

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

Decision No. [2024] NZEnvC 302

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14(1) of the First
Schedule of the Act

BETWEEN BARNHILL CORPORATE
TRUSTEE LIMITED AND D E
AND M E BUNN AND L A
GREEN

(ENV-2019-CHC-86)

MORVEN FERRY LIMITED

(ENV-2019-CHC-88)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

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

Hearing: at Queenstown on 5 and 7 June 2024

Appearances: M Baker-Galloway and L McLaughlan and P Lance for the
appellants
S Scott and S Richardson for the respondent

Last case event: 29 August 2024

Date of Decision: 26 November 2024

Date of Issue: 26 November 2024



- A: The appellants' application for leave to file supplementary evidence is declined.
- B: The appeals are, on all points to which this decision applies, declined (except to the limited extent that we direct that the text of Sch 24.8 be updated).
- C: Directions are made for QLDC to update Sch 24.8 and report back on the timing of this.
- D: Costs are reserved and timetabling directions are made.

DECISION OF THE ENVIRONMENT COURT
Topic 31, subtopic 5: Southern Basin

REASONS

Introduction

[1] This decision concerns appeals by Barnhill Corporate Trustee Limited, D E, M E Bunn and L A Green ('Barnhill') and Morven Ferry Limited ('MFL') on the Wakatipu Basin variation in the review of the Queenstown Lakes District Plan ('PDP'). The points of appeal it addresses concern 'Topic 31, subtopic 5: Southern Basin' in the topic-based determination of those appeals.

[2] Barnhill and MFL own adjacent blocks of land close to the junction of Morven Ferry Road and Arrow Junction Road just south of SH6.¹ Their appeals relevantly concern the zoning of parts of their landholdings. That is the

¹ The Barnhill land is legally described as Lot 2 DP 397602, Lot 3 DP 397602 and Lot 4 DP 397602. The MFL land is legally described as Lot 2 DP 411193, Lots 1-2 DP 300661, Lot 12 DP 323200.

approximately 42 ha area broadly depicted in Fig 2 in Annexure 2 to this decision.² Although extending over parts of both landholdings, we treat that area as a single planning unit for our purposes (the ‘Site’).

[3] The notified variation proposed Wakatipu Basin Rural Amenity Zone (‘WBRAZ’) for the Site. In their submissions on the PDP, the appellants sought that this be changed to ‘Lifestyle Precinct’ (‘Precinct’). That is a WBRAZ sub-zone that is more enabling of rural lifestyle development.³ QLDC decisions on submissions confirmed WBRAZ zoning. The appeals seek that zoning of the Site be changed to Precinct.

[4] There are a few farm buildings on the Barnhill and MFL land. At the time of our hearing, construction of a dwelling on the Barnhill land near to the Site was nearing completion.⁴ Earthworks to form a consented building platform for a dwelling have been undertaken on the Barnhill portion of the Site. Apart from that, the Site is bare land that has the appearance, but not the utility, of farmland. Although fenced for deer, the Barnhill property is mainly grazed by rabbits.

[5] Just north and north-east of the Site is the highly popular and scenic Arrow Bridges Trail which runs between Arrowtown and the Gibbston Valley. Connecting to that trail close to the Site is the Twin Rivers Trail. It traverses part of the Barnhill land and continues west over rolling hills towards Lake Hayes Estate and the Wakatipu Basin. Barnhill granted an easement to allow the trail to pass through their land.

² Annexure 2 is a reproduction of a plan in App 1 to the evidence-in-chief of Mr Ben Espie, the landscape expert called by the appellants. The Site is coloured purple and labelled ‘Appeal Land Proposed Precinct’ (surrounding a wetland area coloured blue). The area for which rezoning relief is sought was specified in the appellants’ evidence as 41.7 ha and 42.26 ha. However, the precise area involved is not significant for our purposes in that the evidence and our site visits allow us to be sufficiently appraised for our purposes.

³ ENV-2019-CHC-86 and ENV-2019-CHC-88.

⁴ Freeman EIC, at [29], [34].

[6] The zoning treatment in the environs of the Site is predominantly WBRAZ. However, there are some areas of Precinct zoning, including close to the Site. Although not a matter for determination in this appeal decision, we note that Barnhill is pursuing Rural Visitor zoning for two small pockets of its landholding near to the Site north-east of where the Twin Rivers Trail crosses Morven Ferry Road.

[7] Landscape matters are central to the issues in the appeals. An overarching intention of the PDP with respect to the Wakatipu Basin is to:⁵

... maintain or enhance the character and amenity of the Wakatipu Basin, while providing for rural living and other activities.

[8] To those ends, PDP Sch 24.8 identifies and describes the landscape characteristics of some 24 mapped 'landscape character units' ('LCUs'). Sch 24.8 also assigns to each LCU a 'landscape capacity' rating according to a six-point evaluative scale of relative 'capability to absorb additional development'. Those ratings have significant consequences for how the related objectives, policies and rules of Chs 24 and 27 operate. That is particularly in terms of expectations for rural lifestyle development.⁶

[9] Much of the Site is within Sch 24.8 LCU 18: Morven Eastern 'Foothills'. A small part is within LCU 17: Morven Ferry. For LCU 18, Sch 24.8 prescribes a landscape capacity rating of 'Low', a rating contested in the appeals.

[10] There are no s274 parties to the matters in the appeals to which this decision pertains.

⁵ The quote is an extract from 24.1 Zone Purpose.

⁶ Sch 24.8, originates from B Gilbert, K Norgrove, B Kaye, *Wakatipu Basin Land Use Planning Study*, Final Report March 2017 a desk-top study ('WBLUPS').

Statutory framework and legal principles

[11] In our *de novo* consideration of the appeals, we have the powers, duties and discretions that QLDC (and its independent commissioners) had in regard to the PDP decision the subject of the appeals (s290, RMA). We have regard to that decision (s290A).

[12] We evaluate available zoning options for what is most appropriate for achieving relevant PDP objectives.⁷ The objectives and related policies of most relevance are those set out in Annexure 1. They are effectively operative, being beyond dispute in any appeal. An overarching PDP intention, as reflected in those various provisions, is to maintain or enhance landscape character and visual amenity values of the LCUs (listed in Sch 24.8) and the Basin as a whole.⁸ SO 3.2.5.8 also seeks that landscape capacity is not exceeded.

[13] We evaluate rules with regard to the actual and potential effect on the environment of the activities they would enable, including any adverse effect (s76(3), RMA). That requires predictive findings as to the relevant future state of the 'environment' which, in this case, is essentially the future 'landscape'.

[14] As an aspect of that, we make findings as to how the existing landscape is likely to change before development enabled under a zoning outcome can be expected to be undertaken. One agency of landscape change may be the rules that enable development under operative zoning in the environs of the Site. Another agency of change may be resource consents whose implementation would likely result in subdivision and development of the relevant landscape.

[15] In addition to s32, RMA, other matters that bear upon our decision include the provisions of pt 2, RMA the territorial authority's s31 functions and national policy statements (s74(1)). While we have considered the evidence on them, none

⁷ RMA, ss290, 32AA, 32.

⁸ Annexure 1, PDP Obj 24.2.1, SO 3.2.5.8, Ch 24 Zone Purpose statement.

is determinative. Therefore, we do not report separate findings on them.

The relief pursued and potential zoning outcomes for consideration

The relief pursued

[16] Primarily, the appellants seek that the Site be upzoned to Precinct. They seek associated changes to PDP provisions including to Sch 24.8. Those include replacing the present Low landscape capacity rating for LCU 18 with a Moderate-High capacity rating for the Site and Moderate-Low rating for the remainder of LCU 18.⁹ Although the relief pursued by the appellants through their submissions and evidence differs to some extent from that specified in their notices of appeal, QLDC does not suggest there is any jurisdictional scope difficulty with that. In any case, we are satisfied that their modified relief is within scope.

The available zoning outcomes

[17] In accordance with the statutory framework we have summarised, available zoning outcomes in the determination of the appeal are within the following spectrum:

- (a) the status quo WBRAZ zoning (including associated PDP provisions);
- (b) Precinct upzoning as pursued by the appellants; or
- (c) zoning options that would allow for residential development of the Site somewhere within the range of the above zoning options ('Modified WBRAZ').

[18] We consider those options on the evidence.

⁹ Our summary of this modified relief draws in particular from the appellants' opening submissions, dated 4 June 2024, at [3], and closing submissions, dated 7 August 2024, at [45].

The evidence

[19] Landscape experts, Ben Espie (called by the appellants) and Helen Mellsop (called by QLDC) are both experienced in the consideration of the landscapes of the Wakatipu Basin in accordance with the policy intentions of the PDP. They undertook their assessments in accordance with their professional guidelines, *Te Tangi o te Manu* (“Guidelines”).¹⁰ As Mr Espie described them, the Guidelines are the “best practice methodology” for a structured assessment of landscape character and visual amenity values.¹¹ Their differences are in essence matters of evaluative judgment.

[20] That is similarly the position for the planning experts, Scott Freeman (called by the appellants) and Craig Barr (called by QLDC).

[21] Following court-directed conferencing, the landscape and planning experts produced joint witness statements supplementing their primary and rebuttal evidence (‘JWS – landscape’,¹² ‘JWS – planning’¹³).

