

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

**Decision No. [2022] NZEnvC 58**

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 of the First  
Schedule of the Act

BETWEEN BARNHILL CORPORATE  
TRUSTEE LIMITED and all other  
appellants concerning Topics 25 and  
30 of Stage 2 of the proposed  
Queenstown Lakes District Plan

(ENV-2019-CHC-086)

Appellants

AND QUEENSTOWN LAKES DISTRICT  
COUNCIL

Respondent

Court: Environment Judge J J M Hassan  
Environment Commissioner K A Edmonds

Hearing: at Queenstown on 6 December 2021

Appearances: M Baker-Galloway and R Giles for the appellants  
M G Wakefield and R Mortiaux for the respondent  
N M Laws for the Otago Regional Council

Last case event: 11 February 2022

Date of Decision: 12 April 2022

Date of Issue: 12 April 2022

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**INTERIM DECISION OF THE ENVIRONMENT COURT  
Topics 25 and 30 – Wakatipu Basin text**

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- A: Part B sets out final determinations on provisions 3.1B.5 in relation to 'Rural living', 3.2.5, policies 24.2.1.11 and 24.2.1.14, rules 24.4.6, 24.4.7A, 24.5.1.4 and 24.5.1.5 and parts of rules 24.5.1.6 and 27.5.18C.
- B: Part B sets out provisional findings on SO 3.2.5.8, a new policy 24.2.1.1X and associated mapping and policies 24.2.1.1, 24.2.1.1A, 24.2.1.1B and 24.2.1.1XX, and assessment matters 24.7.5, 24.7.7, 24.7.8, 24.7.8B, 24.7.9 and 27.9.3.3 reserving capacity for supplementary submissions.
- C: Determinations are reserved on other matters, including 24.1 Zone Purpose and potential further mapping of landscape capacity areas within Landscape Character Units, with directions for supplementary submissions on these matters to be made in due course.
- D: Costs are reserved. A timetable to be set in due course if need be. However, the court's preliminary view is that costs should lie where they fall.

## **REASONS**

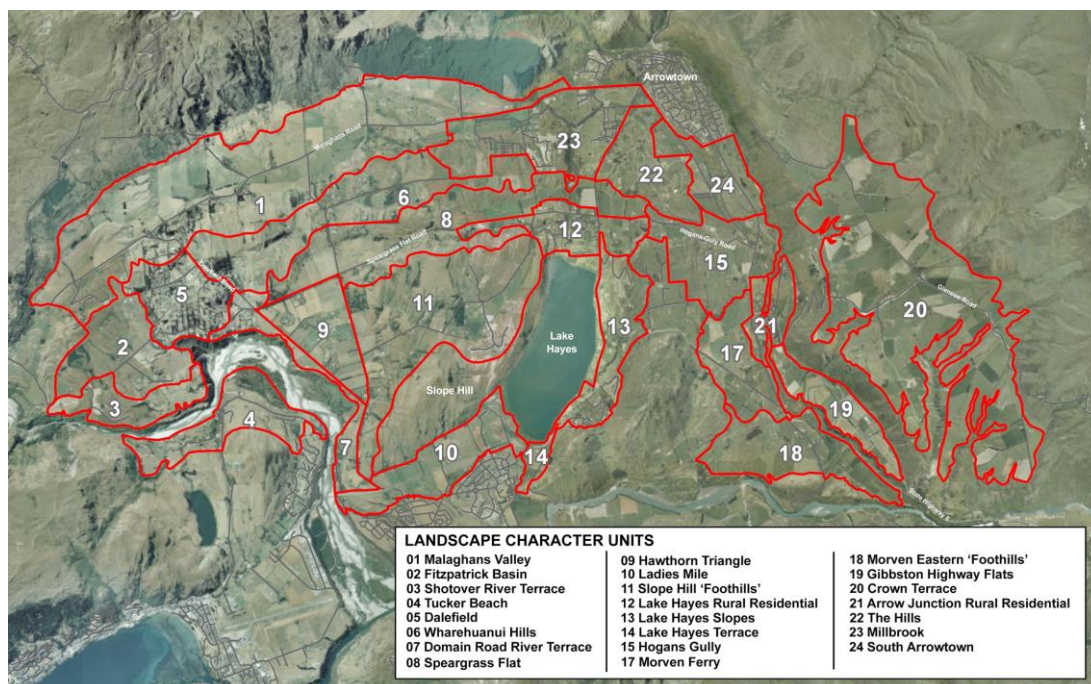
### **Part A**

[1] This decision in the staged review of the Queenstown District Plan concerns unresolved appeal points allocated to Topics 25 and 30, Stage 2, pertaining to the so-termed 'Wakatipu Basin' provisions. These are the Wakatipu Basin Rural Amenity Zone ('WBRAZ'), including provisions in Chs 24 and 27 of the 'proposed district plan' ('PDP').

### **Background**

[2] The WBRAZ originates from a QLDC-initiated variation to the PDP. The geographic extent of the WBRAZ, including its twenty-four identified 'Landscape

Character Units' ('LCUs'), is depicted in the following map from Sch 24.8 of the PDP's decisions version ('DV'):



[3] As originally notified, the PDP simply treated the Wakatipu Basin as part of the PDP's general Rural Zone and subject to related rural landscape provisions. It did not then specify a minimum density or lot size standard. Subject to some specified exceptions, it classed applications for subdivision and residential development as discretionary activities.

[4] The panel of independent commissioners who heard submissions for QLDC on the relevant 'Stage 1' Rural PDP zone provisions explained their concerns about this as follows:<sup>1</sup>

<sup>1</sup> Extract of 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, Commissioners Denis Nugent (Chair), Rachel Dimery, Trevor Robinson, Quentin Smith, at [101] <https://www.qldc.govt.nz/media/kqzdfmuj/report-18-1-chapter-24-wakatipu-basin.pdf>, ('Panel Report and Recommendations').

In the course of the hearing, based on the evidence from the Council and submitters, we came to the preliminary conclusion that continuation of the fully discretionary development regime of the Rural General Zone of the ODP, as proposed by the PDP, was unlikely to achieve the Strategic Direction of the PDP in the Wakatipu Basin over the life of the PDP. We are concerned that, without careful assessment, further development within the Wakatipu Basin has the potential to cumulatively and irreversibly damage the character and amenity values which attracts [*sic*] residents and other activities to the area.

[5] The panel recommended that QLDC commission a detailed study of the Wakatipu Basin floor including for the following purpose:<sup>2</sup>

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

[6] QLDC accepted that recommendation and commissioned a multi-disciplinary experts' team. It produced the *Wakatipu Basin Land Use Planning Study* ('WB Study'/'Study') in March 2017, including recommendations that resulted in the Wakatipu Basin variation.<sup>3</sup>

[7] The notified variation proposed to replace the Rural Residential and Rural Lifestyle Zones with a bespoke regime in a new Ch 24 and associated provisions in Ch 27 on subdivision and development (and accompanying planning maps).

[8] The DV that was confirmed following the hearing of submissions left the WBRAZ relatively unchanged. An important part of the WBRAZ is 'Schedule 24.8 – Landscape Character Units'. It identifies and describes the landscape qualities and capacity for development of the 24 LCUs, derived from the WB

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<sup>2</sup> Panel Report and Recommendations, at [102].

<sup>3</sup> *Wakatipu Basin Land Use Planning Study*, Final Report March 2017, prepared for Queenstown Lakes District Council by Barry Kaye, Kelvin Norgrove and Bridget Gilbert.

Study. Co-author Ms Gilbert explained:<sup>4</sup>

This document, which has been retained in the decisions version, describes the landscape and visual amenity characteristics of the various LCUs throughout the Basin, and specifies a capability rating for each LCU based on their ability to absorb additional development. For certain LCUs, this rating was amended through Council's Stage 2 decisions. Schedule 24.8 is referenced in a number of provisions in Chapter 24, including Policy 24.2.1.3, which requires that subdivision and development maintain or enhance that landscape character and visual amenity values identified in the schedule.

[9] Sch 24.8 operates in tandem with certain WBRAZ policies. Those policies serve to assist to achieve Obj 24.2.1:

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

[10] For each LCU (and for some described areas within some LCUs), Sch 24.8 specifies a rated capacity for the landscapes of that LCU (or area) to absorb additional subdivision and development. This capacity rating is according to the following six-point scale (as we use in this decision):

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

[11] The WBRAZ is designed according to a two-tier regulatory framework derived from the LCU analysis undertaken as part of the WB Study. Ms Gilbert explained that this seeks a landscape pattern for the Basin of "depicted nodes of

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<sup>4</sup> Gilbert EIC, at [2.4].

rural living ... separated by more spacious, ‘working’ rural landscapes across the balance of the Basin”.<sup>5</sup> The hearing panel’s report explains the related design intentions of the two-tier framework:<sup>6</sup>

- (a) the Precinct serves the so-termed “depicted nodes of rural living”. These are some of the areas of the Basin that are rated as having either a ‘Moderate-High’ or ‘High’ capacity to absorb additional development and hence where smaller lot sizes are seen as appropriate; and
- (b) the “more spacious, ‘working’ rural landscapes across the balance of the Basin” is all the remainder of the WBRAZ outside the Precinct. Here, the regulatory framework is designed to discourage significant additional development, notably through non-complying activity status that is triggered when the 80 ha minimum lot density standard is breached (and other building controls).

[12] One outcome of court-facilitated mediation is that the parties agree that this two-tier framework should be replaced with a four-tier one. In broad terms, this is so as to better attune regulation to the different landscape capacity that evidence now reveals more clearly across parts of the Basin outside the Precinct. As we discuss, we find a necessary adjunct to this change to the DV is to significantly strengthen and clarify related policies.

### **The parties and the issues for this decision**

[13] This decision is confined to appeal points in Topics 25 and 30, concerning the text of the WBRAZ’s provisions (and proper linkage to Ch 3).<sup>7</sup> It leaves aside appeal points seeking changes to the PDP planning maps or other ‘rezoning’ relief

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<sup>5</sup> Gilbert EIC, at [2.3].

