

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2023] NZEnvC 207

IN THE MATTER of the Resource Management Act 1991

AND an appeal under cl 14 of Schedule 1 of
the Act

BETWEEN WATERFALL PARK
DEVELOPMENTS LIMITED

(ENV-2019-CHC-90)

Appellant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

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

Hearing: at Queenstown on 25–29 July 2022

Appearances: W P Goldsmith for the Waterfall Park Developments Ltd
M G Wakefield for the Queenstown Lakes District Council
P J Page for James and Rebecca Hadley and Jan Andersson
A Davis for Friends of Lake Hayes Society Inc
N M Laws for Otago Regional Council

Last case event: 25 November 2022

Date of Decision: 22 September 2023

Date of Issue: 22 September 2023

**INTERIM DECISION OF THE ENVIRONMENT COURT
Stage 2: Topic 31 – Ayrburn**



- A: The Arrowtown Urban Growth Boundary will remain unchanged. This aspect of the appeal is declined.
- B: That portion of the Site known as Ayrburn Domain is to be rezoned Waterfall Park Zone to include the various provisions noted herein. This aspect of the appeal is allowed. QLDC is directed to make any necessary consequential changes to the planning maps and the mapped boundaries of LCU 23 and LCU 8 in Sch 24.8 to ensure those boundaries are aligned.
- C: As for the balance of the Site known as Ayrburn Farm, Precinct subzoning (whether or not modified) is not appropriate. The most appropriate zoning is Wakatipu Basin Rural Amenity Zone although the court reserves determination of whether this can include the modifications identified and for the purposes given in this decision. Directions are made to allow parties to provide supplementary submissions and associated drafting for the purposes of the court's final decision.
- D: Costs are reserved.

REASONS

Introduction

[1] This decision is on Topic 31 in Stage 2 of the review of the Queenstown Lakes District Plan ('PDP'). It concerns an appeal by Waterfall Park Developments Limited ('WPDL') against decisions by Queenstown Lakes District Council ('QLDC') in relation to the PDP.¹

[2] Those decisions determined the content of relevant provisions of Ch 4 Urban Development, including as to the Arrowtown Urban Growth Boundary ('Arrowtown UGB'). They also concerned a variation to include Ch 24: Wakatipu

¹ ENV-2019-CHC-90.

Basin and associated zoning maps. As part of that, the Site was determined to be included in the Wakatipu Basin Rural Amenity Zone ('WBRAZ').

[3] WPD L owns land at 343 Arrowtown Lake Hayes Road ('Site'). Its appeal seeks:

- (a) extension to the mapped boundaries of the Arrowtown UGB towards and including part of the Site; and
- (b) change to the zoning of the Site from WBRAZ to a mix of zonings as we discuss later in this decision.

[4] WPD L's relief is opposed by QLDC. Various aspects were opposed by the s274 parties to the appeal.² Those included Friends of Lake Hayes Society Incorporated ('FOLH'), James and Rebecca Hadley ('Hadleys'), Jan Andersson and Otago Regional Council ('ORC') each of whom participated in the hearing.

The Site and environs

Physical aspects and features

[5] In summary, the Site is a 45.9 ha parcel of land accessed via the recently constructed Ayr Avenue from Arrowtown Lake Hayes Road on its eastern frontage. Immediately to the north of the Site are the Waterfall Park Zone ('WPZ') and Millbrook Resort Zone.

[6] Features of the Site and the neighbouring Waterfall Park are as depicted in the following Fig 1:³

² The parties who joined the appeal under s274 RMA are Otago Regional Council by notice dated 5 June 2019, Friends of Lake Hayes Soc Inc by notice dated 20 June 2019, James and Rebecca Hadley by notice dated 31 May 2019, Jan Andersson by notice dated 5 June 2019, Millbrook Country Club Ltd, by notice dated 31 May 2019, McGuinness Pa Ltd by notice dated 5 June 2019, Jessica Wilkinson and John Thomssen withdrew as parties by memorandum of counsel dated 21 December 2020.

³ Copy reproduced from J Brown EIC at [3.1], Fig. 2.