[22] Ms Debbie MacColl is a director of Barnhill Ltd and representative of her family’s interests in the appeals. Called by the appellants as a lay witness, Ms MacColl explained that Barnhill is not a profitable or even economically viable farming operation. She told us about the background to the family’s granting of an easement for the Twin Rivers Trail to cross their farm to connect to the Arrow Bridge trail. She also explained how the usage of this public facility presented significant challenges for their farming operations, particularly through the disturbance of deer.

¹⁰ *Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines*, Tuia Pito Ora New Zealand Institute of Landscape Architects, July 2022; JWS – landscape, at [9].

¹¹ Espie EIC, at [17].

¹² Joint witness statement, signed by Ben Espie and Helen Mellsop, dated 9 April 2024.

¹³ Joint witness statement, signed by Scott Freeman and Craig Barr, dated 17 May 2024.

Request to call supplementary evidence on a modified WBRAZ option declined

[23] Following the testing of evidence, the court made preliminary observations on what that indicated in terms of zoning outcomes and landscape capacity. We return to those observations later in this decision. Provisionally, those observations included that Precinct zoning was not appropriate and a modified WBRAZ outcome would seem more appropriate than the status quo WBRAZ. The preliminary observations extended to signalling merit in a modified WBRAZ that included specified bespoke policies and standards on minimum and minimum average lot sizes and a structure plan that would each be bespoke to the Site. Noting that the observations were subject to closing submissions, we also encouraged parties to give consideration to associated procedural directions including for any supplementary evidence as to a modified WBRAZ zoning outcome.¹⁴

[24] Subsequently, parties informed the court that they were not able to reach agreement on appropriate directions on these matters.¹⁵ On that basis, timetabling directions then made for closing submissions reserved leave for the appellants to seek any directions on these matters in their submissions.¹⁶

[25] In response, as part of their closing submissions, the appellants seek leave to file supplementary evidence as follows:¹⁷

- (a) A package that overall provides for anticipated yield in order of that as indicated by the Court, namely 3-4 dwellings on the Barnhill land and 7-9 on the Morven Ferry land;

¹⁴ Transcript, p 162, lines 1 – 6; p 163, lines 1 – 2.

¹⁵ Joint memorandum dated 24 June 2024.

¹⁶ Minute dated 25 June 2024.

¹⁷ Closing submissions for the appellants, at [45].

- (b) A simple structure plan identifying the location of the above dwellings specifically, building restriction areas, and the minimum requirement in terms of structure planting and planting for enhancement of the wetland;
- (c) A bespoke policy limb for 24.2.1.5 directing the anticipated outcome for LCU 18 and 17 in line with the above, including wetland enhancement and protection;
- (d) A bespoke limb for rules 24.5.1.6 specifying density for dwellings;
- (e) A bespoke restricted discretionary rule in chapter 27 for subdivision in accordance with the structure plan;¹⁸
- (f) Amendments to Schedule 24.4.18 recording that capability to absorb development in the appeal site specifically is moderate, and otherwise in line with Mr Espie's recommended changes as appended to the Joint Witness Statement Landscape.

[26] QLDC opposes this request. It submits that it is opportunistic in seeking a zoning outcome that does not accord with landscape capacity or the PDP's intentions. It submits that it would be procedurally unfair to grant the request given that QLDC has presented its case in response to the appellants' primary relief as was the subject of the appellants' evidence. Further, it submits that granting the request for supplementary evidence on the appellants' described Modified WBRAZ option would put the court into an inappropriate role of considering a structure plan not put in the appellants' case as heard by the court.¹⁹

[27] In principle, a Modified WBRAZ zoning outcome that provides less development yield than Precinct upzoning would be within jurisdictional scope. However, we find matters of procedural fairness weigh against granting the

¹⁸ Counsel noting that in the other cases where the court has approved/is in the process of approving a modified WBRAZ framework with a structure plan, a restricted discretionary subdivision rule is part of that framework, referring to *Waterfall Park Developments Limited v Queenstown Lakes District Council* [2023] NZEnvC 207 at [131].

¹⁹ QLDC closing submissions, dated 23 August 2024, at [8.1] – [8.14].

request. We accept that, in the circumstances, there would be significant prejudice to QLDC in acceding to the request. That is in terms of the significant additional costs associated with responding to what would be alternative relief not pursued by the appellants in the case presented through their evidence and opening submissions. Rather, as noted, their case was focussed exclusively on their Precinct upzoning relief up until their closing submissions. In addition, entertaining the request for supplementary evidence would result in inevitable delay in the finalisation of PDP provisions. That is prejudicial to QLDC and we find also not in accordance with the public interest.

[28] Against that, we find that the appellants would not be significantly prejudiced by declining their request. Even a finding that the status quo WBRAZ is the most appropriate zoning outcome maintains some capacity for the appellants to pursue development aspirations, albeit as a non-complying activity. That includes capacity to elect to pursue a comprehensive development of the Site, as a single unit.

[29] At least insofar as the MFL consents are concerned, their granting as non-complying activities followed independent commissioner consideration of relevant PDP objectives and policies. By the same token, it remains possible for the appellants to revisit their development intentions including on a basis that may allow for some further development yield. We find that approach appropriate for fulfilling the overall PDP intention for the Basin as we have noted, namely to:²⁰

... maintain or enhance the character and amenity of the Wakatipu Basin, while providing for rural living and other activities.

[30] Additionally, the appellants will have the opportunity to pursue upzoning through usual statutory processes from time to time.

[31] Nevertheless, we record that finding does not imply that an appropriate

²⁰ Extract from 24.1 Zone Purpose.

case for structured comprehensive development of the Site, whether according to any change to the PDP or resource consent application, would not be viable in accordance with the PDP's intentions.

Viewings of the Site

[32] The court's viewings of the Site provided helpful context for our consideration of the evidence. That included a guided tour of the Site as well as viewings from various recommended public viewpoints as we address in this decision. In addition, to gain an impression of what a trail user would see of the Site, we cycled parts of the Twin Rivers Trail, including the easement section through the Barnhill land.

The determinative issues as to the zoning options

[33] Primarily, the parties frame their cases on the most appropriate zoning outcome by reference to their evidence on landscape implications:

- (a) the appellants' Precinct upzoning would maintain the landscape character and visual amenity values of LCU 18 and the Basin. As such, they say Precinct zoning is the most appropriate in terms of what it would enable for reasonable use and development of the Site;
- (b) QLDC says the subdivision and development enabled by Precinct upzoning would be of a scale and intensity that would fail to maintain (or enhance) the landscape character and visual amenity values of LCU 18 and the Basin. As such, it says the status quo WBRAZ zoning of the Site is the most appropriate.

[34] Related determinative issues arising from the evidence concern the following:

- (a) would the landscape likely change significantly through implementation of the appellants' existing resource consents?

- (b) would zoning options maintain or enhance landscape character and visual amenity values of LCU 18 and the Basin?
- (c) what landscape capacity rating or ratings should, therefore, be assigned to LCU 18?

Key terms and concepts as to the determinative issues

The meanings of ‘landscape’ ‘landscape character’ ‘visual amenity values’

[35] Our evaluation of the landscape and planning evidence, with reference to the PDP’s intentions for the Wakatipu Basin involve consideration of the key terms *landscape*, *landscape character* and *visual amenity values*. The PDP does not define those terms. Just as the experts did so, we find we can draw from the profession’s Guidelines for their meanings. Those Guidelines include the following definitions:²¹

Landscape	Landscape embodies the relationship between people and place. It is the character of an area, how the area is experienced and perceived, and the meanings associated with it.
Landscape character	Each landscape’s distinctive combination of physical, associative, and perceptual attributes.

[36] On the meaning of ‘visual amenity values’, we draw to some extent from the RMA definition of ‘amenity values’ as follows:

amenity values means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

[37] The Guidelines recognise that visual effects are a kind of landscape effect,

²¹ Guidelines, kuputaka reo Pākeha, glossary.

in the sense of being a visual experience of landscape values.²² We interpret the PDP's reference to 'visual amenity values' to refer to those landscape qualities and characteristics that, as a visual experience, contribute to people's appreciation of the pleasantness, aesthetic coherence, and other relevant attributes of the landscape.

Spatial extent of a landscape

[38] As the Guidelines also reflect, a key matter in landscape assessment is to identify the appropriate spatial extent of the landscape of interest. The Guidelines encourage landscape professionals to take a practical approach to that task. That involves assessing the relevant landscape as a whole, recognising that small landscapes can nest within larger ones.²³ Consistent with that approach, the PDP directs that consideration be given to the relevant LCUs (LCU 18, LCU 17) and the Basin as a whole.

[39] Similarly, the experts assess landscape character and visual amenity values, and landscape capacity, by reference to LCU 18 and LCU 17, as identifiable landscape units for assessment purposes. We find their methodologies appropriate in those respects and adopt a similar approach. That is to treat the LCU landscape as encompassing LCU 18 and that part of LCU 17 that includes the Site.

[40] Mr Espie and Ms Mellso apply a similar approach in their consideration of the spatial extent of the relevant wider Basin landscape and we find their approaches sound. Although not mapping the boundaries, they both treat LCUs 17 and 18 and the parts of the Basin that extend across SH6 up to and including the lower flanks of the Crown Range Road as part of their landscape for assessment purposes. They also consider views from the Remarkables Ski Area access road.