<sup>6</sup> Panel Report and Recommendations, at [105].

<sup>7</sup> Topic 30 also deals with some related provisions in Ch 27 on Subdivision and Development and Ch 3 on Strategic Directions.

to be addressed in Topic 31.

[14] Court-facilitated mediation, and expert conferencing has helpfully narrowed the issues in contention. That leads us to our following summary of key issues for determination:

- (a) is the WB Study materially deficient for our purposes?
- (b) should Ch 3 on Strategic Directions include a new objective on the WBRAZ?
- (c) is a four-tier WBRAZ framework more appropriate for achieving relevant objectives?
- (d) should Ch 24 maps or otherwise recognise different development capacity ratings?
- (e) should an 80 ha minimum lot size regime remain for all areas outside the Precinct rated to have Very Low, Low and Moderate-Low capacity or just LCU 1 and LCU 20?
- (f) do QLDC's Pol 24.2.1.1 and other policies adequately protect against cumulative landscape character degradation?
- (g) how should new Pols 24.2.1.1A and 24.2.1.1B be framed for remaining WBRAZ areas?
- (h) should Pols 24.2.1.11 and 24.2.1.14 apply to areas rated with Moderate-High or High landscape capacity?
- (i) should the density standard be a minimum average lot size only or a minimum and minimum average lot size?
- (j) should the primary activity classification for Rural living and subdivision for Rural living be restricted discretionary or discretionary?
- (k) should the Zone Purpose statement be clarified?

[15] On those issues, parties essentially fall into two camps:

- (a) Otago Regional Council ("ORC") supports the outcomes sought by

- QLDC, including the final set of provisions recommended by QLDC in Annexure A to its closing submissions (“QLDC Provisions”); and
- (b) the other parties (“Anderson Lloyd parties”) including landowners jointly seek some different planning outcomes.<sup>8</sup>

### **Statutory framework**

[16] We adopt our analyses of the RMA framework for plan appeal decisions in our previous decisions in the Plan review. As those decisions discuss:<sup>9</sup>

- (a) our evaluation of the different planning outcomes sought in the appeals is for what are the most appropriate provisions for achieving related Plan objectives. That encompasses consideration of the importance of maintaining the overall integrity and coherence of the Plan;
- (b) we must abide relevant RMA directions, including that district plans must give effect to higher order instruments, notably including the partially-operative Otago Regional Policy Statement 2019 (“PORPS 19”).

### ***Section 32AA evaluation***

[17] Two of the PDP’s present objectives are of particular relevance and neither is in dispute:

- (a) Obj 24.2.1:

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<sup>8</sup> Wakatipu Equities Trust ENV-2019-CHC-65, Crown Investment Trust ENV-2019-CHC-66, Skipp Williamson ENV-2019-CHC-84, Barnhill Corporate Trustee Limited and D E, M E Bunn and L A Green ENV-2019-CHC-86, Morven Ferry Limited ENV-2019-CHC-88 and Antony, Sarah and Samuel Strain ENV-2019-CHC-56.

<sup>9</sup> Notably, Decision 2.1 [2019] NZEnvC 160, Decision 2.2 [2019] NZEnvC 205, and Decision 2.6 [2020] NZEnvC 159.



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

(b) SO 3.2.5.3 in Ch 3 ‘Strategic Directions’:

In locations other than in the Rural Zone, the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected from inappropriate subdivision, use and development.

[18] QLDC proposes an additional SO 3.2.5.8. We are to evaluate it for whether it would help achieve the RMA’s purpose (s32(1)(a)).

[19] We evaluate other provisions for whether they are the most appropriate way of achieving those objectives (ss 32AA(1), 32(1)(b)). This includes identifying reasonably practicable alternatives and assessing their relative efficiency and effectiveness for achieving the relevant objectives. Our evaluation focusses in particular on evaluating what is sought to be changed from the DV and on the “scale and significance” of proposed changes (s32AA(1)). Our evaluation is with reference to the evidence before us and in terms of the live issues for determination.

***Relief pursued in appeals and matters as to scope***

[20] In their appeals, a number of the Anderson Lloyd parties seek significant revisions to the WBRAZ, including to Obj 24.2.1 and its policies and rules and other provisions.<sup>10</sup>

***The evidence***

[21] The evidence is primarily evaluative expert landscape and planning opinion

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<sup>10</sup> For example, the appeals by Wakatipu Equities Trust ENV-2019-CHC-65, The Crown Investment Trust ENV-2019-CHC-66, Barnhill Corporate Trustee Limited and D E, M E Bunn and L A Green ENV-2019-CHC-86 and Morven Ferry Limited ENV-2019-CHC-88.

as follows (in addition to the WB Study):

	<i>Anderson Lloyd parties</i> <sup>11</sup>	ORC	<i>QLDC</i>
<i>Landscape</i>	B Espie, T Milne, S Skelton		H Mellsop, <sup>12</sup> B Gilbert
<i>Planning</i>	B Farrell, S Freeman, N Geddes, C Vivian	A Maclellan	C Barr

[22] Whilst the expert opinion is an important s32AA input for our purposes, so too are the related legal submissions. That is because our focus is ultimately on determining the most appropriate WBRAZ provisions according to statutory interpretation and sound drafting principles. That is reflected, for instance, in the closing submissions particularly for QLDC and the Anderson Lloyd parties. The QLDC Provisions are not solely dependent on Mr Barr’s planning opinion. The changes to those provisions sought by the Anderson Lloyd parties draw from, but are not solely dictated by, the sometimes contrasting landscape and planning opinions of the experts called by those parties.

### **Is the WB Study materially deficient for our purposes?**

[23] The WB Study is plainly a significant underpinning of Ch 24, including the Sch 24.8 descriptions of LCU landscape values and capacity. Ms Gilbert readily acknowledged that the Study presents a “high level” assessment of these matters.<sup>13</sup>

[24] The Anderson Lloyd parties question the reliability of the Study for our purposes. Counsel point out that the Study’s authors did not consult with other experts and landowners and only carried out a limited number of site visits. They submit that the Study cannot be treated as an accurate assessment of what Sch 24.8

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<sup>11</sup> Different parties in this group called separate landscape and planning evidence.

<sup>12</sup> Ms Mellsop’s evidence was in a written statement entered by consent.

<sup>13</sup> Transcript p 8 l 20-26 (Gilbert).

describes, including the complexities of the landscapes and their development capacity.<sup>14</sup>

***We find the WB Study adequate and fit for our purposes***

[25] Plainly, the WB Study is not a substitute for the more specific, finer grained, landscape assessments typically undertaken for resource consent application purposes. It was designed as a strategic-level assessment of the Basin's landscapes in order to inform the Plan variation that was subsequently notified. At that strategic level, we find it is helpfully fit for purpose. Together with the opinions offered by the experts who gave evidence, it assists to inform choices as to the most appropriate provisions and overall regulatory framework for the WBRAZ. No party in Topics 25 and 30 has called any better evidence at this strategic Basin-wide scale.

**Should Ch 3 on Strategic Directions include a new objective on the WBRAZ?**

[26] As recommended by Mr Barr, QLDC seeks a new objective SO 3.2.5.8 in Ch 3. This is to better integrate the WBRAZ with Ch 3, a matter raised by some appeals. Under the PDP, Ch 3 is designed to give overarching 'Strategic Directions' for the district and, as such, should apply to the WBRAZ. The belated addition of the WBRAZ to the PDP by variation has resulted in a present inadequate tying in with Ch 3.

[27] However, it is important that any change to address this design deficiency does not inadvertently weaken the intentions of the WBRAZ as reflected in Obj 24.2.1. Under the design of the WBRAZ, as a bespoke zone for the Basin, Obj 24.2.1 gives local expression to the s5, RMA purpose of sustainable management and the related principles in ss 7(c) and (f) (and to some extent, s6(b)). It expresses

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<sup>14</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [6], [27].

a relatively clear intention that the landscape character and visual amenity values of the Basin (and LCUs of it) are maintained or enhanced.

[28] We find QLDC’s draft SO 3.2.5.8 is inappropriate insofar as it would colour and qualify Obj 24.2.1. For instance, this is in its reference to landscape character simply being “maintained” (rather than being “maintained or enhanced” as specified in Obj 24.2.1). The reference to “or enhanced” in Obj 24.2.1, is relatively more stringent than the simple ‘maintain’ intention expressed for the landscape character of Rural Character Landscapes in the Rural zone. However, we find that difference to reflect an intention to strive to improve those areas of the Basin that have a presently-degraded character. Furthermore, QLDC’s version of this new Ch 3 objective would add a qualifying overlay to Obj 24.2.1 namely “adverse effects on landscape character and visual amenity values from subdivision and development are effectively managed through policies and rules”.

[29] In addition, on the evidence, we find that SO 3.2.5.8 should refer to landscape character and visual amenity values both for the Basin and LCUs so as to effectively protect against degrading cumulative effects at each of those relevant scales.

[30] Therefore, we find that QLDC’s draft SO 3.2.5.8 should be amended as set out in Part B.

### **Is a four-tier WBRAZ framework more appropriate for achieving relevant objectives?**

[31] The essence of the DV’s two-tier WBRAZ framework is as follows:

- (a) inside the Precinct, where rural living is anticipated, there are bespoke policies and a combination of ‘restricted discretionary’ and ‘non-complying’ activity classification for subdivision and residential development. Restricted discretionary status applies where a proposal complies with a 6,000m<sup>2</sup> minimum/1 ha minimum average lot size

standard;

- (b) outside the Precinct, there is also a combination of restricted discretionary and non-complying activity classifications for subdivision and residential development. However, unless a proposal complies with an 80 ha minimum lot size standard, it defaults to non-complying. As noted, Pol 24.2.1.1 is central and is to require an 80 ha minimum net site area to be maintained outside the Precinct.