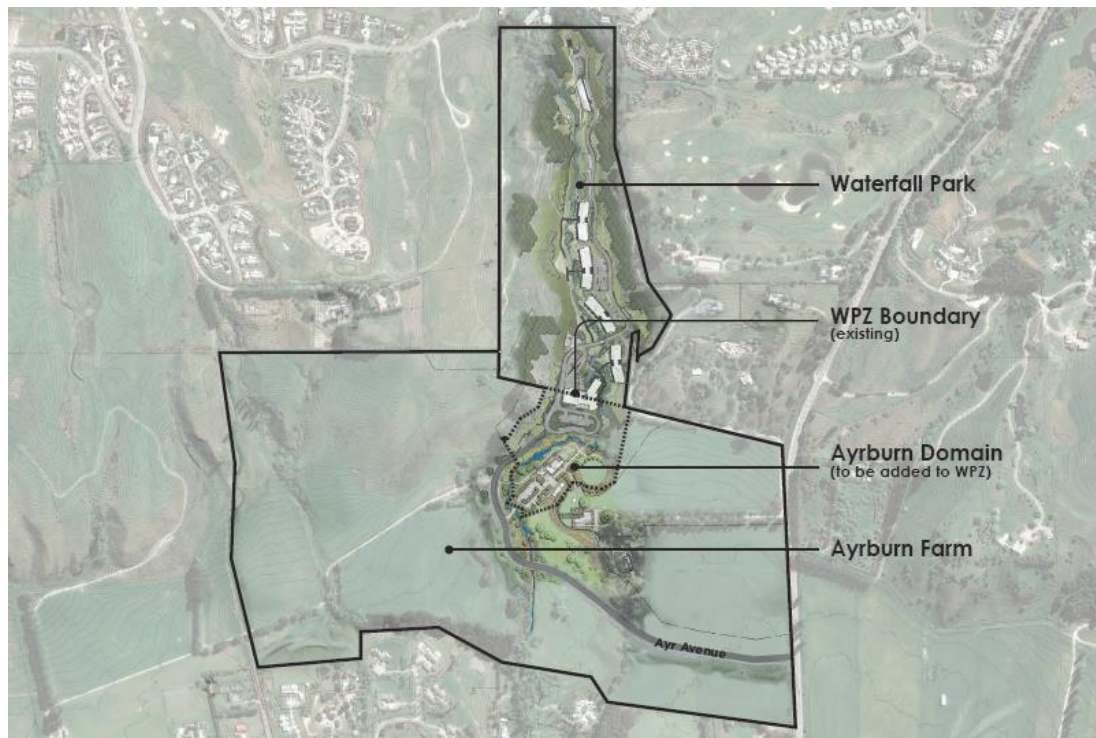


Figure 1 – the Site and neighbouring Waterfall Park

[7] Alongside the Arrowtown Lake Hayes Road frontage of the Site are two main terraces (‘eastern and central terraces’) separated by a narrow plain either side of Mill Creek. Mill Creek meanders through the Site generally from north to south before flowing under Speargrass Flat Road and continuing south as the main tributary feeding Lake Hayes. Its headwaters are somewhere north of Millbrook Resort.

[8] Further to the west, the Site rises towards the flanks of Christine’s Hill. Part of the Countryside Trail runs along the western boundary of the Site in this locality.

[9] The adjacent WPZ is a special zone (PDP Ch 42) providing for a visitor and residential resort known as Waterfall Park. WPZ takes its name from a waterfall feature of Mill Creek. WPDL is making improvements to the riparian margins of Mill Creek as part of that development. It seeks to continue those in the reach through the Site and makes provision for that in structure plan provisions it seeks as part of its rezoning relief.

[10] WPDL seeks that the part of the Site known as ‘Ayrburn Domain’ be incorporated into WPZ. As can be seen in Fig 1, Ayrburn Domain is part of the flatter ‘eastern terrace’ of the Site. It features the historic Ayrburn Homestead accessed via a separate avenue flanked by established trees. Also within Ayrburn Domain are the historic woolshed and farm buildings of the former Ayrburn Farm. Those historic features are part of an attractive gateway and setting for Waterfall Park. The rezoning of this portion of the Site WPZ is not contentious.

Zoning of the Site and environs

[11] Between the southern boundary of the Site and Speargrass Flat Road is a string of established rural lifestyle dwellings. Although spilling across Speargrass Flat Road, these are part of the enclave of ‘North Lake Hayes’ that is zoned Lifestyle Precinct (‘Precinct’) under the PDP. The general zoning pattern in the vicinity is as depicted in the following Fig 2:⁴

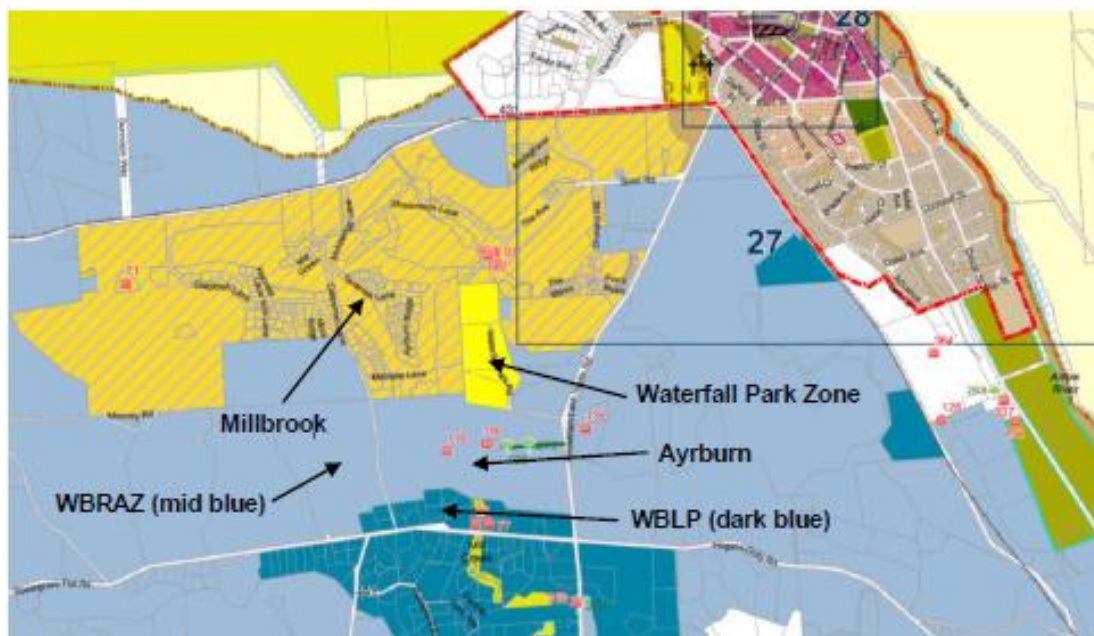


Figure 2 – PDP excerpt from planning map 26

⁴ Copy reproduced from J Brown EIC, at [3.6], Figure 3.

[12] In Fig 2:

- (a) the Site is part of the mid blue middle swathe (all zoned WBRAZ);
- (b) WPZ and Millbrook Resort Zone are to the north as marked (WPZ coloured bright yellow); and
- (c) North Lake Hayes is shown below the Site labelled 'WBLP' and coloured dark blue.

Landscape setting

[13] As we discuss more fully in Annexure 2, an intention of the WBRAZ is to maintain or enhance the landscape character and amenity values of the Wakatipu Basin and of particular mapped and identified Landscape Character Units.