²² Guidelines, [6.07], [6.08], [6.25], [6.27]; Espie EIC, at [66], Mellso EIC, at [5.2].

²³ Guidelines, at [5.16].

PDP significance of landscape capacity ratings

[41] Under the decision version PDP provisions, Sch 24.8 specifies that LCU 18 has Low landscape capacity. Ms Mellsoop considers that to be an appropriate rating. Mr Espie disagrees, and recommends that Sch 24.8 be amended to the effect that it specifies the Site (as a defined area within LCU 18) to have Moderate-High landscape capacity and for the remainder of LCU 18 to be uprated to a Moderate-Low landscape capacity.

[42] The landscape capacity ratings for LCUs, as applied in Sch 24.8, represent a rating of relative ‘capability to absorb additional development’. In essence, the capability reflects an evaluative judgment of the extent to which additional subdivision and development may be able to be absorbed whilst still fulfilling the PDP’s intentions concerning the maintenance or enhancement of the landscape character and visual amenity values of LCUs and the Basin. The evaluative rating is according to a six-point evaluative scale.

[43] The landscape capacity that is found to apply to a LCU (or area of a LCU) is relevant to the consideration of the most appropriate zoning of Basin land.

[44] For example, the 24.1 Zone Purpose statement explains that “Precinct is applied to specific areas of land within the broader Rural Amenity Zone that have capacity to absorb rural living development”. Related to that intention, Obj 24.2.1.1. directs that Sch 24.8 and the planning maps are to identify “the landscape capacity of areas outside of the Precinct to absorb subdivision and residential development” according to the noted six-point evaluative scale.

[45] Landscape capacity ratings also bear upon how applications for subdivision and development are to be assessed in terms of their effects on landscape character and visual amenity values. For example, the 24.1 Zone Purpose statement explains that proposals “in areas rated to have Very Low, Low or Moderate-Low development capacity are to be assessed against the landscape character and

amenity values of the landscape character unit they are located within, as well as the Wakatipu Basin as a whole”. That is by contrast to proposals in areas given a Moderate capacity rating. In such cases, 24.1 explains that proposals are only to be assessed against “the landscape character and amenity values of the landscape character unit they are located within”. It further explains that, in such cases controls on the location, scale and visual effects of buildings “are used to provide a design led response to the character and values”.

[46] Those explanatory statements fairly summarise the associated directions in WBRAZ policies.²⁴ In addition, SO 3.2.5.8.b. is that the landscape capacity of each LCU and the Basin as a whole are not exceeded.

[47] Hence, it is properly a matter for consideration in this appeal whether the PDP’s ‘Low’ landscape capacity rating for LCU 18 is appropriate or should be amended either for the LCU as a whole or that part of it that includes the Site.

Cases presented as to the determinative issues

Would the landscape likely change significantly through implementation of the appellants’ existing resource consents?

[48] A significant focus of the landscape and planning evidence was as to the significance or otherwise of consents that have been granted to enable the appellants to subdivide and develop their land, including parts of the Site.

The relevant existing consents

[49] Those consents are as follows:

- (a) Barnhill has subdivision and land use consent to create five allotments, with associated residential building platforms, as well as

²⁴ For example, Pols 24.2.1.2, 24.2.1.3.

landscaping, construction of accesses and other earthworks for the development ('Barnhill consents'). One of the consented allotments (and its consented building platform) is on the Site. The remainder are on Barnhill land in the vicinity of the Site;²⁵

- (b) MFL has subdivision and land use consent to create ten allotments on the MFL land, with seven associated residential building platforms, as well as landscaping and other associated earthworks and the establishment of a pump building and water tank (in breach of an internal boundary setback) ('MFL consents'). Six of the consented lots and building platforms are within the MFL part of the Site. One lot (Lot 4) and its associated platform is on a part of the MFL land beyond the Site.²⁶ In addition, QLDC granted MFL and an adjoining landowner a boundary adjustment subdivision consent (RM230994). This would effectively amalgamate a 4941m² lot with the MFL land. It would also provide for a wider access (in close proximity to Morven Ferry Road) to the rear of the MFL land.

[50] Implementation of the Barnhill consents has commenced and it intends to fully do so regardless of the outcome of the appeals. Records of Title for three of the lots (Lots 1, 2 and 5, DP 570875) have been secured. Some consented physical works have been undertaken. Barnhill intends to secure the remaining titles once a building platform area is created.²⁷

[51] The MFL consents have not been implemented. MFL has decided to hold from doing so until the court determines the appeals. Mr Freeman informed us that MFL would not implement the consent if it were successful in securing its

²⁵ Barnhill consent RM171268, as amended by RM200023; Scott EIC, Appendices A and B.

²⁶ Freeman rebuttal, at [8].

²⁷ Freeman EIC, at [33], rebuttal at [6], [9].

preferred Precinct rezoning relief.²⁸

The different opinions of the planners and landscape experts

[52] There are two camps of opinion on whether the landscape would likely change significantly through implementation of the appellants' existing resource consents.

[53] The planner called by the appellants, Mr Freeman, regards all of the existing consents as agents that would "undoubtedly change the appearance and function of the land that is subject to the resource consents" within the Site "if fully implemented". He refers, for instance, to what they would authorise by way of "buildings, domestic landscaping and the trappings associated with rural living". Notwithstanding his qualifier "if fully implemented", he opines that "the appearance and function of the appeal land will highly likely change". He makes clear that he considers that to be the likely outcome irrespective of the choice of zoning outcome we determine in this appeal.²⁹

[54] Mr Espie relies on Mr Freeman's interpretation of the significance of implementation of the existing consents.³⁰

[55] QLDC planner, Mr Barr points out that the existing consents impose strict controls which require that land outside the building platform and curtilage areas of the approved lots, with residential building platforms, be retained in pasture. These are the subject of consent notices, that would need to be revisited if consents to allow for rural lifestyle development according to the intentions of a Precinct rezoning were to be sought.³¹ Ms Mellsop treats the existing consents on the basis

²⁸ Freeman rebuttal, at [10], [11].

²⁹ Freeman EIC, at [28].

³⁰ Espie EIC, at [92].

³¹ Barr EIC, at [3.5] – [3.9], Mellsop EIC, at [7.4].

that they would not affect the landscape capacity of LCU 18.³²

Would zoning options maintain or enhance landscape character and visual amenity values of LCU 18 and the Basin?

[56] The landscape experts' opinions about how the zoning options would likely affect landscape character and visual amenity values are significantly based on their visual impact assessments. Each undertook a visual impact assessment using materially similar methodologies according to the Guidelines. For their impact assessments, they used a common set of public viewpoints they were satisfied were representative. Those included viewpoints:

- (a) on public roads in the Morven Ferry area in relatively close proximity to the Site ('Near Viewpoints') and from SH6;
- (b) on the Twin Rivers Trail which traverses Barnhill and public land above the Site ('Trail Viewpoints'); and
- (c) at two localities, a few kilometres from the Site, along the Crown Range Road ('Crown Range Road Viewpoints'), being a locality known as Chain Bay 4 ('viewpoint 6' ('VP6)) and a public lookout at the top of a series of switchbacks known as 'the Zig-zag' ('VP1').

[57] For their assessments of relative visual impact, from their selected viewpoints, and associated effects on visual amenity values, Mr Espie and Ms Mellsop employed a seven point evaluative scale (i.e. Very Low, Low, Low-Moderate Moderate, Moderate-High High, Very High).³³ Their respective ratings were predictive, namely as to the relative scale of visual impact and visual amenity effects from those viewpoints of future development enabled by any Precinct upzoning.

[58] A gap in their approach is in having only assessed these matters with respect

³² Barr EIC, at [3.5] – [3.9], Mellsop EIC, at [7.4].

³³ Guidelines, at p 241.

to a Precinct upzoning. They do not report on how that compares with what is likely as a result of development enabled under the status quo WBRAZ. However, we are able to draw necessary inferences.

Impacts from Near Viewpoints are agreed to be Low and from SH6 Very Low

[59] Mr Espie and Ms Mellsop agree that the visual impacts and associated effects on visual amenities of Precinct development, as viewed from Morven Ferry Road, would be Low (once planting associated with the Precinct development matures). They agree that such effects, for viewpoints on Gibbston Flats SH6, would be Very Low.³⁴

Impacts on visual amenity values from the Twin Rivers Trail

[60] The landscape experts agree that there will be adverse visual amenity effects as experienced from Twin Rivers Trail. However, they acknowledge that the trail is not a ‘public place’ for PDP purposes for the section that traverses the Barnhill land.³⁵ They differ on the extent of likely effect of Precinct development on visual amenity values from trail viewpoints:

- (a) Mr Espie rates these as Moderate.³⁶ In part, that is because the experience of views across the Site for a trail user would be “relatively short lived; i.e. a trail user will pass the affected area relatively quickly and regain open ground”. Furthermore, the Site is relatively remote from other Precinct-zoned areas within the landscape such that there is no risk of a cumulative visual amenity effect. He does not agree with Ms Mellsop that the Site is an important rural buffer area;³⁷
- (b) Ms Mellsop considers that Precinct development would have a High

³⁴ JWS – landscape, at [14], [15].

³⁵ JWS – landscape, at [16].

³⁶ JWS – landscape, at [23].