[32] The four-tier framework would leave the Precinct regime unchanged. Outside the Precinct, parties propose a more graduated regime of subdivision and residential development controls. This would essentially calibrate minimum lot size standards or averages according to the rated landscape capacities of particular areas. The Anderson Lloyd parties take issue with some aspects. In outline, however, this revised regime would include:

- (a) a revised Pol 24.2.1.1 to account for the additional tiers in the framework;
- (b) different policy and minimum lot size regimes for different groups of landscape capacity rated areas as follows:
  - (i) Very Low, Low or Moderate-Low;
  - (ii) Moderate; and
  - (iii) Moderate-High or High.

[33] The DV's two-tier regime is the product of close and careful scrutiny of the landscape character of the Wakatipu Basin. It was found by QLDC's independent commissioners to be the most appropriate planning response to the risk of ongoing degradation and potential loss of this character. However, given that Ms Gilbert co-authored the WB Study, we give weight to her support for the change to a four-tier framework. On the evidence, we find that a four-tier framework would be more appropriate in that it would better attune and target the regulation of subdivision and residential development to relevant development capacity ratings, as described in Sch 24.8. Conceptually, a four-tier framework is more

capable of protecting the Basin's landscape character and visual amenity values from cumulative degradation, both at a localised and Basin-wide scale.

[34] However, it is particularly important that policies give clear and effective direction. That is given the fact that the WBRAZ would continue to enable and anticipate subdivision and residential development applications according to activity classes that allow for discretionary determinations. Specifically, WBRAZ policies must be clear in their directions concerning cumulative effects on landscape character and visual amenity values. That is so as to assist to achieve Obj 24.2.1 and SO 3.2.5.3 (and new SO 3.2.5.8).

[35] Counsel for the Anderson Lloyd parties submit that we should withhold from determining some policies and other provisions until we hear Topic 31. By and large, we do not find that fair or necessary. Whilst the two Topics are related to an extent, they are sufficiently discrete to be able to be sequentially determined. That was the court's view in making case management directions on the recommendation of QLDC and after input from the parties. It remains our view. However, given the extent to which we find it necessary to refine the drafting of key policies recommended to us as part of the new four-tier framework, we allow opportunity for supplementary closing submissions on what we have provisionally determined.

### **Should Ch 24 map or otherwise recognise different development capacity ratings?**

[36] Although the DV planning maps show the LCU boundaries, they do not separately show areas within LCUs where Sch 24.8 ascribes different capacity ratings. Rather, this differentiation is simply in the narrative in Sch 24.8. The parties agree that mapping these areas would assist in Plan clarity terms.<sup>15</sup> For

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<sup>15</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [21]. ORC does not express a position. The closing submissions for QLDC, dated 11 February 2022, at [4.14], show QLDC is also supportive.

QLDC, Mr Wakefield and Ms Mortiaux explain there are two potential mapping approaches:

- (a) adding a layer to QLDC's online GIS maps to identify the different applicable capacity ratings across the WBRAZ; and/or
- (b) updating Sch 24.8 to map where different capacity ratings apply within particular LCUs.

[37] Counsel suggest that the court direct QLDC to prepare an exemplar online GIS map and corresponding PDP mapping update. This would be based on the *current* status of the Topics 25 and 30 and Topic 31 appeals (i.e. the DV as amended by decisions and consent orders).<sup>16</sup>

***Landscape capacity ratings should be shown on the planning maps backed by a new policy '24.2.1.1X'***

[38] Mapping of the various areas having different capacity ratings is a logical and appropriate component of the updated four-tier framework. However, as relative landscape capacity is intended to inform resource consenting outcomes in a more targeted way under the four tier framework, we find that there should also be an associated new policy as to the purpose and approach.

[39] Therefore, we include in Part B our provisional drafting of a new Pol 24.2.1.1X and make directions enabling parties to make supplementary submissions on its drafting. That is in addition to our direction to QLDC to prepare an exemplar online GIS map and Sch 24 map on the basis suggested by counsel.

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<sup>16</sup> As we have noted, appeal points seeking changes to mapping boundaries are to be addressed as part of Topic 31. QLDC reserves its position on Topic 31.

**Issues concerning WBRAZ areas with landscape capacity rated as Very Low, Low or Moderate-Low**

[40] There are two related issues for this group of landscape capacity areas under the revised four-tier WBRAZ framework:

- (a) should an 80 ha minimum lot size regime remain for all areas with a Very Low, Low or Moderate-Low landscape capacity rating or just for LCUs 1 and 20?
- (b) do QLDC's recommended Pol 24.2.1.1 and other policies adequately protect against degradation of cumulative landscape character and visual amenity values?

[41] For context, we refer to Annexure 1. It reproduces Ms Gilbert's Fig 6, depicting the spatial extent of the Basin where landscapes are rated to have Very Low, Low or Moderate-Low development capacity.<sup>17</sup> Collectively, these "more spacious 'working' rural" areas are character-defining for the Basin as a whole. That is so long as this working rural character remains dominant despite the "nodes of rural living" that are scattered across parts of the Basin.

***Should an 80 ha minimum lot size regime remain for all areas outside the Precinct rated to have Very Low, Low and Moderate-Low capacity or just LCU 1 and LCU 20?***

[42] Ms Gilbert explained that the DV's 80 ha regime was conceived by the authors of the WB Study as a threshold trigger for non-complying activity classification for the following reasons:<sup>18</sup>

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<sup>17</sup> Gilbert EIC, Fig 6 at [6.4].

<sup>18</sup> Gilbert rebuttal, at [2.3]. Ms Gilbert supported those observations with extract from the Study.



In order to ensure discouragement of rural living subdivision, the [WB Study] examined lot sizes across the Basin to determine an appropriate minimum lot size that would act as a signal to plan users that additional rural living development and subdivision was discouraged. The [Study] concluded that applying a minimum lot size of 80ha (and 100ha) would be appropriate to discourage potential further subdivision in the WBRAZ (as mapped at that time).

[43] The relevant provisions are:

- (a) Pol 24.2.1.1; and
- (b) a pair of density standards breach of which renders a proposal a non-complying activity:
  - (i) r 24.5.1.5 which pertains to residential development land use consent applications and specifies a maximum density of “one residential unit per 80 hectares net site area”; and
  - (ii) r 27.6.1 which specifies an 80 ha minimum lot size standard for subdivision.

[44] As we have explained, as part of pursuing a new four-tier WBRAZ framework, QLDC recommends a substantial rewriting of the DV’s Pol 24.2.1.1. We find that rewriting problematic in various ways that we explain later in this decision. Leaving those matters aside, we focus at this stage on the differences between QLDC (supported by ORC) and the Anderson Lloyd parties concerning the 80 ha regime.

[45] The Anderson Lloyd parties prefer that the 80 ha regime be confined to LCU 1 and LCU 20 (where there are presently some allotments capable of being subdivided in compliance with this standard). Hence, these parties seek the following changes to QLDC’s versions of Pol 24.2.1.1 and associated density

standards (underlining/strike through against QLDC's preferred drafting):<sup>19</sup>

(a) amending Pol 24.2.1.1:

Ensure ~~Avoid~~ any ~~new~~ non-complying residential development or subdivision for residential activity outside of the Precinct: ~~that does not achieve the identified minimum net site area standards unless the proposal:~~

- a. avoids adverse cumulative effects on the ~~identified~~ landscape character and visual amenity values identified in Schedule 24.8; and
- b. is located and designed and of a nature that will ensure landscape capacity is not exceeded.

(b) amending r 24.5.1.5:

For that part of all other sites in LCUs 1 and 20 of the Wakatipu Basin Rural Amenity Zone wholly located outside of the Precinct, a maximum of one residential unit per 80 hectares net site area.

~~Except this rule shall not apply where Rule 24.5.1.6 is applied.~~

(c) adding a new r 27.5.6 to classify the following as a non-complying activity:

Subdivision of any site within the Wakatipu Basin Rural Amenity Zone (outside the Lifestyle Precinct) where located within Landscape Character Units with a capability rating of very-low, low or low-moderate, with the exception of sites within LCU 1 and LCU 20;

(d) amending the 80 ha minimum lot size standard in r 27.6.1:

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<sup>19</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, App C. The parties seeking relief as part of Topic 31 in the court's staged consideration of appeal points also make clear, and the court accepts, that their position in Topic 30 reserves their position in regard to relief they pursue in Topic 31.

Wakatipu Basin Rural Amenity Zone within Landscape Character Units 1 and 20;

- (e) amending restricted discretionary activity subdivision r 27.5.9 to specify as a matter of discretion:

r. Lot size (in the Landscape Character Units of the Wakatipu Basin Rural Amenity Zone (excluding the Precinct) with a capacity rating of moderate, moderate-high and high capacity only).

*The Anderson Lloyd parties' submissions*

[46] The Anderson Lloyd parties submit that the 80 ha minimum lot size standard has a valid place only in LCU 1 and LCU 20, where there are land parcels greater than 160 ha such as to allow for a restricted discretionary activity consenting pathway. In all other LCUs, where the capacity rating is Very Low, Low or Moderate-Low, counsel submit that the minimum lot size approach should not apply.<sup>20</sup>

[47] Other than in LCU 1 and 20, the Anderson Lloyd parties submit an 80 ha minimum lot size standard (and related policy) is inappropriate because:<sup>21</sup>

- (a) it “is not representative of the existing and consented development and land use pattern within the Basin” but ... “is an arbitrary figure”; and
- (b) “most importantly ... is solely a trigger for a non-complying activity status, which can be achieved simply by applying a non-complying activity status to the activities”.

[48] Ms Baker-Galloway and Ms Hill highlight the relatively limited

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<sup>20</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [36], [37].