[14] The landscape setting of the Site is the alluvial Speargrass Flat/Hogans Gully valley east of Lower Shotover/Hunter Road, its enclosing schistose landforms, and the rural living area extending south to Lake Hayes.⁵

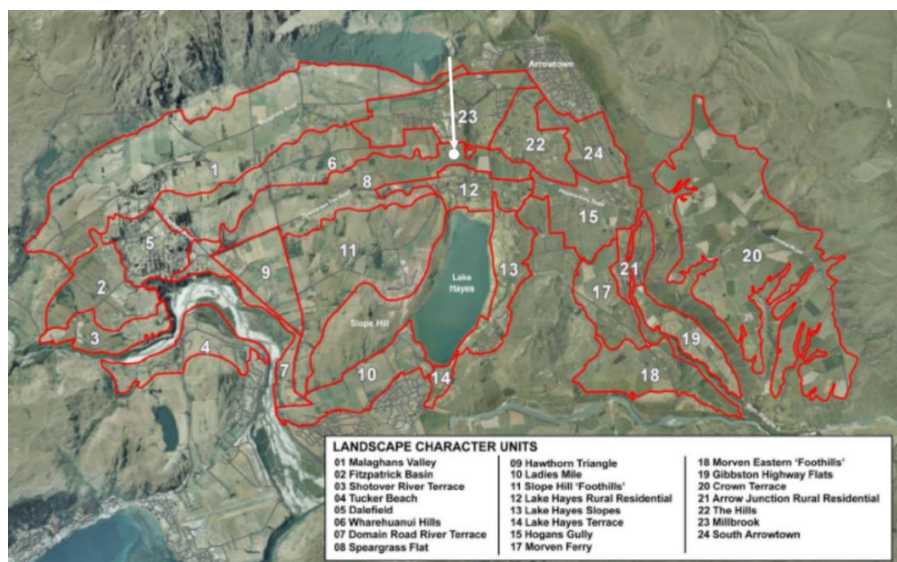


Figure 3 – Landscape Character Units including LCU 8 as reproduced from *PDP Sch 24.8*

⁵ Mellsope EIC, at [6.3].

[15] The 24 LCUs depicted in Fig 3 above and mapped in PDP Sch 24.8 were identified in the Wakatipu Basin Land Use Study ('WBLUS') that underpinned development of the variation that included Ch 24 in the PDP. We have added the white dot and arrow to depict the approximate location of the Site in LCU 8. As can be seen Fig 3:

- (a) Arrowtown sits beyond LCU 23: Millbrook LCU 22: The Hills and LCU 24: South Arrowtown;
- (b) LCU 8: Speargrass Flat comprises a relatively narrow east-west swathe of Speargrass Flat from the Hawthorn Triangle (LCU 9) to Hogans Gully (LCU 15);
- (c) tucked below LCU 8 to the south is LCU 12: Lake Hayes Rural Residential. LCU 12 is part of the landscape setting we described earlier. In terms of geomorphology, both LCUs are related, but the long-established rural living overlay of Lake Hayes North makes it appropriate to show these as separate LCU.

[16] A hook of LCU 23 can be seen in Fig 3 just above the Site and intruding into LCU 8. That hook includes both Millbrook Resort Zone and WPZ within LCU 23. It is more clearly shown in the following Fig 4 from Ms Mellsop's evidence:⁶

⁶ Mellsop EIC, at [10.3] (her Fig 1).

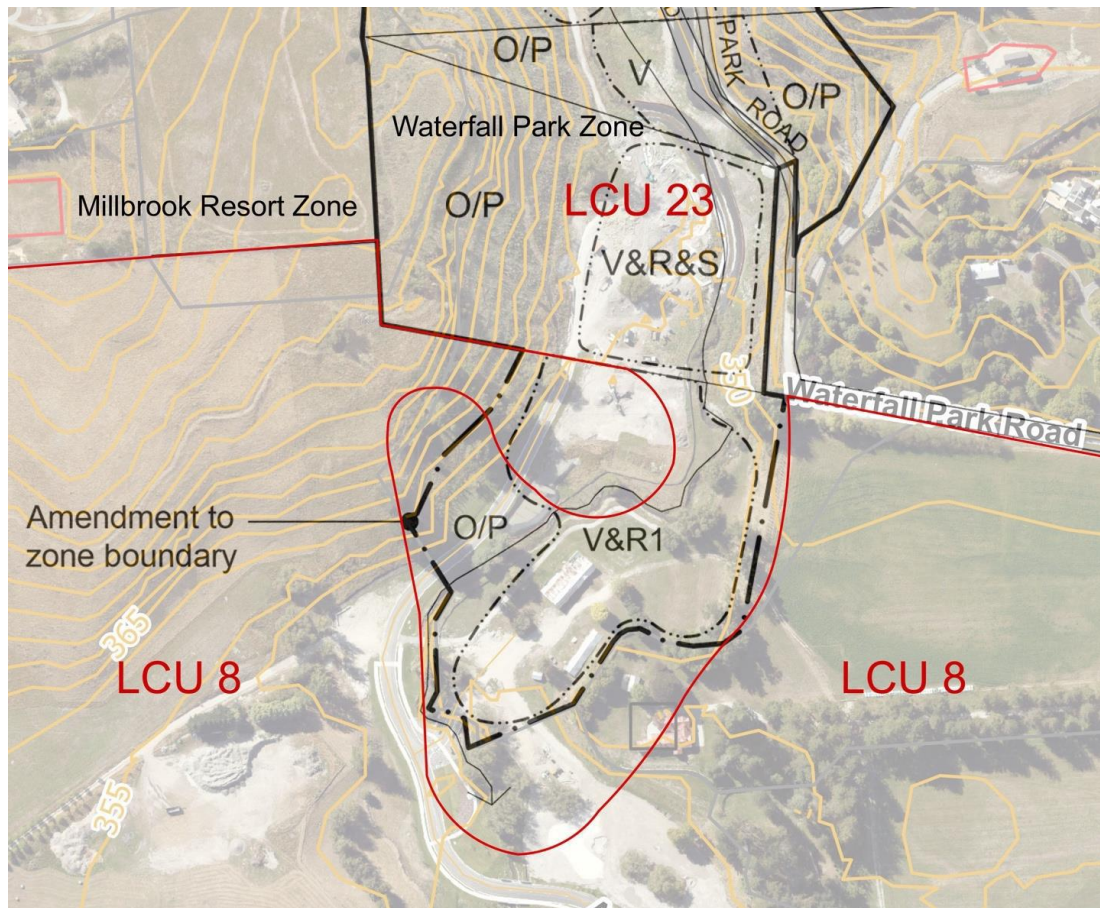


Figure 4 – LCU8/LCU 23 boundary in Sch 24.8

[17] As we understand it, the hook seeks to align LCU 8 and LCU 23 with zone boundaries in this locality. We direct that the LCU 23 boundaries be further realigned as a consequence of our decision to extend to Ayrburn Domain as will be included in WPZ as WPD L seeks.