³⁷ Espie EIC, at Appendix 8, at [16].

level of adverse visual amenity effect for users of the Twin Rivers Trail.³⁸ She notes that much of the Site would be visible from the trail, either unobscured or through the cypress hedge planted along the Site’s western boundary. She considers that Precinct upzoning would enable a change from the open rural character of the Site (in the foreground to Morven Hill) to a domesticated rural living character. Furthermore, she comments that “longer views would likely be obscured by planting” associated with rural living development under a Precinct upzoning.³⁹

Impacts on visual amenity values from Crown Range Road Viewpoints

[61] The experts identified two relevant viewpoints from Crown Range Road, as follows as is illustrated in the following figures from Mr Espie’s evidence.

[62] Chain Bay 4 is some 5.6 km from the Site. It includes a gravelled car parking area on public road and a dedicated lookout that is accessible from it but on private land. Mr Espie’s figures illustrate the following view taken from the lookout area:⁴⁰



Figure 1: Chain Bay 4 (VP6)

[63] The Zig-zag lookout is a dedicated viewing area on road reserve downhill from there and some 2.5 km from the Site. Mr Espie’s illustration of it is as

³⁸ JWS – landscape, at [23].

³⁹ Mellsop EIC, at [12.4].

⁴⁰ Espie EIC, at Appendix 7, viewpoint location 6.

follows:⁴¹



Figure 2: Viewpoint from Zig-zag Lookout (VP1)

[64] The respective ratings that the experts offer of visual amenity impacts from those viewpoints is as follows:⁴²

	<i>Chain Bay 4 (VP6)</i>	<i>Zig-zag Lookout (VP1)</i>
Espie	Very Low to Low	Low
Mellsop	Moderate reducing to Low-Moderate	Low-Moderate

[65] Mr Espie considers that, with Precinct development, the “essential qualities” of existing views from these viewpoints would remain. In his opinion, development according to Precinct zoning would not be significantly different in effect than development under the existing consents. Viewers would recognise development of the Site as “an instance of rural living, making the overall scene less sparsely populated and more complex”.⁴³ He notes the breadth and distance of views across the Site from VP6. That would, in his view, mean landscape treatments associated with development would be effective in visually integrating buildings into the landscape. Given the part that the Site plays “in the overall composition of views” and “the dominance of the mountain ranges and hills in these views”, he considers the visual effect would be Low “at most”.⁴⁴

⁴¹ Espie EIC, at Appendix 7, viewpoint location 1.

⁴² JWS – landscape, at [20] – [22], Espie EIC, Appendix 8, [20] – [23], Espie supplementary, at [17], [18].

⁴³ Espie EIC, Appendix 8, at [23].

⁴⁴ Espie EIC, Appendix 8, at [[20].

[66] In contrast, Ms Mellsoop considers the landscape setting as part of what would make Precinct development of the Site inappropriate. She views the Site as currently serving as a “transition” from that denser development “through to open working farmland closer to the Remarkables and Morven Hill”. In her opinion, Precinct rezoning would enable an anomalous “separate isolated node of domestication” within the visible Basin. She identifies the Remarkables, the Kawarau River valley, the undulating farmland of the Crown Terrace, and the rural land of the Basin floor as important in those terms. She considers that Precinct development of the Site “would result in a noticeable large node of buildings and domestication in the mid-ground, within a highly attractive view that otherwise has a very strong rural character and a moderate-high level of naturalness”.⁴⁵ That is from both VP1 (Chain Bay 4) and VP1 (Zig-zag). From Viewpoint 1, she observes that this visual impact would be seen “in the foreground to the Remarkables”.

[67] As a consequence, she considers that Precinct development would “detract from people’s appreciation of the coherence and aesthetic quality of the view”. She acknowledges that the visual impact would depend somewhat on the “sensitivity of the viewer and their familiarity with the District”.⁴⁶

Whether visual amenity values and landscape character would be maintained

[68] The landscape experts consider related consequences for landscape character by reference to what is relevantly recorded in Sch 24.8 as to the landscape attributes of LCU 18. Sch 24.8 describes LCU 18 as a “sleepy backwater” without particular “prominence”, having a “variable sense of openness” and a “low level of landscape coherence”. It also describes it as a “mixed rural and rural lifestyle / hobby farming area that functions as a transition between the mountain ONL and the lower-lying and more ‘developed’ river terrace to the north and east”. In

⁴⁵ JWS – landscape, at [20].

⁴⁶ JWS – landscape, at [21].

relation to those described attributes:

- (a) Mr Espie considers this is part of what enables opportunity for Precinct up-zoning. That is in the sense that Precinct development would maintain the “pleasant rural and rural living character” of LCU 18 (together with LCU 17) as a part of the valued Wakatipu Basin landscape;⁴⁷
- (b) Ms Mellsop identifies the existing strong rural and open spacious character of LCU 18 (including on the Site) as important to the maintenance of the landscape character of the Basin as a whole. That is the sense of providing balance and separation from “more intensive rural living development”. In her opinion, maintaining the relatively open character of areas within LCU 18 (including the Site) is important to the “overall strategy” for the Basin “whether or not they are highly visible from key road networks or public trails”.⁴⁸

[69] PDP Sch 24.8 identifies the following potential landscape issues and constraints for LCU 18:

The visibility of the unit from public roads and vantage points and from parts of the Queenstown Trail located on Crown land, very close proximity to ONLs and ONFs, together with the role of the area as a transition between the mountain ONL and the lower-lying and more ‘developed’ river terrace to the north and east, makes it sensitive to additional development.

[70] As we understand it, Mr Espie does not consider the Site or LCU 18 more generally to fulfil any significant transition area role. For instance, he recommends some softening of the language in Sch 24.8 including to qualify the specification as to the landscape constraints on additional development with the words “in the general sense”.⁴⁹ In contrast, Ms Mellsop considers that the Site is an important

⁴⁷ Espie EIC, at [78].

⁴⁸ Mellsop EIC, at [11.8].

⁴⁹ JWS – landscape, at Appendix A.

transitional area between development on the flats closer to SH6 and the ONL/ONF to the south and west.⁵⁰

[71] Overall:

- (a) Mr Espie considers development enabled under a Precinct zoning of the Site would maintain the visual amenity values and the landscape character of LCUs 17 and 18 and the Basin as a whole;⁵¹
- (b) Ms Mellsop considers that Precinct rezoning would have a moderately high adverse effect on landscape values.⁵² She considers it would substantially reduce the landscape character of LCU 18 and undermine the “zoning strategy” of the PDP for the Basin as a whole.⁵³

Related planning opinions

[72] The planning opinions parallel those of the respective landscape experts on this issue.

What landscape capacity(s) should be assigned to LCU 18?

[73] The landscape experts’ respective opinions on the appropriate landscape capacity ratings for LCU 18 are informed by their opinions on landscape character and visual amenity values (and also by their respective understandings of the significance of the existing consents).

[74] Mr Espie considers the Site to have a Moderate-High landscape capacity and the balance of LCU 18 to have a Moderate-Low capacity. As to his rating of

⁵⁰ Mellsop EIC, at [11.7].

⁵¹ JWS – landscape, at [27], Espie EIC, at [74] – [82], Espie supplementary, at [19] – [26], Espie rebuttal, at [9] and [28].

⁵² JWS – landscape, at [26], Espie EIC, at [74] – [82], Espie supplementary, at [19] – [26], Espie rebuttal, at [9] and [28].

⁵³ JWS – landscape, at [24] – [26], Mellsop EIC, at [12.1] – [12.18], [12.22] – [12.25].

the Site, he characterises it as being “physically contained, discrete, visually hidden”. That rating compares to his recommended uprating of the balance of LCU 18 to Moderate-Low.⁵⁴ In contrast, Ms Mellsop endorses the PDP’s Low landscape capacity rating for LCU 18 as appropriate.

Related opinions on the most appropriate zoning outcome

[75] The planners’ respective opinions on the appropriate zoning outcome parallel those respective landscape opinions. Mr Freeman supports Precinct upzoning. Mr Barr considers the status quo WBRAZ to be the most appropriate zoning choice.

Submissions

[76] Submissions follow similar lines on each of the determinative issues and the zoning options.

[77] As to the associated determinative issue of the likely significance to the landscape of implementation of the existing resource consents, the appellants rely on Mr Freeman’s interpretation and Mr Espie’s related evidence. That is for their closing submission that the future landscape character of LCU 18 would not be “strongly rural” and “open pasture”, but “rural living”.⁵⁵

[78] As for views from Twin Rivers Trail, the appellants point out that the PDP’s definition of ‘public place’ expressly excludes “any trail as defined” in the PDP. The related definition of ‘trail’ encompasses the easement land in this case, namely as “any public access route legally created by way of a grant of easement registered after 11 December 2007 for the purpose of providing public access in favour of the Queenstown Lakes District Council, the Crown or any of its

⁵⁴ Espie EIC, at [92].

⁵⁵ Closing submissions for the appellants, at [6] – [18].

entities”.

[79] Counsel note that the exclusion of any defined trail from the definition of ‘public place’ occurred through a plan change (‘PC28’) and submit that the rationale for it was given in an associated s32 RMA report, as Mr Freeman explained.⁵⁶ In particular, that report commented:⁵⁷

If the landowner then wishes to undertake development on nearby land, any such development will be assessed against its visibility from the trail, in accordance with the relevant policies and assessment matters of the Plan.