<sup>21</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [30].

underpinnings of the 80 ha standard, essentially as a desk-top assessment “without reference to (and isolated from) the intended landscape outcome”, based on existing cadastral (lot size) arrangements.<sup>22</sup> They submit that the 80 ha “trigger” would only make a difference “when an activity status is non-complying versus restricted discretionary, i.e. when a site is below 160 ha, which would be all but 2-3 sites in the WBRAZ”.<sup>23</sup> Additionally, they observe there is no case law authority for a ‘trigger’ to have any informal weight or represent any signal of appropriateness or otherwise. They say that nor is it sound, when evaluating a consent application under the RMA, to look at the reasons why an activity triggers non-complying status. Whilst acknowledging QLDC’s intention that the 80 ha standard would be relevant to a policy assessment of a consent application, counsel submit that this standard would not assist “a fine grained analysis of landscape capacity and cumulative effects”.<sup>24</sup>

[49] Furthermore, counsel submit that the court “does not have the evidential basis” to assess what could be a more appropriate minimum or average lot size for the Very Low, Low and Moderate-Low LCUs in this proceeding.<sup>25</sup>

[50] Counsel observe that “roughly 85%” (or some 3,500 ha) of the land in the Basin that has a Very Low, Low or Moderate-Low rating is “uncontested”. We understand that is in the sense of not being subject to any live Topics 25 and 30 or Topic 31 appeal.<sup>26</sup> Counsel add that this ‘uncontested’ land is “protected from cumulative effects due to the non-complying status that will inevitably apply to subdivision and residential development proposals”.<sup>27</sup>

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<sup>22</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [31].

<sup>23</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [32], referring to Transcript at p 22.

<sup>24</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [34], [35].

<sup>25</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [38].

<sup>26</sup> Ms Baker-Galloway also refers to Ms Gilbert’s Fig 6 for this submission.

<sup>27</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [23].

*A universal 80 ha regime is the most appropriate for these areas*

[51] Dealing first with that last submission, the court is not in a position to speculate about the significance or otherwise of the election some landowners have made to not contest the DV insofar as Topics 25 and 30 or Topic 31 are concerned. In any case, we do not accept that dropping the 80 ha minimum lot size standard for so-termed ‘uncontested land’ (i.e. for all WBRAZ land other than in LCU 1 and 20) would be without significant consequence. There is simply no evidence to support that submission.

[52] We find the Anderson Lloyd version would materially weaken the capacity to achieve Obj 24.2.1 in those parts of the Basin rated as having Very Low, Low or Moderate-Low development capacity. That is because it would remove any reference to any preferable density in those areas.

[53] We are mindful that in the vast majority of cases where non-complying residential subdivision or development proposals are being considered in consenting processes, lot sizes sought will likely fall well below the 80 ha minimum lot size standard.

[54] However, a minimum lot size standard does not need to be representative of existing land use patterns in order to have a valid resource management purpose within the scheme of a district plan zone. Rather, as district plans are instruments to guide and direct subdivision and development into the future, a standard on minimum lot sizes is capable of serving holistic intentions that may not necessarily accord with existing land use patterns and related development trends.

[55] In effect, the WBRAZ, and in particular the 80 ha standard, is a deliberate shift in the regulatory regime of the ODP. A fundamental purpose of Ch 24 (and related Ch 27 provisions) is to endeavour to arrest and redirect that development; that is to fundamentally change course, at a strategic level. In that context, there is nothing inherently unsound about a minimum lot size that does not accord with, or reflect, the pattern of existing development across the Basin.

[56] The fact that the great majority of existing lots are less than 80 ha in area means there needs to be clear associated policy direction as to cumulative effects, as we have discussed. It does not render QLDC's 80 ha standard regime inappropriate, provided it is supported by an improved policy framework.

[57] The 80 ha minimum lot size standard is based on expert analysis of the "more sensitive areas of the WBRAZ".<sup>28</sup> We find that analysis sound and sufficient to justify the standard as a form of benchmark against which applications would be assessed.

[58] Therefore, we find:

- (a) the Anderson Lloyd parties' amendments to rr 24.5.1.5, 27.6.1 and 27.5.9 and new r 27.5.6 are not appropriate; and
- (b) QLDC's standards in r 27.5.1.5 and 27.6.1 are the most appropriate for achieving Obj 24.2.1, subject to our findings on relevant policies.

[59] However, as we next discuss, we find revisions are required to the relevant policy framework, particularly Pol 24.2.1.1.

***Do QLDC's Pol 24.2.1.1 and other policies adequately protect against cumulative landscape character degradation?***

[60] Under the new four-tier framework more closely based on the different landscape capacities of areas of the WBRAZ, Pol 24.2.1.1 serves an important directive purpose. That is acknowledged in the revisions to this policy proposed in the QLDC Provisions.

[61] The issue we now address is as to whether the revised Pol 24.2.1.1 would adequately protect against cumulative landscape character degradation especially in those areas identified to have a Very Low, Low or Moderate-Low landscape

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<sup>28</sup> Opening submissions for ORC, dated 3 December 2021 at [19].

capacity.

*Submissions*

[62] QLDC and the Anderson Lloyd parties differ on some matters of detailed drafting. However, they largely agree that there is no need to substantially further enhance the policy framework. Each refers to the opinions of Ms Gilbert and Mr Barr as supporting their positions. We understand that ORC concurs on these matters.

[63] For QLDC, Mr Wakefield and Ms Mortiaux submit that “the combination of the policies, capacity ratings and descriptive text in Schedule 24.8” provides “an appropriate framework against which cumulative effects can be assessed”.<sup>29</sup> In addition to QLDC’s proposed revised Pol 24.2.1.1, they refer in particular to Pols 24.2.1.3, 24.2.1.11 and 24.2.1.15 (and their related standards).

[64] In any case, they submit it would be impracticable to try to frame a policy that would apply to the Basin as a whole. Given the extent of variation that exists across this complex landscape, they say any new policy would need to be specific to particular areas. Further, it would need to be informed by landscape or planning evaluation not before the court.<sup>30</sup>

*Policy 24.2.1.1 needs to be further strengthened in its directions*

[65] The effective management of cumulative effects on landscape character over the life of the Plan and across a large and centrally important geographic area is particularly challenging. We bear in mind that both the ODP and the initially-notified PDP regimes have been adjudged unsatisfactory. The ineffectiveness of the existing management regime and the risks of not fixing this were recognised in both the WB Study and the findings of the independent commissioners who heard

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<sup>29</sup> Closing submissions for QLDC, dated 11 February 2022, at [4.19]-[4.23].

<sup>30</sup> Closing submissions for QLDC, dated 11 February 2022, at [4.24]-[4.28].

submissions on the Basin variation.

[66] The WB Study cites a QLDC report *Monitoring the Effectiveness and Efficiency of the Rural General Zone 2009* and concerning the then-District Plan regime:<sup>31</sup>

A key theme of the report was whether the existing provisions were effectively managing cumulative effects of residential subdivision and development.

[67] The independent commissioners found:<sup>32</sup>

further development within the Wakatipu Basin has the potential to cumulatively and irreversibly damage the character and amenity values which attracts residents and other activities to the area.

[68] That finding acknowledges the size and centrality of the Basin and its wider ONF/L setting and the importance of the Basin's landscape character for the District's reputation and economic wellbeing.

[69] Under the various activity classifications of the WBRAZ, there is a broad capacity to seek resource consents for subdivision and residential development across the Basin. Sound discretionary judgment will be the ultimate determiner of whether the WBRAZ will in due course at least maintain the Basin's remaining landscape character and visual amenity values or fail to do so. In that predominantly discretionary regime, clear policy direction is particularly important for the achievement of the relevant Plan objectives for the Basin. In particular, policies (and related objectives) are important in giving direction:

- (a) for non-complying activities, in the initial threshold scrutiny under s104D; and

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<sup>31</sup> *Wakatipu Basin Land Use Planning Study*, Final Report March 2017, prepared for Queenstown Lakes District Council by Barry Kaye, Kelvin Norgrove and Bridget Gilbert. at [1.10].

<sup>32</sup> At [3.1].



- (b) for all activity classes in any consideration of the proposal under s104, RMA.

[70] Without clear policy direction underpinning Obj 24.2.1, there would be greater uncertainty presented in how those determining consent applications would account for the relevant receiving environment for cumulative effects assessment purposes. Obj 24.2.1 refers to landscape character and visual amenity values “in the Basin”. The evidence reveals the importance of considering those words according to different geographic scales of relevance for the consideration of cumulative effects on landscape character. One such scale is the immediate environs of the proposal. Extending somewhat further, Sch 24.8 describes the character and values of identified LCUs.

[71] The evidence reveals the importance of considering various “areas” where there are different ratings of landscape capacity. Some are more confined than LCUs. Ms Gilbert agreed that it was also important to assess LCUs collectively where appropriate.

[72] More broadly still is the overall character of the Basin as a whole. The evidence, including Fig 6, reveals clear policy direction is particularly important in regard to those areas identified to have Very Low, Low or Moderate-Low landscape capacity. As noted, those areas collectively comprise the Basin’s character-defining open working rural environment.<sup>33</sup> As we reported to the parties, our site visit confirmed that impression from viewpoints on the top of the zig-zag on the Crown Range Road and from the Coronet Peak access road.

[73] We find that neither the QLDC Provisions nor the amended policies sought by the Anderson Lloyd parties would be sufficiently effective in protecting against the risk of further progressive degradation of the Basin’s remaining open working rural landscape character.

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<sup>33</sup> Gilbert EIC, Fig 6 at [6.4].

[74] Whilst QLDC Pols 24.2.1.1 and 24.2.3.1 refer to Sch 24.8, that schedule uses open-textured language that leaves generous room for discretionary judgment. It calls for further landscape assessment to be undertaken, case by case, in the context of each specific subdivision or development application. We acknowledge counsel’s observation that the Topic 31 hearings may provide opportunities to review the Sch 24.8 text, so that there is “a greater prescription” in terms of the requirement to maintain spaciousness. However, even assuming that outcome in Topic 31, Sch 24.8 is subordinate to related policies. In Plan design terms, the policies are the primary means of giving direction to the exercise of discretionary judgements in consenting processes so as to achieve what Obj 24.2.1 intends.

[75] We agree with counsel for QLDC that Pol 24.2.1.1 is a “reference point” for the consideration of cumulative effects. We find the policy is of particular importance for the achievement of Obj 24.2.1. However, we do not accept counsel’s further submission that QLDC’s proposed revised Pol 24.2.1.1 would signal “what level of development/subdivision is appropriate, relative to the identified landscape capacity”.<sup>34</sup> Rather, we find it would give a broad invitation to discretionary judgment, with minimal landscape character outcome direction. That is especially as a consequence of its following differences from the DV Pol 24.2.1.1:

- (a) QLDC’s revised policy would not “require” a landscape character outcome “within the Wakatipu Basin”;
- (b) it would instead give a simple binary direction, either to “avoid” any new residential development or subdivision of residential activity outside the Precinct or to enable it subject to the soft directions in its clauses a and b.