Landscape character, values and issues and development capability ratings in LCUs in the vicinity of the Site

[18] For each LCU, Sch 24.8 includes a description of landscape character and values and other matters. It includes a rating of the “capability” of each LCU (or specified areas of an LCU) “to absorb additional development” (i.e. “landscape capacity”).⁷ The rating is according to a six-point qualitative scale (“Very Low”,

⁷ ‘Landscape capacity’ is the equivalent term used in various PDP objectives and policies and we use that term.

“Low”, “Moderate-Low”, “Moderate”, “Moderate-High” and “High”). Directions in associated policies in Ch 24 and 27 mean that those ratings can affect how subdivision and development are considered in different LCUs. However, Sch 24.8 includes a rider that 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”.

LCU 8: Speargrass Flat

[19] For LCU 8, Sch 24.8, describes the following “environmental characteristics and visual amenity values to be maintained and enhanced” (the Site being within its “eastern portion”):

Central and western portion of LCU 8

Sense of openness and spaciousness as a ‘foil’ for the more intensively developed rural residential areas nearby.

Maintenance of unobstructed rural views from Speargrass Flat Road to the largely undeveloped hillslopes and escarpment faces to the north and south.

Eastern portion of LCU 8

Integration of buildings with landform and/or planting.

Maintenance of a spacious and open outlook in views from the Queenstown Trail and Arrowtown Lakes Hayes Road, including the southbound view as one descends Christine’s Hill.

Maintenance of openness in views from Hogans Gully Road to the backdropping hill /escarpment landforms and broader ONL mountain context.

[20] Sch 24.8 prescribes a Low landscape capacity rating for LCU 8 as a whole.

LCU 12: Lake Hayes Rural Residential

[21] In contrast, for the adjacent LCU 12, the landscape capacity rating is High. Schedule 24.8 provides a brief commentary on its landscape character and visual amenity values. It specifies some “potential landscape issues and constraints associated with additional development.” Notably, with reference to the string of

established rural lifestyle properties along the northern side of Speargrass Flat Road adjacent to the Site, it specifies that there is an “Absence of legible edges to the west and north edges of the unit”.

Statutory framework

[22] In our *de novo* consideration of the appeal, we have the same powers, duties and discretions as QLDC (and its independent commissioners) had in regard to the decision appealed (s290, RMA). We have regard to the appealed decision (s290A, RMA).

[23] Annexure 1 addresses the RMA statutory framework (and related legal principles). This Annexure also sets out those PDP objectives and policies and other provisions we find to significantly frame and give direction to the evaluative judgments we make in determining the outcome of the appeal. We do not set out provisions of higher order RMA regional and national policy instruments as we are satisfied the PDP provisions we discuss give effect to those instruments on all matters of significance for our findings.

Evidence

[24] The witnesses heard or whose evidence was taken as read are as listed in Annexure 3.

Site visits

[25] In accordance with the parties’ recommended itinerary, the court undertook Site visits and viewings. These included driving through and walking parts of the Site (via Ayr Avenue) and Waterfall Park and taking views from the Countryside Trail and other public viewpoints. In addition, we viewed the Site from the Millbrook residence of s274 party, Mr Andersson.

Structure of the remainder of this decision

[26] We structure the remainder of this decision in the following parts addressing the noted components of WPDL's relief:

- (a) Arrowtown UGB;
- (b) Ayrburn Domain;
- (c) Ayrburn Farm.

Arrowtown UGB

Introduction

[27] This aspect of WPDL's relief was expressed as follows in its notice of appeal:⁸

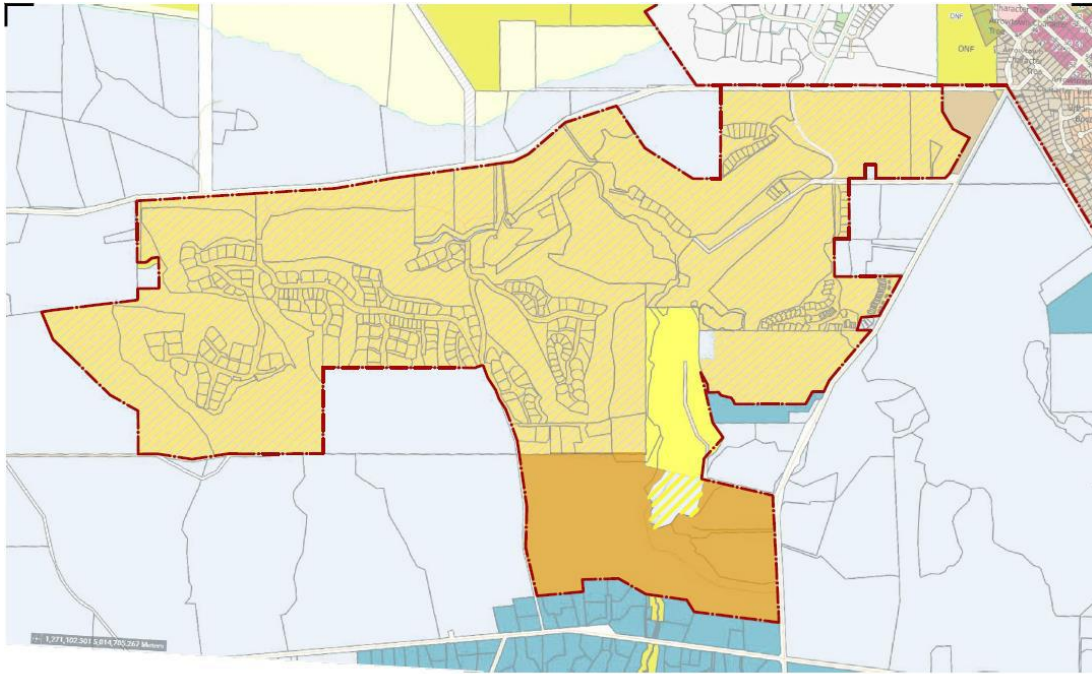
... that a UGB be inserted into the relevant Planning Maps containing the land within the Arrowtown UGB and/or the Millbrook Zone and the WPZ and the Ayrburn Zone or extended WPZ – or any combination of those areas.