This has caused landowners to become reluctant to gift their land for public access purposes, and given that there are examples where development applications have been declined because of their visibility from nearby public places, this reluctance has become more widespread.

[80] Counsel explain that PC28 arose in light of a recognised conflict between the operative district plan’s landscape provisions and aspirations to develop trails. There was concern that landowners were reluctant to agree to the formal establishment of trails in view of the risk to their development aspirations. Counsel add that, following PC28:⁵⁸

... landowners were specifically advised/requested to allow the trails as public access easements over their properties, rather than vesting the land with the Council. This was to ensure the trails would not be considered Public Places and to protect their ability to subdivide/develop their land by ensuring they would not be penalised for the potential effects of development on views and amenity from the trails.

[81] In view of that context, the appellants express disappointment at the

⁵⁶ Freeman EIC, at [51] – [53].

⁵⁷ Appellants’ opening submissions, at [38].

⁵⁸ Appellants’ opening submissions, at [39].

apparent weight put on views from the Twin Rivers Trail by QLDC witnesses.⁵⁹

[82] As for the visual impact of Precinct development from VP6, counsel point out that Chain Bay 4 is not public land. In any case, they submit that we should be cautious to give “proportionate” weight to this single viewpoint so as to not tip the balance in favour of declining the appeals”. Moreover, they submit we should prefer Mr Espie’s opinion on Crown Range Road viewpoints.

Evaluation

The character of the existing and future landscape

[83] Relevant attributes of the existing LCU 18 landscape are adequately summarised in PDP Sch 24.8 (subject to some recommended refinements we address later in this decision).⁶⁰ Materially, the landscape exhibits a pattern of land use and associated landscape character that is “predominantly rural lifestyle, hobby farming and more generously proportioned working rural lots.”⁶¹ From relevant viewpoints, Morven Hill and the Remarkables, as ONF/L, have an important framing role for the landscape of LCU 18. That is the case, in particular, for views across the Site and other parts of LCU 18 from Twin Rivers Trail and the two noted Crown Range Road viewpoints.

[84] That framing role will remain important in the future landscape.

[85] The extent of hobby farming or working rural lot attributes of the existing landscape will likely lessen somewhat by the time development is likely to be undertaken under the enablement of zoning we confirm for the Site. That is likely to occur in those pockets of the landscape where Precinct zoning is now confirmed. In those localities, there would likely be nodes of rural lifestyle

⁵⁹ Appellants’ opening submissions, at [34] – [44].

⁶⁰ Espie EIC, at [35], [36], Mellsop EIC, at [7.3].

⁶¹ Transcript, p 128, lines 7 – 11.

development. That is particularly on the north-eastern side of Morven Ferry and the relatively large Precinct in the vicinity of the SH6/Arrow Junction Road. However, from Twin Rivers Trail and Crown Range Road viewpoints, such change in the character of LCU 18 would be perceived as quite visually separate from the Site.

[86] The Barnhill consents are likely to be fully implemented before or early in the planning life of any of the zoning outcomes we determine. Whether or not the MFL consents will be implemented is a matter for MFL. Therefore, it is likely that the future landscape would also include rural lifestyle development within LCU 18 in the range of:

- (a) five residences on the Barnhill land, including one on the Site; and
- (b) twelve residences, including those five and another seven on the MFL land (including a further six on the Site), in two enclaves.

[87] That would be evident in terms of additional dwellings, landscape treatment and accesses.

[88] However, we do not accept the characterisation given by the appellants that implementation of the existing consents would result in “a legible node of rural living, in the foreground to the Remarkables”. That characterisation suggests a node in the nature of a compact Precinct.

[89] Full implementation of the existing consents would result in eight building platforms across the 42 ha Site. On a broad basis, that would generally translate into an average density in the order of 1 per 5 ha. Such a density is significantly more spacious than the 6000m² / 1.0 ha subdivision and one residential unit per hectare development standards for Precinct zoned land. If MFL were to decide against full implementation of its consents, there would be a comparatively less dense development outcome. Moreover, the relative openness that would be maintained across the Site would be reinforced by the consent notice conditions

that require large parts of the Site to be maintained in grazing or pastoral management.

[90] Unlike Ms Mellisop and Mr Barr, Messrs Espie and Freeman do not appear to have accounted for the role of the consent notice conditions in those terms. Although Mr Freeman discusses the potential for those conditions to be uplifted, that is on a premise that the court grants the Precinct upzoning relief.

[91] In any case, given the consent notice conditions, we find it more likely that buildings would be reasonably well-spaced as areas of open pastoral character between them are protected by consent notice. The consent notice conditions would likely mean that visible development on and within the vicinity of the Site would continue to be largely in keeping with what Sch 24.8 describes as the predominant land use character of LCU 18.

Comparison of Precinct and WBRAZ development scenarios

Precinct development scenario

[92] Mr Espie provided a visual representation of a “realistic hypothetical development” as would be enabled by Precinct upzoning.⁶² Compared to the eight building platforms enabled on the Site by the existing consents, it illustrates in the order of 37 or so platforms and associated lots. Some 24 of the indicative building platforms would be on the MFL land. The remaining 13 or so would be on the Barnhill land.

[93] Mr Espie’s illustration assumes that the consent notice condition of the existing consents that require land other than development lots to be maintained as open pasture would need to be cancelled. That would require a discretionary activity application to be granted.⁶³ However, under a Precinct upzoning scenario,

⁶² Espie supplementary evidence, Appendix 7.

⁶³ RMA, s127(1)(a).

we find that cancellation of the consent notices is a reasonable assumption. That is in view of the PDP's intentions in regard to rural living development in the Precinct sub-zone. Those intentions are reflected in the following:

(a) Obj 24.2.5 is:

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

(b) Pol 24.2.5.1 is:

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

[94] Those enabling intentions for rural living development in the Precinct are supported by relatively generous minimum subdivision and development standards of 6000m² / 1.0 / ha and 1 residential unit/ha (rr 24.6.1.2, 27.6.1).

[95] Therefore, we find Mr Espie's illustration of Precinct development of the Site realistic.

WBRAZ development scenario

[96] Under a WBRAZ zoning outcome, subdivision or development of the Site would be a non-complying activity. In theory, that would not limit the potential number of lots and building platforms pursued in any consent application. However, any application would need to negotiate the s104D threshold test before being able to be considered on its merits. Inevitably, any application would be scrutinised carefully for whether it would result in the maintenance or enhancement, or degradation, of landscape character and visual amenity values.

[97] Any fresh application to subdivide and develop the Site could, potentially, be in substitution for or addition to what may already be implemented under the existing consents. In our preliminary observations, we indicated the following as our preliminary view on the capacity to accommodate development of lots and building platforms on the Site from the baseline of the Site's presently relatively unbuilt state:

As a rule of thumb for instance three or four on Barnhill, seven to nine on Morven Ferry as an indication of what the Court means at this stage subject to closing submissions of course on minor adjustment.

[98] That indication was on the basis of what was indicated to us, namely that Barnhill intended to fully implement its consents but MFL reserved its position on implementation pending the outcome of the appeals.

[99] For the purposes of comparison, we find it reasonable to infer from the evidence that, under a WBRAZ zoning outcome there would, at most, be a relatively modest increase in the number of already consented lots, but of a scale and pattern that remained subservient to the dominant open pastoral character of the Site. In broad terms, that may be in the order of 8 – 12 lots (in total) and associated building platforms, with most of any additional lots being on the Barnhill land or close to the central wetland area. Given the landscape intentions of the PDP, we find it likely that recourse would continue to be made to conditions that serve the same or similar ends as the present consent notice conditions.

Comparison of visual impacts under Precinct and WBRAZ development scenarios

Near Viewpoints and SH6: Low

[100] We accept the consensus opinion of the landscape experts that undulating topography and vegetation provide effective shielding for the Near Viewpoints as well as SH6. Applying the evaluative scale used by the landscape experts, we find

the associated visual impacts of development, whether under Precinct or WBRAZ zoning, would be Low.

Twin Rivers Trail: Low (WBRAZ) or Moderate (Precinct)

[101] We agree with Mr Espie that the visual effects from the public land segments of the trail are isolated and fleeting. That includes for much of the climb up Thompsons Hill from the direction of Lake Hayes Estate and on the approach to the trail from Morven Ferry Road and the Arrow Bridge Trail.

[102] On the other hand, there would be a plain view of development of the Site and that would significantly contrast to the open pastoral character of LCU 18 in the environs. Hence, whilst fleeting, the visual impact would be quite significant and memorable.

[103] It is of course somewhat artificial to try to treat those views from the public land segments of the trail in isolation from a trail user's experience on intervening easement sections of the trail through the Barnhill land. More realistically, a trail user's experience would be holistic. Indeed, the court's viewing reinforced to us that a significant part of a trail user's visual experience of the Site is on the easement section, between the cul-de-sac end of Morven Ferry Road and Thompsons Hill.

[104] None of the relevant PDP objectives and policies concerning landscape character and visual amenity values expressly dictate, for example, that visual impact assessment is to only be from public places. Rather, that is a matter of sound landscape practice. However, in a purposive sense, we read the PDP's exclusion from its definition of 'public place' of trails legalised by easement as intending to help inform how visual impact assessment should be approached.