[76] As such, we find the proposed revision to QLDC’s version of this

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<sup>34</sup> Closing submissions for QLDC, dated 11 February 2022, at [5.34].

important policy (and the Anderson Lloyd parties' variation of it) would fail to give effect to the PORPS 19, particularly Pol 3.2.6:

**3.2.6 Managing highly valued natural features, landscapes and seascapes**

Maintain or enhance highly valued natural features, landscapes ... by all of the following:

- a) Avoiding significant adverse effects on those values that contribute to the high value of the natural feature, landscape ...;
- b) Avoiding, remedying or mitigating other adverse effects;
- c) Encouraging enhancement of those values that contribute to the high value of the natural feature, landscape... .

[77] *Todd v Queenstown Lakes District Council*<sup>35</sup> does not support counsels' interpretation of the significantly revised version of Pol 24.2.1.1 that QLDC now seeks.

[78] Nevertheless, we find these deficiencies in QLDC's now-proposed Pol 24.2.1.1 can be readily overcome by relatively confined amendments. The guiding principles for this are:

- (a) to reinstate a Basin-wide focus and supplement this with an added LCU focus for the consideration of 'cumulative effects'; and
- (b) to reinstate a landscape outcome focus and attune this to the relevant landscape capacity areas.

[79] Our provisional drafting in Part B significantly revises QLDC's Pol 24.2.1.1, splitting it into two policies. We make a related consequential change to assessment matter provisions so that their frame of reference extends to the

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<sup>35</sup> *Todd v Queenstown Lakes District Council* [2020] NZEnvC 205.

consideration of Basin-wide effects where relevant. We make directions to allow for supplementary submissions on our drafting.

**How should new Pols 24.2.1.1A and 24.2.1.1B be framed for remaining WBRAZ areas?**

[80] The QLDC Provisions include these new policies as part of the four tier regulatory framework recommended by Mr Barr. They are not opposed by other parties. They are intended to give “clearer direction and guidance as to the capacity of the relevant area to accommodate additional development”. That is according to the relative “landscape capacity of the LCU or part of the LCU at issue, and/or any other identified constraint that is necessary to manage the density of rural living activity, for example infrastructure constraints such as legal road width”.<sup>36</sup>

***Pol 24.2.1.1A***

[81] QLDC’s proposed Pol 24.2.1.1A is relatively straightforward in giving policy direction for WBRAZ areas that are rated to have a Moderate capacity rating. We agree that a policy to its general effect is an appropriate component of the four-tier framework for the WBRAZ. However, as we set out in Part B, we find some refinements are needed so as to sharpen its clarity and direction. In particular:

- (a) the words “Subject to Policy 24.2.1.1” should be added because Pol 24.2.1.1 gives overall direction on strategic outcomes for the WBRAZ;
- (b) the words “the unit” in QLDC’s Pol 24.2.1.1A.c should be replaced with “relevant Landscape Character Units” given our evidential findings that effects can extend to encompass more than one LCU; and
- (c) various other changes should be made to sharpen the direction of the

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<sup>36</sup> Barr EIC, at [6.22].

policy somewhat, as we set out.

[82] Our directions allow opportunity for supplementary submissions on our drafting.

***Pol 24.2.1.1B***

[83] QLDC’s proposed Pol 24.2.1.1B is prefaced as follows:

Within the following areas any new residential development and subdivision for residential activity manages the visibility of buildings from roads and public places (except any trail as defined in the plan), including through building setback from roads and utilising existing landform character while having regard to... .

[84] In overall terms, we find these words do not give meaningful policy direction. In particular, little if anything is added by the words “Manages the visibility of buildings from roads and public places” ... “including through building setback from roads and utilising existing landform character”. The intervening bracketed words “except any trail as defined in the plan” are redundant. As counsel for the Anderson Lloyd parties points out, there is already an exclusion of any “trail” as defined in the Ch 2 definition of ‘public place’, i.e.:

Public Place

Means every public thoroughfare, park, reserve, lake, river or place to which the public has access with or without the payment of a fee, and which is under the control of the council, or other agencies. Excludes any trail as defined in this Plan.

[85] We have noted the concerns expressed for the Anderson Lloyd parties’ in closing submissions about Ms Gilbert’s consideration of the trail as an important public place. However, Ms Gilbert offers her opinions as an independent expert, not as a spokesperson for QLDC. Her opinions do not colour the proper interpretation of the Plan. In any case, they do not warrant any specific policy expression as QLDC has offered in its expression of Pol 24.2.1.1B.

[86] We have, therefore, deleted these prefacing words and recast Pol 24.2.1.1B to focus on those areas of the WBRAZ that have a specified capacity rating. In essence, that is confined to the matters that follow the words “while having regard to”.

[87] We find those linking words unhelpful in that they appear to downgrade important statements of landscape character outcome for each LCU, as derived from Sch 24.8, to a list of secondary considerations.

[88] Finally, as with Pol 24.2.1.1A, we find Pol 24.2.1.1B should be expressed to be subject to Pol 24.2.1.1 as a policy intended to give overall direction for those parts of the WBRAZ outside the Precinct.

[89] Therefore, we have replaced the prefacing words with the following:

Subject to Policy 24.2.1.1 and Policy 24.2.1.1A ensure the following outcomes in the consideration of any proposal for subdivision or residential development:

[90] Those words preface cls a. – f. giving specified outcome directions for the identified LCUs or LCU areas. Our drafting intends to capture the essence of QLDC’s drafting of these clauses.

[91] Our directions allow opportunity for supplementary submissions on our drafting.

**Should Pols 24.2.1.11 and 21.2.1.14 apply to areas rated to have Moderate-High or High landscape capacity?**

[92] As recommended by QLDC, these policies would read:

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.

*Submissions*

[93] For the Anderson Lloyd parties, counsel do not offer any revised drafting. However, in regard to Pol 24.2.1.11, counsel note the difficulty in applying a construct of “spaciousness” to areas where certain densities of development are considered appropriate.<sup>37</sup>

[94] Parties submit that it would be premature to make any final determination on Pol 24.2.1.14 until there is final determination of the location of all Moderate-High and High capacity areas through Topic 31. Counsel argue, for instance, that both the practicability and need to maintain a defensible edge to a Precinct area could depend upon how proximate or otherwise any Moderate-High or High capacity area is to the Precinct.<sup>38</sup>

***QLDC’s Pol 24.2.1.11 is appropriate***

[95] We find Pol 24.2.1.11 as framed by QLDC is the most appropriate for achieving Obj 24.2.1. As framed QLDC’s Pol 24.2.1.11 provides policy support for activities that would have the described landscape benefit. That can apply according to the relevant context of each locality, duly accounting for the rated capacity of that area to absorb further development. We refer to our findings on Pol 24.2.1.1 on the broader issues discussed by counsel for the Anderson Lloyd parties.

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<sup>37</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [67]-[69].

<sup>38</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [69]-[71].

***We determine Pol 24.2.1.14 now and find QLDC's version is appropriate***

[96] We accept QLDC's submission that Pol 24.2.1.14 can and should be confirmed now. We do not identify any procedural fairness reason to withhold from doing so, given that all parties have had opportunity to call related evidence and present their positions, according to our directions, on a Topic clearly signalled to address the text of Ch 24. The evidence before us is sufficient to enable us to determine Pol 24.2.1.14 as appropriate. In the event that evidence called as part of Topic 31 provides any justified basis to revisit any aspect of the application of this provision, there would be capacity for the court to make related directions under s293. On the other hand, it is important to bring finality to the policy framework at this stage, to provide context for the consideration of Topic 31.

[97] On the evidence, we find the proposed Pol 24.2.1.14 is most appropriate for achieving Obj 24.2.1.

**Should the density standard be a minimum and minimum average lot size or just a minimum average lot size?**

***Introduction***

[98] This issue concerns the framing of rr 24.5.1.6 and 27.6.1. It is as to whether the WBRAZ regulatory framework outside the Precinct should include:

- (a) a dual standard regime of both a minimum lot size and a minimum average lot size ('Dual Standards approach'), which is QLDC's preference;<sup>39</sup> or
- (b) just a single standard regime as preferred by the Anderson Lloyd parties ('Single Standard approach') being:<sup>40</sup>
  - (i) a minimum lot size standard only for Very Low, Low and

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<sup>39</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, App A.

<sup>40</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, App C.



- Moderate-Low landscape capacity areas; and
- (ii) a minimum average lot size standard only for other areas outside the Precinct.

[99] The Anderson Lloyd parties seek that QLDC's rules be reframed as follows (tracking against the QLDC Provisions):

- (a) for r 24.5.1.6, in essence restoration of the DV version as follows:

Any site located within a Landscape Character Unit or area identified on the District Plan web mapping application a maximum of one residential unit per ~~net site area and~~ average net site area;

- (b) for r 27.6.1:

Within the following areas of the Wakatipu Basin Rural Amenity Zone identified on the district plan web mapping application the minimum average net site area ~~and the average area~~ of all lots in the subdivision is not less than:

[100] We reserve our determination of the related issues as to what should be specified as the applicable dimension of any specified minimum or minimum average lot size. These are issues that can be considered as part of Topic 31.<sup>41</sup>

### ***Submissions***

[101] Parties maintain that their respective preferences would assist to achieve

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<sup>41</sup> We note the observation made by counsel in closing that there may be a need for QLDC to seek leave to file supplementary evidence for some areas of the WBRAZ that are not the subject of Topic 31 appeals, but which are still proposed to be subject to the modified framework that QLDC now proposes in this Topic 30. In particular, counsel refer to the fact that, due to COVID-19 lockdowns, Ms Gilbert was not able to complete some site visits in order to assess appropriate minimum average lot sizes for some areas. Specifically, counsel refer to the Moderate rated areas of LCU 15 – Hogans Gully (outside of the Hogans Gully Resort Zone) and LCU 22 – The Hills (excluding the Monk land) and the High rated areas of LCU 6 – Unter Road West and LCU 12 – Hogans Gully Road South). We simply record that QLDC's position is noted and the court will await its filing of a memorandum seeking directions in due course.

relevant objectives, particularly Obj 24.2.1, and related policies.