[28] It would add in the order of 346 ha to the Arrowtown UGB, rendering it some 1.5 times larger than the present area of the Arrowtown village UGB.⁹ The proposed expansion is illustrated in the following Fig 5:¹⁰

⁸ WPDL notice of appeal, at [21].

⁹ Langman EIC, at [7.16].

¹⁰ J Brown EIC, at [3.65] his Fig 10.



Urban Growth Boundary - Millbrook, Waterfall Park and Ayrburn Zones
1:10000@A3

Figure 5 – Excerpt from PDP planning map 26 showing extended UGB as recommended by J Brown

[29] The only expert evidence offered by WPDL in support of this aspect of its relief was from Mr J Brown. His opinion was not supported by any reliable foundation to enable the court to understand how the expansion of the UGB would assist to achieve the PDP’s relevant objectives. In particular, WPDL did not provide any evidence to help our understanding of how the expansion would:¹¹

- (a) assist to manage urban growth “in a strategic and integrated manner” as is specified in the Ch 3 Strategic Directions SO 3.2.2 and SP 3.3.14;
- (b) “manage the growth of urban areas within distinct and defensible urban edges” (Obj 4.2.1);
- (c) preserve “the existing urban character of Arrowtown” and avoid “urban sprawl into the adjacent rural areas” (Pol 4.2.2.12);
- (d) focus urban development “primarily on land within and adjacent to the existing larger urban areas or within and adjacent to smaller urban towns and rural settlements” (Pol 4.2.1.2);

¹¹ We refer to the updated PDP provision numbering as shown on the QLDC website.

- (e) minimise significant adverse effects on the values of open rural landscapes (Pol 4.2.1.6);
- (f) address “changing community needs, respond to monitoring evidence, or enable appropriate urban development” (Pol 4.2.1.7);
- (g) preserve the existing urban character of Arrowtown and avoids urban sprawl into the adjacent rural areas (Pol 4.2.2.12); or
- (h) be “based on existing urbanised areas” (Pol 4.2.2.13).

[30] We accept Mr Langman’s evidence in finding that the requested expansion would directly conflict with the PDP’s intentions for the Arrowtown UGB.¹² Therefore, we decline this aspect of WPDL’s relief.

Ayrburn Domain

The zoning options for Ayrburn Domain

[31] As we have noted, Ayrburn Domain is approximately 3 ha in area and WPDL seeks that it be incorporated into the WPZ as illustrated in Fig 2. The zoning options are in essence on a spectrum between:

- (a) the status quo WBRAZ (‘status quo option’); and
- (b) WPZ, subject to structure plan restrictions as proposed by WPDL (‘WPZ option’).

[32] As Mr J Brown explained, the WPZ option would enable residential and visitor accommodation activities, guided by a structure plan. The structure plan sets out where built development can and cannot happen, and enables residential development (up to 100 units) and visitor accommodation and related activities.¹³ This would be in addition to the development now consented in the WPZ which

¹² J Brown EIC, at [3.64], [3.65], [3.66].

¹³ J Brown EIC, at [3.8], [4].

Mr Langman described as follows:¹⁴

... a 380 guest unit hotel, a wellness centre, conference facilities and related activities and facilities, and the restoration and adaptive reuse of the heritage buildings in Ayrburn Domain and their use for a restaurant and bar, outdoor equipment, bike and ski hire, maintenance equipment storage, guest parking and landscaping.

[33] Central to the WPZ option is a structure plan and related provisions in terms of which built development would be confined mainly to the western terrace of the Site. Development would not be allowed on Christine’s Hill or the visually prominent eastern terrace (other than taking into account consented development). The structure plan would encompass Ayrburn Domain and identify “Activity Area R&V1” (residences and village) and “Activity Area O/P” (open space and recreation, passive recreation).¹⁵ Under the WPZ, associated rules would govern activity classifications and prescribe standards and controls. The structure plan provisions would also promote setbacks (varying between 15m and 50m) of development areas from the external boundary of the proposed WPZ extension. Within one setback area, landscaping would be promoted to avoid and mitigate potential adverse effects on the amenity values of neighbouring property owners and users of the Queenstown Trail. The structure plans also contain tree protection areas, riparian planting and residential curtilage overlays.¹⁶

[34] Mr J Brown recommends that, for Activity Area R&V1 in Ayrburn Domain, the WPZ prescribes building height and scale controls.¹⁷ That is to respect the scale of the Ayrburn Domain heritage buildings and their heritage setting and ensure visual effects are contained to the Domain. For those purposes, Mr J Brown recommends a new Pol 42.2.1.4 and r 42.5.3. The rule would prescribe a maximum building height (of RL 354.7 masl).

¹⁴ Langman EIC, at [6.2].

¹⁵ J Brown EIC, at [3.9](a) and Fig. 4.

¹⁶ J Brown EIC, at [5].

¹⁷ J Brown EIC, at [3.9], [3.10].

[35] The landscape and planning witnesses agree that the WPZ option is the most appropriate for achieving relevant PDP objectives. Initial narrow differences as to the final wording of one of the provisions recommended by Mr J Brown (Pol 42.2.1.4) were ultimately fully resolved in a second joint witness statement ('JWS-Planning 2').¹⁸

[36] Ayrburn Domain is a natural extension of the WPZ. Given its location at the gateway to Waterfall Park and its heritage, ecological and recreational association with the WPZ, it would assist to achieve Obj 42.2.1, namely:

Visitor, residential and recreation facilities and activities developed in an integrated manner with particular regard for the natural and scenic values of the setting.

[37] Importantly, structure plan controls will ensure proper respect for the heritage values of this part of the Site.