[105] The PDP's relevant objectives and policies for the maintenance or enhancement of the landscape character and visual amenity values of LCUs and the Basin rely on the sound application of landscape assessment practice.

Recognising the relatively more significant weighting applied in that practice to the consideration of significant public viewpoints, the exclusion in the definition is intended to provide guidance. That is in essence for practitioners to not give significant weight to visual impacts experienced from those sections of any trail that are authorised by easement over private land. In particular, we draw from the above-quoted extract from the s32 report that accompanied PC28 for that interpretation.

[106] Potentially, it can be problematic when, as in the present case, some sections of a trail are on public land and other sections are on easement land. We resolve that by our approach in weighing the visual impact evidence.

[107] We find that Mr Espie's somewhat lower Moderate rating of the visual impact of Precinct development realistically accounts for the fleeting nature of this impact for a typical trail user. Insofar as Ms Mellsop derives a relatively higher visual impact rating, our viewings from and cycling experience of the trail leave us cautious that she may have been somewhat influenced by what we adjudge the most significant views of the Site from the easement section. Setting those most significant views aside, we find that Mr Espie's overall opinion is more realistically in keeping with what we experienced.

[108] On that basis, we find that the visual impact of development under the different zoning outcomes would range between:

- (a) Low (for the status quo WBRAZ); and
- (b) Moderate (for Precinct upzoning).

Crown Range Viewpoints: Low & Low (WBRAZ), Low-Moderate & Moderate (Precinct)

[109] The Crown Range Road is a highly popular part of the Queenstown-Lakes roading network. It is well travelled by tourists and other road users. Some will be journeying 'over the hill' from Wānaka. Others may be returning from the

Cardrona pub or Alpine Resort. For whatever reason they are on this part of the Crown Range Road, travellers are given a memorable impression of the existing landscape character of the Basin including LCU 18 from this elevated viewpoint.

[110] VP6 is the most distant of the various viewpoints assessed by the landscape experts, being some 5km from the Site. It is also the most elevated, which means the viewing experience would be more significantly impacted by weather and light conditions. Even on clear days, clouds often can obscure views down towards the Basin and, more particularly towards LCU 18 (although there were clear conditions at the time of our viewing from this viewpoint).

[111] We acknowledge that the dedicated lookout area at VP6 is not a 'public place' as the PDP defines that term. Nevertheless, in parts of the parking bay on road reserve, similar views are available. Furthermore, our viewing from this locality revealed that a passenger in a car heading towards the Basin on Crown Range Road would have a similar viewing experience to what is represented in the evidence. This viewpoint has significance in offering an early impression of the Basin's character, centring on LCU 18 and its environs, against the backdrop of the Remarkables.

[112] In the general locality of VP6, depending on weather and light conditions, the Site, marked by its central wetland feature, is a component of the view.

[113] Under a status quo WBRAZ outcome, the view would likely differ to a degree as a consequence of the implementation of the existing consents. As compared to the current open rural vista, a few rural residential dwellings, and associated landscaping and accesses, would be evident. Given the consent notice conditions, those cues to rural lifestyle living would appear well-spaced and subservient to a generally open pastoral landscape setting.

[114] Under a Precinct upzoning outcome, the view would instead be of a legible node of rural living, in the foreground to the Remarkables. That node would not

appear subservient to an open pastoral setting, but as a satellite settlement of homes and outbuildings and their landscaped grounds and an associated grid of accesses.

[115] Turning next to the Zig-zag public lookout (VP1), anyone viewing LCU 18 and the Site from VP1 would have stopped purposely so as to take in the Basin vista. As compared to VP6, the view would be significantly less elevated and closer (some 2.5 km from the Site). Much of the Barnhill land would be hidden from view by hills near to this lookout. However, the MFL part of the Site would be plainly in view. Again, that part of the Site would be seen against the backdrop of the Remarkables. The MFL part of the Site would be viewed as part of the foreground to Morven Hill.

[116] Under a status quo WBRAZ outcome, with the likely implementation of the MFL consent, there would be a closer view of associated established rural residential dwellings, and associated landscaping and accesses. Again they would appear well spaced and subservient to a generally open pastoral landscape setting.

[117] Under a Precinct upzoning outcome, a legible node of rural living would be dominant in the foreground to the Remarkables. As with VP1, it would appear as a satellite settlement of homes and outbuildings and their landscaped grounds and an associated grid of accesses.

[118] On matters of visual impact from these Crown Range Road viewpoints, therefore, we largely prefer and accept Ms Mellsop's evidence.

[119] We do not accept Mr Espie's characterisation of the Site as "visually hidden". That is simply not in keeping with our findings, especially on what can and would be seen from Crown Range Road viewpoints. Overall, we find Mr Espie to have significantly understated the different visual impression from these localities of Precinct-enabled development as compared to the relatively subservient pattern that is likely to emerge with implementation of the existing

consents.

[120] For those reasons, we find as follows:

- (a) from views in the vicinity of VP6 (Chain Bay 4), Low (for the status quo WBRAZ) and Low-Moderate (for Precinct upzoning);
- (b) from VP1 (Zig-zag lookout), Low (for the status quo WBRAZ) and Moderate (for Precinct upzoning).

Summary of visual impact ratings

[121] In summary, therefore, our findings on visual impacts from the noted viewpoints for development under a status quo WBRAZ or Precinct upzoning outcome are as follows:

	WBRAZ	Precinct
<i>Near Viewpoints</i>	Low	Low
<i>SH6</i>	Low	Low
<i>Twin Rivers Trail</i>	Low	Moderate
<i>Crown Range Road – Chain Bay 4 (VP6)</i>	Low	Low-Moderate
<i>Crown Range Road – Zig-zag Lookout (VP1)</i>	Low	Moderate

Whether visual amenity values and landscape character maintained

[122] Those findings on visual impact significantly inform our findings on how zoning options compare with respect to the PDP’s intentions that visual amenity values be maintained or enhanced. That is also the case for the PDP’s intentions concerning the maintenance or enhancement of landscape character.

[123] We find Sch 24.8’s above-noted description of “potential landscape issues and constraints associated with additional development” as appropriate (subject to the minor refinement that the experts agree in their JWS – landscape).

[124] It is the described landscape setting of the framing ONF/Ls that are of particular significance to the consideration of the maintenance of landscape character. We accept Ms Mellsoy's evidence in finding that setting of particular significance with respect to viewpoints from public place parts of the Twin Rivers Trail and the two noted Crown Range Road viewpoints. From those viewpoints, inappropriate subdivision and development of the Site could have a significantly adverse effect on the landscape character that those framing ONF/L help contribute to both LCU 18 and the Basin as a whole.

[125] Under the status quo WBRAZ, there would be no significant impediment to implementation of the existing consents. However, given further subdivision and development would be a non-complying activity, any proposal would need to pass the s104D threshold for it to be consentable. Hence, at that stage and on any consideration on the merits, it can be anticipated that any proposal would be fully tested by reference to the PDP's relevant objectives and policies. On the evidence, we find the status quo WBRAZ would be appropriate to assist to achieve the PDP's intentions that the visual amenity values and landscape character would be maintained.

[126] In contrast, upzoning the Site to Precinct would enable development that would fail to maintain the visual amenity values and landscape character of LCU 18 and the Basin.

[127] We accept Mr Espie's point that the land that "actually acts as a foreground" in views of the Remarkables and Morven Hill is not the Site but other intervening land. However, perceptions from both parts of the Twin Rivers Trail and the two noted Crown Range Road Viewpoints are different. We agree with Ms Mellsoy that, as perceived from those viewpoints, the Site is set against the backdrop of those ONF/Ls.

[128] That setting significantly colours how development under a Precinct upzoning would be perceived. That is in contrast to any incremental further

development beyond the existing consents that may occur as a non-complying activity under a status quo WBRAZ outcome.

[129] As noted, the pattern of development as may emerge with implementation of the existing consents and under the WBRAZ is likely to be of well-spaced dwellings and landscaped curtilages and accesses that appear quite subservient in a predominantly pastoral landscape setting. We accept Ms Mellsop's opinion that open landscape character offers an important buffer between the more closely developed areas of Precinct zoning in the locality and the ONF/Ls that frame LCU 18. In those terms, Sch 24.8 accurately characterises LCU 18 as fulfilling a "transition role" between the mountain ONL and the lower-lying and more 'developed' river terrace to the north and east.

[130] Therefore, we also find appropriate Sch 24.8's statement that this role means the area is "sensitive to additional development" (but not with the added qualifier "in a general sense" as Mr Espie recommends).

[131] Precinct upzoning would enable a material change to that landscape character and associated visual amenity values. We find Mr Espie's comparisons with the Rapley Close / Whitechapel and Dalefield areas of some assistance in envisaging the nature of this change, as it would be perceived from the noted viewpoints. That is of an isolated rural lifestyle enclave in LCU 18 that would exhibit "a relatively busy (for a rural area) but well treed type of character".⁶⁴

[132] That would be a significant change from the more open pastoral character likely to be maintained with the implementation of the existing consents.

[133] Therefore, we prefer Ms Mellsop's evidence on these matters. By enabling development of a large somewhat isolated rural lifestyle enclave in the foreground of elevated views towards Morven Hill and the Remarkables, we find that Precinct

⁶⁴ Espie EIC, at [74], [75].

upzoning of the Site would materially:

- (a) alter the sense of place and landform patterning of LCU 18 including its mix of rural and rural lifestyle / hobby farming areas, including relatively dispersed dwellings and its relative openness; and
- (b) compromise the function of LCU 18 as a transition between the mountain ONF/Ls and the lower-lying more ‘developed’ river terrace to the north and east.