[102] QLDC submits that a minimum lot size standard provides a safeguard against proposals for urban development within the WBRAZ. Further, counsel argue that a minimum average applied on its own risks subdivision and development in smaller clustered lots, generating adverse impacts on landscape character and not being distinguishable from the Lifestyle Precinct.<sup>42</sup>

[103] For the Anderson Lloyd parties, Ms Baker-Galloway and Ms Giles submit that just prescribing a minimum average lot size standard would be more effective in achieving Obj 24.2.1. Specifically, they submit that it would enable better subdivision design yet still ensure that the overall landscape capacity on the site and within the LCU would not be exceeded. In essence, landscape capacity would be maintained through a minimum average, with the smaller lots being well located.<sup>43</sup>

[104] Counsel submit that QLDC's concern that not having a strict minimum could result in urban densities is unsupportable.<sup>44</sup> They note that the strategic direction of the Plan's Ch 4 Urban Development to the effect that urban development must be located within Urban Growth Boundaries and should be avoided outside those boundaries. Furthermore, counsel submit that the changes that these parties seek to the rules would facilitate better design outcomes. They maintain clustering of development in a visually discrete part of a site, where this enables retention of open space and visual amenity values over the remainder, could be superior in design terms than having larger lots spread across a site. Using a minimum average only would allow for outcomes that better work with a site's topographical and natural features and visibility. Counsel argue that nor would there be undue risk of inappropriate subdivision outcomes. That is particularly in

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<sup>42</sup> Closing submissions for QLDC, dated 11 February 2022, at [6.5].

<sup>43</sup> Opening submissions for the Anderson Lloyd parties, dated 7 December 2021, at [88]; closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [44].

<sup>44</sup> Opening submissions for the Anderson Lloyd parties, dated 7 December 2021, at [86].

the sense that the Anderson Lloyd parties' revised r 27.5.9 would maintain discretion over minimum lot size.<sup>45</sup>

[105] QLDC refers to the acknowledgement by planner Mr Vivian that:<sup>46</sup>

- (a) the end result of a minimum average applied on its own could be more lots than if a strict minimum was applied;<sup>47</sup> and
- (b) the purpose of applying both is to avoid situations where a larger balance lot is created, and then subdivided at a later stage.<sup>48</sup>

[106] Counsel for QLDC point to the mixed nature of Mr Skelton's opinions on this issue.<sup>49</sup> On the one hand, he stated that "Minimum average I think is something that is a useful tool and minimum lot sizes I don't think are helpful".<sup>50</sup> On the other hand, he agreed with Mr Espie that minimum standard can assist to guide how to manage cumulative effects, albeit "As a blunt tool, it does".<sup>51</sup>

[107] Counsel also point out that Mr Vivian and Mr Freeman agree that the application of dual standards would likely result in a more spacious outcome within the WBRAZ site.<sup>52</sup>

***QLDC's Dual Standards approach is the most appropriate***

[108] On the weight of evidence, we find the Dual Standards approach is the most appropriate for achieving Obj 24.2.1 and related policies. In particular, we base our finding on QLDC's evidence and the noted concessions by other

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<sup>45</sup> Opening submissions for the Anderson Lloyd parties, dated 7 December 2021, at [87]; closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [44].

<sup>46</sup> Closing submissions for QLDC, dated 11 February 2022, at [6.6].

<sup>47</sup> Transcript at p 198 (Vivian).

<sup>48</sup> Transcript at p 198 (Vivian).

<sup>49</sup> Closing submissions for QLDC, dated 11 February 2022, at [6.6].

<sup>50</sup> Transcript at p 163, l 22-23 (Skelton).

<sup>51</sup> Transcript at p 164, l 11 (Skelton).

<sup>52</sup> Closing submissions for QLDC, dated 11 February 2022, at [6.7]; Transcript at p 199 (Vivian) and p 213 (Freeman).

witnesses. Furthermore, we observe that the Dual Standards approach is consistent with the Precinct regime (which is not under challenge). We acknowledge that creative subdivision design that works with a site's topographical and natural features and visibility can assist to maintain or enhance landscape character and visual amenity values. However, that is not precluded by a Dual Standards approach. Indeed, sound subdivision design is a matter that should still assist a case for consent under this regime. On the other hand, the Dual Standards approach would help to discourage urban-style development creep beyond the Precinct (which would be contrary to the intentions of the WBRAZ).

[109] Therefore, we find the Dual Standards approach the most appropriate for rr 24.5.1.6 and 27.6.1 to achieve the relevant objectives. As there are further aspects of these rules to determine, we set out provisional drafting in Part B.

*Remainder of rr 24.5.1.6 and 27.6.1 is reserved*

[110] The remainder of r 24.5.1.6 would prescribe the maximum net site areas and average areas for specified LCUs or areas. Similarly, the remainder of r 27.6.1 would prescribe the maximum net site areas and average areas for specified LCUs or areas. We cannot determine those remaining parts until we have determined the issue of whether areas of LCUs with different landscape capacity are to be mapped. Furthermore, Topic 31 may bear upon the final determination of some specified maximum site areas and average areas. Therefore, we reserve final determination of the remainder of these rules but provisionally indicate that QLDC's drafting is sound overall.

*Rules 24.5.1.4 and 24.5.1.5 should be consequentially amended*

[111] Subject to reserving those matters, we find it appropriate that rr 24.5.1.4 and 24.5.1.5 are consequentially amended as recommended by QLDC (as in Part B).

**Should the primary activity classification for Rural living and subdivision for Rural living be restricted discretionary or discretionary?**

[112] This issue concerns two of QLDC's proposed rules:

- (a) r 24.4.7A which would assign discretionary activity status to new residential activity including the construction of buildings (within areas identified in r 24.5.1.6); and
- (b) r 27.5.18C which would assign discretionary activity status to subdivision of any site within specified areas of the WBRAZ outside the Precinct.

***The parties' respective preferences***

[113] In those parts of the WBRAZ identified as having a Very Low, Low and Moderate-Low landscape capacity rating, parties agree on the appropriate activity classification for subdivision and residential development that complies with the minimum lot size standard. That informs our findings as to the appropriate classification for achieving the relevant objectives.

[114] The parties' material disagreement is as to the most appropriate activity classification for subdivision and residential development in areas of the WBRAZ rated to have a Moderate, Moderate-High or High landscape capacity. For proposals in those areas that would comply with the applicable minimum lot size standard:

- (a) QLDC, supported by ORC, seeks a discretionary activity classification; whereas
- (b) the Anderson Lloyd parties seek a restricted discretionary activity classification.

[115] There are related differences as to the appropriateness or otherwise of providing for consent application notification. Consent application notification is

provided for in the case of discretionary activities. It is precluded for restricted discretionary activities, except where there is a breach of particular standards.

### ***Submissions***

[116] Parties maintain that their respective preferences would assist to achieve relevant objectives, particularly Obj 24.2.1, and related policies.

[117] For the Anderson Lloyd parties, counsel submit that a well drafted restricted discretionary rule can ensure discretion is available over necessary matters. In particular, they refer to the assessment matters in Chs 24 and 27.

[118] These parties propose the addition to restricted discretionary subdivision r 27.5.9 of a further assessment matter:

- r. Lot size (in the Landscape Character Units of the Wakatipu Basin Rural Amenity Zone (excluding the Precinct) with the capacity rating of moderate, moderate-high and high capacity only).

[119] Counsel submit that this additional assessment matter would assist to achieve good outcomes because of its better focus on the issues for assessment and direction of the Council's consideration.<sup>53</sup> Furthermore, they maintain that a restricted discretionary status would enable and direct a collaborative approach between QLDC and the applicant while still retaining the option for consent to be declined if necessary.<sup>54</sup>

[120] In the alternative, should the court determine in favour of discretionary activity status, the Anderson Lloyd parties seek that public and limited notification of consent applications should be precluded.<sup>55</sup>

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<sup>53</sup> Opening submissions for the Anderson Lloyd parties, dated 7 December 2021, at [100].

<sup>54</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [54].

<sup>55</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [56].

[121] Counsel for QLDC submit that discretionary activity status is the most appropriate in view of the landscape sensitivity of these parts of the WBRAZ. That is in the sense that discretionary activity status would “provide an appropriate pathway that will allow the consent authority to consider all relevant provisions in the PDP, providing certainty that all matters can be assessed” (under s104, RMA). For similar reasons, counsel submit that it is important for applications to be able to be assessed for whether they are notified under s95, RMA. Noting the essential agreement as between Mr Barr and Mr Vivian on these matters, counsel submit that “it cannot be presumed that non-notification (even if the densities are complied with) will provide an appropriate policy response”.<sup>56</sup>

***Discretionary activity status is the most appropriate***

[122] We find discretionary activity status under QLDC’s proposed rr 24.4.7A and 27.5.18C is the most appropriate.

[123] That is in view of the landscape sensitivity of these parts of the WBRAZ. That sensitivity makes it important that all policies have full effect in order to achieve Obj 24.2.1 and SO 3.2.5.3, SO 3.2.5.8.

[124] By contrast, the restricted discretionary assessment matters in r 24.7.5, even with the addition proposed for the Anderson Lloyd parties, would be inherently and unduly restrictive of the application of relevant policies. Comparison with the Precinct is not helpful as it has a bespoke objective and related policies that focus on enabling rural living opportunities. WBRAZ policies 24.2.1.1, 24.2.1.3, 24.2.1.6, 24.2.1.9, 24.2.1.11 and 24.2.1.14 do not apply to Precinct areas. Nor is comparison with the Very Low, Low and Moderate-Low capacity areas helpful. An important distinguishing factor in those areas is that an 80 ha minimum lot size must be met before an activity qualifies as restricted discretionary and hence before considering

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<sup>56</sup> Closing submissions for QLDC, dated 11 February 2022, at [6.11], [6.12], Barr rebuttal at [3.9], Transcript at p 53, l 8 – p 54, l 25 (Barr), p 199, l 30 (Vivian).

the related matters of discretion.