[38] Rezoning Ayrburn Domain WPZ would also allow better economic use of this part of the Site in accordance with the strategic directions in Ch 3. Conversely, leaving it as part of the WBRAZ would not materially assist to advance Obj 24.2.1 that "landscape character and visual amenity values in the Wakatipu Basin are maintained or enhanced". In particular, given Ayrburn Domain is on a low lying terrace close to the entrance to Waterfall Park, keeping it as WBRAZ would not materially assist the maintenance or enhancement of any of the following landscape character and visual amenity values identified for the eastern portion of LCU 8 in Sch 24.8:

Integration of buildings with landform and/or planting.

Maintenance of a spacious and open outlook in views from the Queenstown Trail and Arrowtown Lakes Hayes Road, including the southbound view as one

¹⁸ JWS planning dated 27 July 2022, signed by J Brown, M Langman, A MacLennan, C Vivian.

descends Christine's Hill.

Maintenance of openness in views from Hogans Gully Road to the backdropping hill /escarpment landforms and broader ONL mountain context.

[39] We find the amended structure plan and other amendments to the WPZ recommended by Mr J Brown appropriate subject to the refinement to Pol 42.2.1.4 recommended in the JWS-Planning (2). The WPZ option is the most appropriate for achieving relevant PDP objectives and more generally. Therefore, we grant this aspect of WPDL's relief and make directions for the PDP, including the planning and Sch 24.8 maps, to be updated.

Ayrburn Farm

Relief pursued – modified Precinct

Introduction

[40] The issue of the appropriate choice of zoning for Ayrburn Farm (i.e. the remaining 42.9 ha of the Site) occupied most of the time in the hearing.

[41] In its notice of appeal, WPDL sought one of three alternative zoning options for Ayrburn Farm. Two of those were not ultimately pursued such that we treat them as abandoned:

- (a) extension of WPZ to Ayrburn Farm was never advanced as part of WPDL's case;
- (b) a bespoke Ayrburn Zone designed to enable the development of a retirement village (including a village hub and some community facilities) was initially pursued. After evidence was tested, the court observed that the Site is not "suitable for a retirement village type development at all" (in the preliminary observations recorded in

Annexure 2). WPDL formally abandoned this Ayrburn Zone option in its closing submissions.¹⁹

Modified Precinct zoning is WPDL's ultimately preferred relief

[42] The third zoning option pursued in WPDL's appeal was for Ayrburn Farm to be rezoned from WBRAZ to Precinct but subject to a set of modifications to the Precinct provisions that would apply only to Ayrburn Farm. ('Modified Precinct option'). Those modifications were advanced and refined in the evidence of Mr J Brown.²⁰

[43] In essence, WPDL proposes a bespoke set of modifications to Chs 24 and 27 to enable structure plan development of Ayrburn Farm for rural living purposes. The modifications would include a bespoke new Obj 27.3.20 to the effect that rural living "is provided for in a way that is "sympathetic to the natural setting and has regard to location-specific opportunities and constraints".²¹ Several associated policies and rules would enable and direct subdivision and development of Ayrburn Farm to those ends. For example, policies and rules recommended by Mr J Brown would effectively:²²

- (a) mandate a structure plan approach to rural living development;
- (b) direct rural living areas identified on the structure plan and away from identified 'open space' areas;
- (c) strongly discourage commercial livestock farming and the use of fertilisers containing nitrogen or phosphorous; and
- (d) provide for the protection of identified open space values, and as part of a comprehensive development of the Site, landscape treatment and

¹⁹ WPDL closing submissions, dated 18 August 2022, at [3]-[7].

²⁰ J Brown rebuttal, Attachment 8.

²¹ J Brown rebuttal, Attachment 8, proposed Obj 27.3.20.

²² Provisions in Mr J Brown's rebuttal evidence (Attachment 8) we have considered for those purposes include his proposed new rr 24.4.27.1 - 25.4.27.3 and new r 24.4.26 in Ch 24 and his proposed new Pols 27.3.20.1 – 27.3.20.11, amended r 27.6.1 and new rr 27.7.18.1, 27.7.18.1A, 27.7.18.2 - 27.7.18.5 in Ch 27.

riparian and other ecological enhancements along Mill Creek and another ephemeral watercourse; and

- (e) provide for new public cycleway/walkway trails along Mill Creek that link to the Countryside Trail.

[44] As part of this carefully considered and comprehensive regime, Mr J Brown also recommends policies and other provisions pertaining to vehicle access, on-site wastewater and stormwater management and the avoidance of flood hazards. Mr J Brown also recommends consequential amendments to Schedule 24.8 in essence to bring Ayrburn Farm into LCU 12.

[45] In addition, Mr J Brown recommends that a bespoke concession to allow for subdivision at Ayrburn Farm to occur to a greater intensity than elsewhere in the Precinct. For restricted discretionary activity subdivision, a dual 4000m² minimum/1 ha average lot size would apply (in place of the Precinct's usual 6000m² minimum/1 ha standard).²³

Further changes to the modified Precinct option proposed by WPDL in closing

[46] As is recorded in Annexure 2, after the testing of evidence we made a preliminary observation that this Modified Precinct option “sits badly with” the intentions and objectives in PDP Ch 24. Counsel for WPDL responded in closing by recording that WPDL would be prepared to accept a Modified Precinct outcome that reverted to the PDP's dual 6000m² minimum/1 ha average lot size standards. In addition, in closing, counsel offered two slightly modified structure plans. These include an expansion of the landscape setback along the Countryside Trail to 75m (from the initially proposed width of 15m). Mr Goldsmith explains that this expansion is intended to overcome any concern the court may have about how development would impact upon views from the lower part of the Trail (and

²³ J Brown rebuttal, Attachment 8.

any debate about whether setbacks in this locality are to a legal road).²⁴

WPDL's ultimately proposed Modified Precinct option

[47] In essence, therefore, WPDL's ultimate relief for Ayrburn Farm is Modified Precinct but subject to the following possible iterations:

- (a) Modified Precinct on the full basis as recommended in Mr J Brown's rebuttal including the concessional dual 4000m² minimum/1 ha average lot size standard for restricted discretionary activity subdivision ('Modified Precinct – version 1'); or:
- (b) Modified Precinct as it is further refined in WPDL's closing submissions removing the proposed concessional standard for subdivision and including one or other of two modified structure plans:
 - (i) 'Plan A1' ('Version 2'); or
 - (ii) the structure plan depicted in 'Plan B' in those submissions ('Version 3').