[134] Therefore, we find Precinct upzoning would:

- (a) detract from people’s appreciation of those valued associative attributes of the LCU 18 landscape; and
- (b) therefore, fail to maintain landscape character and visual amenity values. That is both of LCU 18 and the wider Basin. For the wider Basin, that is particularly because of how visible Precinct development would be from the Zig-zag lookout (and also the part of Crown Range Road in the vicinity of Chain Bay 4). We find that there would be an associated impression of change of landscape character that would spill beyond LCU 18 to the Basin more widely.

What is the landscape capacity of the Site and LCU 18?

[135] It follows that we do not accept Mr Espie’s recommended uprating of the specified landscape capacity for LCU 18 to Moderate-High (for the Site) and Moderate-Low (for the balance of LCU 18).

[136] Apart from not according with our findings on landscape character and visual amenity values, such an uprating would not assist to achieve PDP Obj 24.2.1. That is particularly with respect to its consequences for the evaluation of subdivision and development proposals for the Site. Where a LCU or area within a LCU is ascribed a landscape capacity greater than ‘Moderate-Low’, Pol 24.2.1.2

does not apply. That means there would no longer be a policy direction to ensure the landscape character of the Basin as a whole is maintained or enhanced in any subdivision or development of the Site. Such an outcome would not be in accordance with our finding that the Site has an important landscape character relationship with the framing ONF/Ls.

[137] We accept Ms Mellsop's opinion in finding that the Low landscape capacity that the PDP ascribes to LCU 18 is appropriate. A significant cause of that limited capacity is the extent of existing development that has occurred to date in LCU 17 and LCU 18.

[138] However, we do not entirely agree with Ms Mellsop that the landscape capacity of the Site would be taken up by implementation of the existing consents. We find that, under a scenario where the appellants elected to seek replacement consents for comprehensive treatment of the Site (as a single unit), there would be limited further development potential (with that being predominantly on the Barnhill land and in proximity to the central wetland).

[139] With any further development of the Site, it would be important to take careful account of the Site's natural attributes. Minimising visual impacts from public place sections of the Twin Rivers Trail and from the noted Crown Range Road viewpoints would be important in order to maintain the landscape character and visual amenity values of LCU 18 and the Basin as a whole.

Findings as to the most appropriate zoning outcome for the Site

Precinct upzoning is not appropriate

[140] On the basis of those findings, Precinct upzoning would not assist to achieve Obj 24.2.1 and would, similarly, be in conflict with SO 3.2.5.8. As it would conflict with the related PDP intentions for the Wakatipu Basin, we find this option inappropriate and decline this relief.

The evidence supports limited WBRAZ modification

[141] We have noted that there is some limited potential for further subdivision and development of the Site, particularly on the Barnhill land and in proximity to the central wetland area. However, on the evidence, we find the non-complying activity regime of the status quo WBRAZ is the most appropriate zoning option for the purposes of considering any such development proposal. The likelihood that the appellants will elect to fully implement their existing resource consents does not alter that finding.

[142] The evidence identifies some appropriate limited modifications to one aspect of the status quo WBRAZ as we now discuss, namely what Sch 24.8 specifies for LCU 18.

Refinements to Sch 24.8 in respect to LCU 18

[143] We find some minor refinements to Sch 24.8 with respect to LCU 18 are appropriate largely as agreed by the landscape experts in the JWS – landscape. That is, in summary to the following effect:

- (a) adding reference to ‘irrigation race’ to the description of ‘hydrology’;
- (b) updating the description of ‘typical lot sizes’ as part of the description of ‘settlement patterns’ so that it would read as recommended by Ms Mellsop, namely:

Typical lot sizes: vary, with the majority of unit > 10ha hectares and approximately a third of the lots between 25 and 50ha. There are a few small lots less than 1ha.

- (c) replacing ‘route’ with ‘road network’ in the description of ‘proximity to key route’; and
- (d) replacing the reference to ‘Crown land’ with ‘public land’ in the description of visibility from the Queenstown Trail.

[144] On the basis of our evidential findings, we do not accept any of the other recommendations in the JWS – landscape that the landscape experts did not agree about. In particular, we determine that no change is appropriate to the Low landscape capacity rating that Sch 24.8 ascribes for LCU 18. That is not to say that there is no available capacity for some further subdivision and development of the Site beyond the limits enabled by the existing consents. We refer to our related observations in this decision on that theme. However, the characterisation of that capacity as Low remains appropriate for the Site even if it has relatively greater capacity than other parts of LCU 18. Whether or not that proves to be so is a matter for any non-complying consent application process.

[145] Therefore, we find the only modifications to the status quo WBRAZ are the noted refinements to what Sch 24.8 specifies with respect to LCU 18.

[146] In all other respects, we find that the status quo WBRAZ is the most appropriate zoning outcome for the achievement of the relevant PDP objectives and policies. That is particularly insofar as it would:

- (a) best enable the proper testing of any subdivision or development proposal on the Site for whether it would maintain or enhance the landscape character and visual amenity values of LCU 18 and the Basin as a whole (and related matters of landscape capacity); and
- (b) therefore also assist to uphold the integrity of the Wakatipu Basin framework, including the non-complying activity regime.

Conclusion

[147] For those reasons:

- (a) the appeals are, on all points to which this decision applies, **declined** (except to the limited extent that we direct that the text of Sch 24.8 be updated as we have set out);

- (b) QLDC is directed to update Sch 24.8 in accordance with its closing submissions and to file a memorandum, within 15 working days, proposing a date by which it would inform the court and appellants that Sch 24.8 has or will be updated; and
- (c) costs are reserved. Any party seeking costs is to consult on an appropriate timetable and file a proposed timetable **within 20 working days of completion of the step in (b)**. Unless otherwise directed, any costs' application and submissions are to be filed accordingly.

For the court



J J M Hassan
Environment Judge



Annexure 1

Relevant objectives and policies

[1] The relevant PDP objectives are in Chs 3 (Strategic Direction), 24 (Wakatipu Basin) and 27 (Subdivision and Development). As the geographic focus is the Wakatipu Basin, those objectives and policies pertaining to that locality have particular significance.

Ch 3: Strategic Direction

[2] Strategic objective SO 3.2.5.8:

Within the Wakatipu Basin Rural Amenity Zone:

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

[3] Ch 3 includes an associated definition of ‘landscape capacity’ that relevantly states:

b. ‘Landscape capacity’:

...

- iii. in relation to those parts of the Wakatipu Basin Rural Amenity Zone that are identified in Schedule 24.8 to have Moderate capacity, means the capacity of the landscape character unit to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values;
- iv. in relation to those parts of the Wakatipu Basin Rural Amenity Zone that are identified in Schedule 24.8 to have Very Low, Low or Moderate-Low capacity, means the capacity of the landscape character unit and that of the Basin as a whole to accommodate subdivision and development without

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

Chapter 24 – Wakatipu Basin

24.1 Zone Purpose

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

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

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

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

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

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

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

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

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

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

Obj 24.2.1

[5] This objective is:

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

Policies to achieve and implement Obj 24.2.1

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

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

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

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

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

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

not exceeded.

- 24.2.1.4 Within those areas identified as having a landscape capacity rating of Moderate, do not allow any new residential development and subdivision for residential activity that is not located and designed so as to:
- a. avoid sprawl along roads;
 - b. maintain a defensible edge to and not encroach into any area identified as having Moderate-Low, Low or Very Low landscape capacity rating;
 - c. minimise incremental changes to landform and vegetation patterns associated with mitigation such as screen planting and earthworks which adversely affect important views of the landform and vegetation character identified for the relevant Landscape Character Units in Schedule 24.8; and
 - d. not degrade openness when viewed from public places if that is identified in Schedule 24.8 as an important part of the landscape character of the relevant area, including as a result of any planting or screening along roads or boundaries.
- 24.2.1.5 Ensure the following outcomes in the consideration of any proposal for subdivision or residential development:
- a. *[left intentionally blank]*
 - ...
- 24.2.1.6 Ensure subdivision and development is designed (including accessways, services, utilities and building platforms) to minimise inappropriate modification to the natural landform.
- 24.2.1.7 Ensure that subdivision and development maintains or enhances the landscape character and visual amenity values identified in Schedule 24.8 - Landscape Character Units.
- 24.2.1.8 Maintain or enhance the landscape character and visual amenity values of the Rural Amenity Zone including the Precinct and surrounding landscape context by:
- a. controlling the colour, scale, form, coverage, location (including setbacks) and height of buildings and associated infrastructure, vegetation and landscape elements.