[125] We also agree with QLDC that the range of constraints and sensitivities associated with these areas of the WBRAZ warrant notification assessment under s95, RMA.

[126] We do not agree that a Council's regulatory role and responsibilities are necessarily "a collaborative approach". As with any consent authority, QLDC needs to consider all the factors that are at play in evaluating whether an activity is worthy of consent. That is not confined to a design-led approach, as emphasised by Mr Skelton in his landscape evidence. It includes stepping back from and evaluating the merits of any subdivision or development proposal and deciding whether the activity should occur at all.

[127] For those reasons, in order to achieve Objs 24.2.1, SO 3.2.5.3, SO 3.2.5.8 and related policies, we find discretionary activity classification is the most appropriate for those areas of the WBRAZ rated to have Moderate, Moderate-High or High landscape capacity.

[128] In regard to r 27.5.18C, we reserve determination of the expression of the matters in clauses a. – j., pending our determinations concerning the possible mapping of LCU areas and any relevant matters assigned to Topic 31. Subject to those matters, we find this proposed rule properly gives effect to our related findings. Therefore, at this stage, we include in Part B the prefacing words only, as we find these appropriate.

### **Should the Zone Purpose statement be clarified?**

[129] As Ms Baker-Galloway observes, the experts largely agree that there is capacity for some further rural living development to be able to be absorbed in LCUs with a rating of Moderate or above.<sup>57</sup> There is also general agreement

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<sup>57</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [78].



between the parties that the Zone Purpose statement should be refined, although perspectives on the wording differ.

[130] QLDC's planning witness, Mr Barr, offered some revised drafting in evidence. Ms Baker-Galloway submits that Mr Barr's recommended changes should be further amended as follows (as recommended by Mr Farrell):<sup>58</sup>

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 ~~their landscape capacity for residential a threshold where further landscape modification from~~ subdivision, use and development (including buildings). Accordingly, limited additional residential subdivision and development is provided for commensurate with the area's capacity. ~~are not likely to maintain the Wakatipu Basin's landscape values.~~ Other activities that also 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.

[131] While QLDC generally supports the intentions of the Anderson Lloyd parties, it considers the better approach would be to clarify in the Zone statement what the role of the modified four-tier regime is, as follows (tracking shown against Mr Barr's recommended wording):

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

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<sup>58</sup> Closing submissions for the Anderson Lloyd parties, dated 23 December 2021, at [79].

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 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, and in those areas limited and carefully located and designed additional residential subdivision and development is provided for while maintaining landscape character or enhancing 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 Zone Purpose statement should be clarified and reflect our findings***

[132] In terms of their RMA purpose, objectives serve to express the zone's intentions whereas a Zone Purpose statement is to serve those intentions.

[133] Insofar as it goes, we prefer QLDC's drafting as more clearly reflecting the intentions of the updated four-tier framework and hence better achieving Obj 24.2.1. The additional text recommended in QLDC's second paragraph provides appropriate acknowledgement of the additional capacity for absorbing more residential development, as was revealed in evidence. By contrast, we find the Anderson Lloyd drafting too vague as to the overarching intention of the WBRAZ. The proposed concept of 'landscape capacity' is relatively less precise than QLDC's concept of a 'threshold' based on LCU ratings. The words "limited additional residential subdivision and development is provided for commensurate with the area's capacity" are also unclear.

[134] The additional text proposed by QLDC could be usefully refined to be more consistent with Obj 24.2.1 as follows:

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, ~~and in~~ In those areas limited and carefully located and designed additional residential subdivision and development is provided for while maintaining or enhancing landscape character ~~or enhancing~~ and visual amenity values.

[135] More broadly, however, where a Zone Purpose statement is used, as a plan-drafting technique, it is important that it does not undermine or confuse the intentions of the zone objective(s).

[136] In those broader terms, we find some other aspects of the Zone Statement also need to be refined so as to more accurately reflect the proper place of LCUs and issues of cumulative effects. In particular, we refer to the following paragraph:

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 landscape character and amenity values that are to be maintained or enhanced. Controls on the location, scale and visual effects of buildings are used to provide a design led response to the character and values

[137] As our findings set out, the evidence reveals that matters of landscape character may often need to be considered beyond the boundaries of particular LCUs. Indeed for the areas rated to have Very Low, Low or Moderate-Low landscape capacity, we find it important that landscape character assessment also be undertaken at a Basin-wide scale. These matters are recognised in policy drafting recommendations made by QLDC in closing submissions and in our findings.

[138] Given those broader issues are not effectively addressed to date, we make directions for QLDC to update its draft to reflect the findings in this decision and to allow for supplementary submissions on the finalisation of the Zone Statement.

## Definitions in Ch 3 Strategic Direction

### *3.1B.5 – ‘Landscape capacity’*

[139] QLDC proposes the following amendment to the definition of ‘landscape capacity’ in Ch 3, provision 3.1B.5 (tracking against the DV):

3.1B.5 In this Chapter:

...

- 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, and landscape character unit in the Wakatipu Basin Rural Amenity Zone, means the capacity of the landscape character area or unit to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values;

[140] We find the addition “, and landscape character unit in the Wakatipu Basin Rural Amenity Zone,” is problematic in the fact that it does not account for the landscape character that may extend across a number of LCUs and the Basin as a whole. We refer to our findings in this decision on those matters.

[141] There is an overarching question, raised by ORC in Topic 18, as to whether this and some other definitions should be repositioned to Ch 2. We signal our preliminary view that this re-positioning would appear sensible. However, we reserve final determination of that, given that parties not involved in Topic 30 may

wish to express a view on where the definition is best positioned in the Plan.

[142] Therefore, we reserve final determination of this matter. Our directions allow for supplementary submissions both as to the proper expression of this amendment to the definition and the most appropriate location of this definition in the Plan.

### ***3.1B.5 – ‘Rural living’***

[143] QLDC proposes a minor amendment of this Ch 3 definition to add reference to “the Wakatipu Basin Rural Amenity Zone” (as shown in Part B). This effectively ensures related Ch 3 policies are duly applied to the WBRAZ.

[144] We find this consequential amendment appropriate and direct it be made accordingly.

[145] However, we note that there is an element of confusion with usage of the words ‘rural living’ in Ch 24. In particular, we refer to Obj 24.2.5 (“Rural living opportunities ...”), Pol 24.2.5.1 (“Provide for rural living, subdivision, development and use of land...”), Pol 24.2.3.2 (... effects on rural living”) and 24.1 Zone Purpose (“ ... while providing for rural living and other activities”, “ ... absorb rural living development”, “... well-designed rural living development”).

[146] More broadly, there is quite a variety of expressions in various provisions of what we understand to intend to refer to residential-type subdivision or development. For example:

- (a) ‘new residential development or subdivision for residential activity’ (QLDC’s proposed Pols 24.2.1.1, 24.2.1.1A, 24.2.1.1B);
- (b) ‘subdivision and development’ (Pols 24.2.1.2, 24.2.1.3, 24.2.1.14);
- (c) ‘residential activity’ (Pol 24.2.1.10);
- (d) ‘subdivision and development, and use of land’ (Obj 24.2.4, Pol 24.2.5.2, 24.2.5.4);

- (e) ‘subdivision, development and use’ (Pol 24.2.4.2); and
- (f) ‘development’ (Pol 24.2.4.5, Pol 24.2.5.2).

[147] In addition, the words ‘non-residential development’ are used in various provisions.

[148] This inconsistency and looseness of expression in Ch 24 is not necessarily an interpretative problem. However, insofar as there is value in tidying up and clarifying any uncertainties, it would be opportune to do that at this stage. Our directions allow for this, with QLDC reporting in the first instance with any recommendations.

## **Part B**

### **Consequential drafting findings and directions**

#### ***Introduction***

[149] On the basis of our findings in Part A, this Part sets out our consequential findings on the drafting of various provisions and directions. Changes specified in this Part without associated findings are consequential either on Part A findings or other drafting changes.

#### ***Chapter 3 – Strategic Directions***

##### ***3.1B.5 – ‘Landscape capacity’***

[150] Our determination is reserved, subject to directions.

##### ***3.1B.5 – ‘Rural living’***

[151] This definition is to be amended as follows (tracking against the DV):

- 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.

*SO 3.2.5.8*

[152] A new strategic objective SO 3.2.5.8 is to be included as follows:

**Wakatipu Basin Rural Amenity Zone**

3.2.5.8 Within the Wakatipu Basin Rural Amenity Zone, ~~adverse effects on landscape character and visual amenity values from subdivision or development are anticipated and effectively managed, through policies and rules, so that:~~

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

[153] In 3.2.5, the italicised text in the PDP is to be amended as follows:

(Strategic Objectives 3.2.5.1 – 3.2.5.7~~8~~ inclusive elaborate on Strategic Objective 3.2.5. In addition, SO 3.2.1.7, 3.2.1.8 and 3.2.2.1 also elaborate on SO 3.2.5).

***Chapter 24 – Wakatipu Basin***

*Text below the heading to 24.2*

[154] We reserve our determination concerning QLDC's proposed updating of the italicised cross-referencing text below the heading to 24.2 until all matters in

Topics 25 and 30 are determined. For ease of reference, QLDC's currently proposed updating is as follows:

*Objectives 24.2.1 to 24.2.4 and related policies apply to both the Rural Amenity Zone and the Precinct except the following policies do not apply to the Precinct; 24.2.1.1. 24.2.1.1A, 24.2.1.1B, 24.2.1.3, 24.2.1.6, 24.2.1.9, 24.2.1.11 and 24.2.1.14. Objective 24.2.5 and related policies apply to the Precinct only.*

#### *24.1 Zone Purpose*

[155] For the reasons in Part A, we reserve final determination of the Zone Purpose statement.