[48] For completeness, Mr Goldsmith also floats the potential in his closing for the imposition of a hybrid zoning approach whereby Modified Precinct would apply to only a part of Ayrburn Farm and WBRAZ to the balance. However, he emphasises that this is not an outcome that WPDL advocates for.²⁵ We add that it was not identified in WPLD's notice of appeal, nor advanced in evidence. We find against it on the evidence and do not discuss it further.

²⁴ WPDL closing submissions, dated 18 August 2022, at [9], [10].

²⁵ WPDL closing submissions, dated 18 August 2022, at [10].

Is it procedurally open to consider Modified Precinct Versions 2 and 3?

Submissions

[49] QLDC submits that WPDL’s introduction of Versions 2 and 3 of the Modified Precinct option in their closing submissions is procedurally improper. In substance, Mr Wakefield characterises these variations as being designed to deliver a similar development as opposed to a zoning outcome.²⁶ He submits that Version 2 differs in several respects from what was tested in evidence. While accepting that Version 2 proposes a similar zoning pattern in spatial terms, he submits that the various changes WPDL proposes to the associated structure plan and provisions were not tested in evidence.²⁷ He submits that the position is even more problematic for Version 3 in that it is in essence a new zoning proposal untested in evidence.²⁸ Counsel drew parallels with the position in *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council*.²⁹

[50] Mr Goldsmith submits that Version 3 of the Modified Precinct option would address QLDC’s specific concerns as to density and setbacks (bringing these in line with what the Precinct generally provides) and its preference for “buffer areas” to be zoned WBRAZ.³⁰

There is scope to consider the changes WPDL proposed in closing

[51] We find that there is jurisdictional scope to consider those proposed changes despite the fact that WPDL proposed them in its closing submissions.

[52] In *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council*, the

²⁶ Council memorandum re position, dated 26 August 2022, at [8].

²⁷ Council memorandum re position, dated 26 August 2022, at [11].

²⁸ Council memorandum re position, dated 26 August 2022, at [7].

²⁹ *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* [2021] NZEnvC 189.

³⁰ WPDL closing submissions, dated 18 August 2022, at [13], referring to QLDC opening submissions, at [4.2](d)(ii).

court found neither of the versions sought as relief was capable of properly achieving and implementing the relevant PDP objectives and policies.³¹ That is not the case for the changes proposed by Mr Goldsmith in closing, including Versions 2 and 3. Rather, we are able to evaluate all aspects on the evidence and within the scope of WPDL’s original relief. We refer in particular to the planning and landscape evidence, including answers to questions in cross-examination or by the court. We acknowledge that QLDC and other parties were not aware of all specifics when they filed their closing submissions. However, we find no party would suffer significant prejudice. Nor is anyone realistically affected by the changes who is not before the court. In any case, having evaluated all zoning options we find in favour of either WBRAZ or our described modified WBRAZ.

The zoning options for consideration in regard to Ayrburn Farm

[53] Therefore, the focus of the remainder of this decision is on the options fairly tested within the scope of the appeal in regard to Ayrburn Farm, namely:

- (a) Modified Precinct, in any of its available iterations (‘Modified Precinct option’);
- (b) WBRAZ as per the appealed decisions version PDP (‘WBRAZ option’); or
- (c) potentially, as we discuss, a variation of WBRAZ to allow for some enhanced opportunity for rural living development within parts of Ayrburn Farm (‘modified WBRAZ option’).

The policy framework for evaluation of zoning options for Ayrburn Farm

Introduction

[54] A significant point of difference between parties is as to the overall intentions of the PDP for environmental values and outcomes. In particular, the

³¹ At [88]-[95].

issue is as to the relative weighting given to:

- (a) the maintenance or enhancement of landscape character and visual amenity values; and
- (b) other matters, including water quality and ecological enhancement, integrated management of resources and economic wellbeing.

The policy framework

[55] In their joint witness statement (‘JWS – Planning’),³² the planners identify the objectives and policies of PDP Chs 3 and 4 (as to Strategic Directions and Urban Development) and Ch 24 (Wakatipu Basin) that materially bear on the issues.³³ They agree that the PDP’s objectives and policies mainly capture the intent of the higher order regional and national policy instruments. They note that the PDP objectives and policies pertain to matters such as economic wellbeing, integrated management of resources, water quality, environmental enhancement and landscapes.³⁴ Their consensus on that informs our summary of the PDP policy framework in Annexure 1. The key objectives are supported by related policies. Notably:

- (a) both SO 3.2.5.8 and Obj 24.2.1 are as to the maintenance or enhancement of the landscape character and visual amenity values of the Basin and its LCUs (and SO 3.2.5.8.b is that the landscape capacity of the Basin and its LCUs are not exceeded);
- (b) Obj 24.2.4 is that subdivision and development and use of land maintains or enhances water quality, ecological quality, and recreation values while ensuring the efficient provision of infrastructure. This is supported by policies that pertain to the Lake Hayes catchment

³² Joint witness statement of the planning witnesses, dated 14 July 2022, signed by J Brown, and Messrs Langman, Maclennan and Vivian.

³³ JWS planning dated 14 July 2022 at [7] and Schedule A.

³⁴ JWS planning dated 14 July 2022 at [8].

including:

- (i) Pols 24.2.4.2 to restrict subdivision and development in the Lake Hayes catchment unless it can contribute to water quality improvement commensurate with the nature, scale and location of the proposal; and
- (ii) Pol 24.2.4.3 to provide for improved public access to and the maintenance or enhancement of the margins of waterbodies including Mill Creek and Lake Hayes.