- 24.2.1.9 Require all buildings to be located and designed so that they do not compromise the landscape and amenity values and the natural character of Outstanding Natural Features and Outstanding Natural Landscapes that are either adjacent to the building or where the building is in the foreground of views from a public road or reserve of the Outstanding Natural Landscape or Outstanding Natural Feature.
- ...
- 24.2.1.13 Control earthworks and vegetation clearance to minimise adverse effects on landscape character and visual amenity values.
- ...
- 24.2.1.15 Provide for activities that maintain a sense of spaciousness in which buildings are subservient to natural landscape elements.
- ...
- 24.2.1.18 Ensure subdivision and development maintains a defensible edge between areas of rural living in the Precinct and the balance of the Rural Amenity Zone.
- 24.2.1.19 Require buildings, or building platforms identified through subdivision, to maintain views from roads to Outstanding Natural Features and the surrounding mountain Outstanding Natural Landscape context, where such views exist; including by:
- a. implementing road setback standards; and
 - b. ensuring that earthworks and mounding, and vegetation planting within any road setback, particularly where these are for building mitigation and/or privacy, do not detract from views to Outstanding Natural Features or Outstanding Natural Landscapes; while
 - c. recognising that for some sites, compliance with a prescribed road setback standard is not practicable due to the site size and dimensions, or the application of other setback requirements to the site.

Schedule 24.8

[7] Schedule 24.8 sets out some 24 related landscape character units. It is prefaced by the following commentary:

Schedule 24.8 – Landscape Character Units identifies and describes 24 landscape character units, all of which are within the Wakatipu Basin. The schedule is a tool to assist with the identification of the landscape character and amenity values that are to be maintained or enhanced within each landscape character unit, and across the Wakatipu Basin more generally.

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

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

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

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

Ch 27 Subdivision and Development

[9] The Ch 27 objectives and policies are primarily directed towards the more

specific intentions of subdivision design and control. These provisions effectively apply subject to the strategic directions in Ch 3 and the directions given in regard to landscape and visual and other amenity values concerning the Wakatipu Basin in Ch 24. Nevertheless:

(a) Obj 27.2.1 is:

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

(b) Obj 27.2.2 is:

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

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

Annexure 2

Plans referred to in our associated reasons

Figure 1: *Reproduction of map from PDP Sch 24.8 showing LCU 17 and 18 and other LCUs*

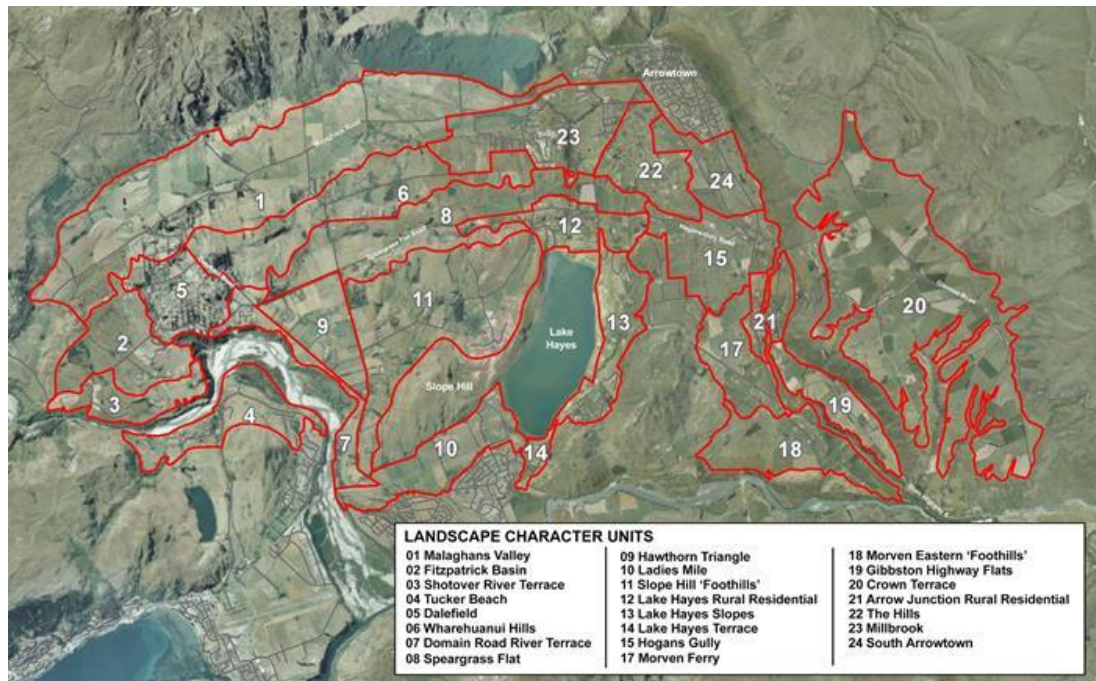


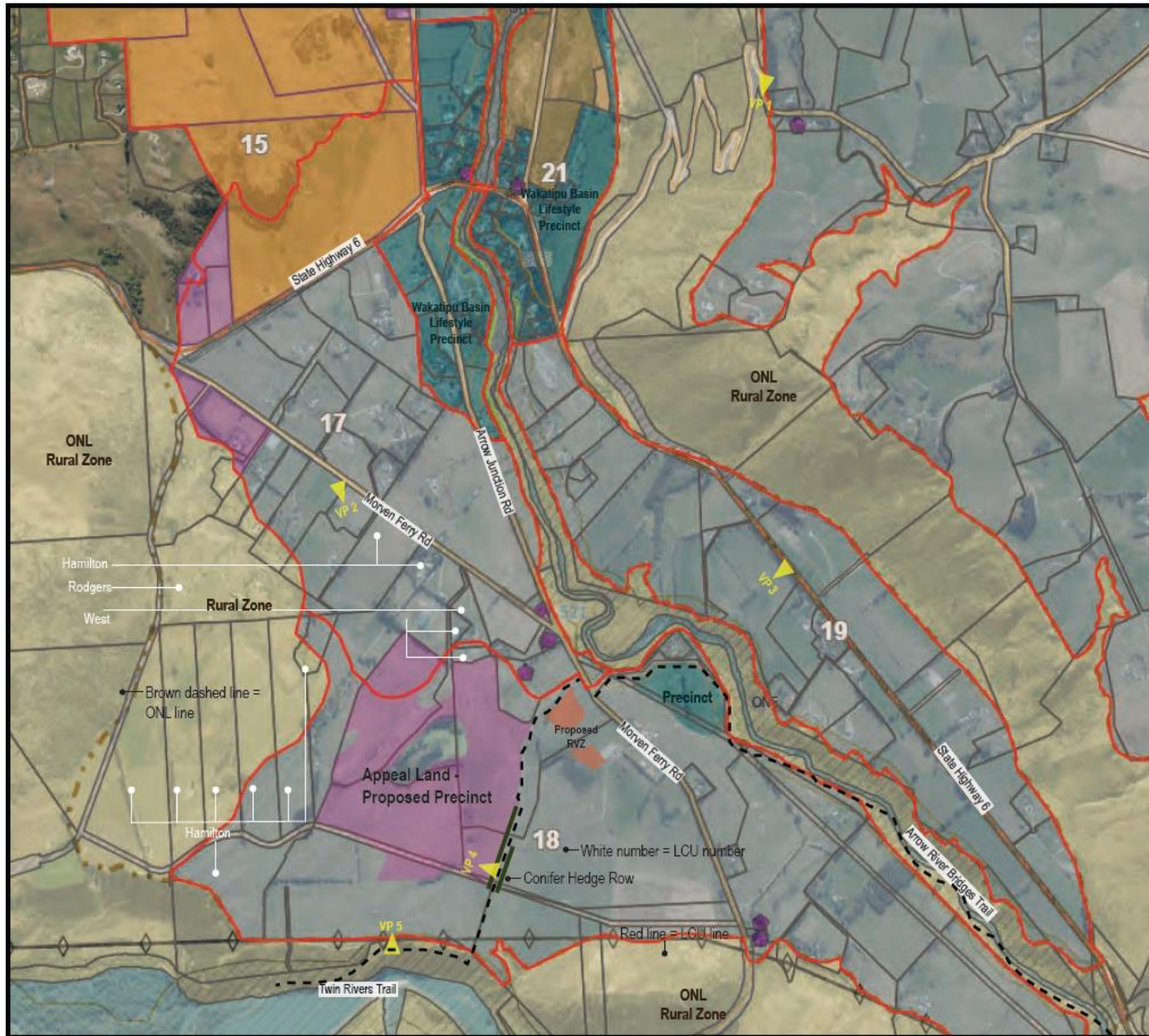
Figure 2: *'Context and viewpoint' plan*

The following Figure 2 is a reproduction of the plan in Appendix 1 to the evidence-in-chief of Ben Espie, landscape architect called by the appellants and shows the Site in their immediate environs.

Mr Espie's Appendix 1 also includes the following narrative which we reproduce for context only (not as findings):

NOTES

The base data for this plan is taken from the QLDC mapping database on 3/11/21. The viewpoints shown on this plan (labelled VP) are the locations from which the photographs of Appendix 7 have been taken. Viewpoint 6 is not shown on this plan and is at Chain Bay 4 on the Crown Range Road, to the east of the extent of this page. The extent of the appeal land is labelled and this is also the area within LCU18 that is found to have a moderate-high capability to absorb further development. Uncontested areas of Lifestyle Precinct are shown as a dark turquoise shade. Rural Zone areas are shown as a yellow shade. In relation to relevant trails, the trail on the western side of Morven Ferry road is the Twin Rivers Trail and the trail on the eastern side of Morven Ferry Road is the Arrow River Bridges Trail



NOTES

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EVIDENCE - APPENDIX 1: CONTEXT AND
VIEWPOINT PLAN