*Provisionally a new Pol 24.2.1.1X*

[156] On a provisional basis, allowing for supplementary submissions (and reserving determination on associated mapping), we find it would be appropriate to include the following new Pol '24.2.1.1X':

24.2.1.1X Identify in Schedule 24.8 and on the planning maps the relative 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.



*Provisionally revised Pol 24.2.1.1 and provisional new Pol 24.2.1.1XX*

[157] On a provisional basis, allowing for supplementary submissions, we find it would be appropriate to revise Pol 24.2.1.1 and add a new Pol 24.2.1.1XX as follows:

24.2.1.1 To assist to achieve Objective 24.2.1, subdivision or residential development in all areas outside of the Precinct that are identified in Schedule 24.8 to have Very Low, Low 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 that objective; 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.

24.2.1.1XX To assist to achieve Objective 24.2.1, 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 maintains or enhances the landscape character and visual amenity values of all relevant LCUs as identified in Schedule 24.8.

*Provisionally revised Pol 24.2.1.1A*

[158] On a provisional basis, allowing for supplementary submissions, we find it would be appropriate for a Pol 24.2.1.1A to be included as follows (tracking showing amendments from the QLDC version):

24.2.1.1A ~~Subject to Policy 24.2.1.1, within those areas identified as having a landscape capability capacity rating of Moderate, any new residential development and subdivision for residential activity avoids adverse cumulative effects on landscape character and visual amenity values,~~

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 to any area identified as having Moderate-Low, Low or Very Low landscape capacity rating ~~prevent sprawl into more sensitive areas outside the area rated as moderate;~~
- 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 of relevant Landscape Character Units~~the unit~~; and
- d. not degrade openness if that is an important part of the landscape character of the relevant area, including as a result of any planting or screening along roads or boundaries ~~avoid planting and screening, particularly along roads and boundaries, that would degrade openness where such openness is an important part of the landscape character.~~

*Provisional new Pol 24.2.1.1B*

[159] On a provisional basis, allowing for supplementary submissions, we find it would be appropriate to add new Pol 24.2.1.1B as follows:

24.2.1.1B

Subject to Policy 24.2.1.1 and Policy 24.2.1.1A 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 the part of 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 the part of 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.

*Policy 24.2.1.11*

[160] As recommended by QLDC, we find the following Pol 24.2.1.11 appropriate and direct it be included:

- 24.2.1.11 Provide for activities that maintain a sense of spaciousness in which buildings are subservient to natural landscape elements.

*Policy 24.2.1.14*

[161] As recommended by QLDC, we find the following Pol 24.2.1.14 appropriate and direct it be included:

- 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.

*Table 24.1 r 24.4.6*

[162] QLDC’s proposed updating of the cross-referencing in this rule to other rules is generally appropriate (in that 24.4.7 should be deleted, although the replacement reference should be to 24.4.7A). Subject to that minor correction, we direct that this updating be undertaken.

*Table 24.1 r 24.4.7A*

[163] Table 24.1 is to be amended to include the new r 24.4.7A as proposed by QLDC to prescribe the following as a discretionary activity:

Any new residential activity including the construction of buildings for that residential activity within those areas identified in Rule 24.5.1.6.

*Rule 24.5.1.5 – 80 ha standard and non-complying status for residential units*

[164] In Table 24.5, r 24.5.1.5 is to specify the following density standard 24.5.1.5 and associated non-complying activity status for breach of the standard:

For that part of all other sites in the Wakatipu Basin Rural Amenity Zone wholly located outside of the Precinct, a maximum of one residential unit per 80 hectares net site area.

Except this rule shall not apply where Rule 24.5.1.6 is applied.

[165] For completeness, although not disputed, we find companion r 24.5.1.4 is also appropriate and to be included.

*New r 24.5.1.6 prefacing words and consequential amendments*

[166] As we have discussed, we reserve final determination of the remainder of QLDC's proposed new r 24.5.1.6. At this stage, we find QLDC's proposed non-complying activity classification, Dual Standards approach and the following prefacing words appropriate:

Any site located within a Landscape Character Unit or area identified on the District Plan web mapping application a maximum of one residential unit per net site area and average area: . . . .

[167] Subject to the matters we have reserved, we find QLDC's addition to rr 24.5.1.4 and 24.5.1.5 of the following words appropriate as consequential

amendments:

... Except this rule shall not apply where Rule 24.5.1.6 is applied.

*Consequential changes to rr 24.7.5, 24.7.7, 24.7.8, 24.7.8B, 24.7.9*

[168] In each of these provisions, the words “for the relevant landscape unit” and “for the relevant landscape character unit” are inappropriate and are to be deleted. Consequential on our change to Pol 24.2.1.1, these provisions are to be amended as follows (tracking against the QLDC Provisions):

- (a) the prefacing words of assessment matter 24.7.5.a are to be amended to read:

The extent to which the building, ancillary elements and landscaping maintains or enhances the Basin’s landscape including in responding ~~responds~~ to the identified values set out in Schedule 24.8 – Landscape Character Units and the following assessment matters:

- (b) assessment matter 24.7.7.a is to be amended to read:
  - a. An appropriate scale and intensity of the activity in the context of the Basin’s amenity and character including of the surrounding area including reference to the identified elements set out in Schedule 24.8 – Landscape Character Units.
- (c) assessment matter 24.7.8.a is to be amended to read:
  - a. An appropriate scale and intensity of the activity in the context of the Basin’s amenity and character including of the surrounding area including reference to the identified elements set out in Schedule 24.8 – Landscape Character Units.
- (d) assessment matter 24.7.8B.a.i is to be amended to read:

- i The maintenance of the Basin’s landscape character and visual amenity values including of the identified landscape character and visual amenity values set out in Schedule 24.8 – Landscape Character Units, while having regard to the site constraints identified in (b).
- (e) assessment matter 24.7.9.a is to be amended to read:
- a. The maintenance of the Basin’s landscape character and visual amenity values including reference to the identified elements set out in Schedule 24.8 – Landscape Character Units.

## ***Chapter 27 – Subdivision and Development***

### *Rule 27.5.18C*

[169] Reserving final determination of the remainder of QLDC’s proposed new r 27.5.18C, we find QLDC’s proposed discretionary activity classification and the following prefacing words appropriate:

Subdivision of any site within the Wakatipu Basin Rural Amenity Zone (outside the Lifestyle Precinct) where located within the following areas identified on the district plan web mapping application:

### *Rule 27.6.1*

[170] Reserving final determination of the remainder of QLDC’s proposed revised r 27.6.1, we find the following prefacing words appropriate:

Within the following areas of the Wakatipu Basin Rural Amenity Zone identified on the district plan web mapping application the minimum net site area and the average area of all lots in the subdivision is not less than:

### *Rule 27.9.3.3*

[171] In this rule, the words “for the relevant landscape unit” are inappropriate and are to be deleted. The prefacing words of assessment matter 27.9.3.3.a are to

be amended to read:

- a. The maintenance of the Basin's landscape character and visual amenity values including reference to the identified elements set out in Schedule 24.8 – Landscape Character Units.

### **Outcome including directions**

#### ***The extent to which findings in this decision are final***

[172] This decision is final in the following respects:

- (a) the following provisions in Part B and the related findings in Part A:
  - (i) in Ch 3, provision 3.1B.5 in relation to 'Rural living' and provision 3.2.5;
  - (ii) in Ch 24, Pols 24.2.1.11 and 24.2.1.14 and rr 24.4.6, 24.4.7A, 24.5.1.4, 24.5.1.5;
- (b) the following parts of provisions in Part B and the related findings in Part A:
  - (i) r 24.5.1.6 activity status and prefacing words;
  - (ii) r 27.5.18C activity status and prefacing words; and
- (c) all other evidential and other findings in Part A except where we have stated the finding is provisional.

#### ***Provisions in Part B for which directions for supplementary submissions will be made***

[173] Our findings on each of the following provisions are provisional in that our directions allow opportunity for supplementary submissions on their drafting and any issues as to jurisdictional scope (but not on our related evidential findings):

- (a) SO 3.2.5.8;
- (b) Pol 24.2.1.1X and associated mapping;
- (c) Pol 24.2.1.1;



- (d) Pol 24.2.1.1A;
- (e) Pol 24.2.1.1B;
- (f) Pol 24.2.1.1XX; and
- (g) assessment matters 24.7.5, 24.7.7, 24.7.8, 24.7.8B, 24.7.9 and 27.9.3.3.

[174] Directions for supplementary submissions for the final determination of all those provisions will be made in due course, as timing is contingent on various matters, including in some cases Topic 31.

[175] In addition, directions for supplementary submissions will be made in due course on matters we have reserved, in particular as to:

- (a) the 24.1 Zone Purpose; and
- (b) potential further mapping of LCU areas.

### ***Directions to QLDC***

[176] In the meantime, it would assist the processes for supplementary submissions for QLDC to prepare a tracked change update of its closing version so as to differentiate (for instance by shading) provisions that this decision determines as:

- (a) final;
- (b) final in part and not yet determined in others; or
- (c) provisional.

[177] That is in addition to preparing an exemplar online GIS and Sch 24 mapping of the different capacity ratings within LCUs on the basis set out in this decision.

[178] At this stage, we simply need QLDC to inform us of when it would be in a position to provide those two things. Therefore, we **direct** QLDC to file, by **Friday 29 April 2022**, a reporting memorandum seeking timetabling directions for

the filing for the purposes of [148] and [173]-[175] of:

- (a) a tracked change update of the QLDC closing version;
- (b) an exemplar online GIS and Sch 24 mapping; and
- (c) supplementary submissions on all reserved matters.

***Costs reserved***

[179] Costs are reserved. Timetable directions will be made in due course, if need be. We signal, however, that our present inclination on matters addressed to date for Topics 25 and 30 is that costs should lie where they fall.

For the court



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



Annexure 1: Figure 6 from the evidence-in-chief of Ms Gilbert



Figure 6: Approximate extent of the Basin where a 'very low', 'low' and 'moderate low' capability rating applies

