confined to those remnant areas.

³⁰ *Barnhill Corporate Trustee Ltd v Queenstown Lakes District Council* [2022] NZEnvC 58 at [46].

The WBRAZ is nearest in equivalence to the PS8 Rural Lifestyle Zone

[70] In terms of its detailed design, the WBRAZ does not align particularly well with what PS8 describes as a Rural Lifestyle Zone.

[71] Terms such as “residential lifestyle” are not used. Perhaps ‘rural lifestyle’ would be closer to what the WBRAZ has in mind as a main type of usage provided for in the WBRAZ (alongside other usage, notably including farming which in some parts of the WBRAZ could well be productive farming). Nor is the hierarchy of lot sizes as between the three noted PS zone classes and described for the Rural Lifestyle Zone particularly demonstrated in the design of the rural environment chapters of the PDP. Rather, the PDP zones, including the WBRAZ, tend to display a more complex somewhat disorderly approach in those terms.

[72] However, the WBRAZ is similar to the PS8 Rural Lifestyle Zone zoning class in the fact that it mainly provides for:

... a ... lifestyle within a rural environment ..., while still enabling primary production to occur.

[73] In those terms, we find that the WBRAZ has most equivalence to PS8 Rural Lifestyle Zone. We are satisfied that our interpretation is not inconsistent with the NPS-HPL objective (in cl 2.1) and its associated policies. It follows that nothing in s75(3) RMA impedes our consideration of the range of zoning outcome options available within the scope of the appeals highly productive land.

Outcome

[74] Therefore, we find that:

- (a) the WBRAZ is not a PS General Rural or Rural Production Zone for the purposes of cl 3.5(7)(a)(i) NPS-HPL;
- (b) nor is the Precinct (whether or not a sub-zone of the WBRAZ));

- (c) nor is land notified as Precinct, but down-zoned to WBRAZ by PDP first instance decisions, and now subject to an appeal seeking Precinct; and
- (d) therefore, cl 3.5(7)(a)(i) does not apply to or affect our consideration of relief in the appeals.

For the court



J J M Hassan
Environment Judge

List of appellants

ENV-2019-CHC-065	Wakatipu Equities Limited
ENV-2019-CHC-056	A, S and S Strain
ENV-2019-CHC-086	Barnhill Corporate Trustee Ltd and D E, M E Bunn and L A Green
ENV-2019-CHC-088	Morven Ferry Limited
ENV-2019-CHC-036	Burgess Duke Trust
ENV-2019-CHC-038	Boxer Hill Trust
ENV-2019-CHC-074	Slopehill Joint Venture
ENV-2019-CHC-047	M P Henry
ENV-2019-CHC-090	Waterfall Park Developments Limited
ENV-2019-CHC-055	Middleton Family Trust