Issues as to the interpretation and application of the policy framework

Planning evidence

[56] Despite their consensus as to the relevant PDP policy framework, some planners differ significantly in their interpretation of that framework and as to their associated evaluations of the zoning options.

[57] Mr J Brown applies an overall balancing approach as derived from his understanding of the other evidence. He summarises his opinion materially in favour of the Modified Precinct Option as follows (our edits being to use our names for the different options):³⁵

I consider that [the Modified Precinct option is] ..., overall, superior to [WBRAZ] ..., because the potential adverse effects of [the Modified Precinct option] on views from the Queenstown Trail and on amenity values of neighbouring properties are outweighed by the positive social, economic, water quality, recreational, economic diversification, ecological and private effects.

[58] By contrast, Mr Langman focuses primarily on the matters of urban sprawl and landscape character, drawing from Ms Mellsop's evidence, in concluding that WBRAZ is more appropriate than a Modified Precinct option in terms of zoning

³⁵ J Brown EIC, at [15].

outcome. For example, he comments:³⁶

On balance, I consider that the proposed Precinct provisions would constitute urban development, and that it would be inconsistent with the higher level objectives and policies of Chapter 24 to enable such development, as well as those discussed above in my evaluation of the Ayrburn Zone. As assessed by Ms Mellso, such large lot residential development would not maintain or enhance landscape character, and would be providing for a large lot residential living opportunity, rather than a rural living opportunity. This would not maintain or enhance the landscape and visual amenity values identified in Schedule 24.8. In addition, such development would, in my view, constitute urban development outside of the UGB (which is not proposed to be extended under this scenario). This would be inconsistent with SO 3.3.15 and SPs 4.2.1.3 and 4.2.2.20 ...

[footnotes omitted]

[59] Similarly, Messrs Maclennan and Vivian treat as significant the PDP’s policy directions on the maintenance or enhancement landscape character and visual amenity values and on urban development. They agree with Mr Langman that the WBRAZ is more appropriate than a Modified Precinct option.³⁷ The legal submissions for QLDC and ORC reflect those planning theories.

[60] Mr Goldsmith identifies water quality improvements for Lake Hayes arising from cessation of farming of the Site as an important differentiator in favour of the relief pursued by WPDL. Whereas WBRAZ would permit commercial stock farming (with its associated harmful ecological impacts), the Modified Precinct option would prevent it and require riparian planting and public cycleway and walkway connections and landscape treatment.³⁸ He submits that WPDL’s approach constitutes “integrated management” as to the issue of water quality in Lake Hayes “insofar as that can be achieved within the land owned by WPDL”.³⁹ Mr Goldsmith acknowledges the importance of landscape character and visual

³⁶ Langman EIC, at [9.8].

³⁷ Maclennan EIC, at [70]; Vivian EIC, at [55]-[62].

³⁸ WPDL closing submissions, dated 18 August 2022 at [52], [53].

³⁹ WPDL opening submissions, dated 25 July 2022, at [49].

amenity values. However, he points out that Ch 24's objectives and policies also directly engage with "with other considerations including water quality, public access to Mill Creek and recreation values". In essence, counsel says these matters are "all part of the mix that must be taken into account when determining the outcome".⁴⁰

[61] As for Obj 24.2.1, Mr Goldsmith notes the evaluative judgements inherent in adjudging whether any zoning outcome would accord with its intentions. He submits that if the Modified Precinct option is adjudged contrary to it, that should be only to a "relatively minor extent".⁴¹ In any case, he submits that any determination in relation to landscape considerations would not, on its own, be determinative of the outcome. That is because other objectives and policies are also relevant.⁴²

[62] The only other party to call evidence on water quality was FOLH. Their position is that unless any up-zoning would improve the water quality of the Lake Hayes catchment, it would be inappropriate.

Evaluation

[63] The PDP does not espouse an overall balancing approach. While the PDP recognises the importance of other imperatives, including as to economic wellbeing, that does not take away from the intended primacy of two intended outcomes, namely as to:

- (a) landscape character and visual amenity values, as expressed in SO 3.2.5.8 and Obj 24.2.1 and their supporting policies; and
- (b) water quality, ecological quality and recreation values as expressed in Obj 24.2.4 and its supporting policies.

⁴⁰ WPDLC closing submissions, dated 18 August 2022, at [11]-[12].

⁴¹ WPDLC closing submissions, dated 18 August 2022, at [57].

⁴² WPDLC closing submissions, dated 18 August 2022 at [40].

[64] We add that the evidence we received on economic efficiency and wellbeing was limited albeit from several witnesses (Adam Thompson on market demand, Natalie Hampson on economics, Sally Lee on farming economics and Rachel Mudge on farming systems). This evidence compares the different anticipated future scenarios for how the land may be used or developed depending on what zoning provided for. However, it does not evaluate the broader economic efficiencies of the different zoning outcomes beyond that. Therefore, we do not assign this evidence significant weight.

[65] There is a broad similarity in the expressions of each of SO 3.2.5.8 and Obj 24.2.1 (as to landscape character and visual amenity values) and Obj 24.2.4 (as to water quality, ecological quality, and recreation values). Both sets of objectives use the words “maintain” or “enhance” or similar.

[66] However, as is reinforced in the Ch 24 Zone Purpose statement, the purpose of the WBRAZ (including the Precinct) is to maintain or enhance the character and amenity of the Wakatipu Basin, while providing for rural living and other activities.

[67] If the evidence reveals that a zoning option would not maintain the landscape character of the Basin and relevant LCU, it would not assist to achieve SO 3.2.5.8 and Obj 24.2.1. That would render that zoning option inappropriate as not fulfilling the PDP’s intentions for the Wakatipu Basin.

[68] Given that the Site is within the Lake Hayes catchment, that brings into play Objective 24.2.4 and its implementing policies including those pertaining specifically to Lake Hayes and Mill Creek. Unless we find that a zoning outcome would at least ensure the maintenance of water quality, ecological quality, and recreation values in accordance with that objective and its associated policies, we should find that zoning outcome inappropriate. That is the case even if we find on the evidence that the zoning option would assist to maintain landscape character and visual amenity values.

Evaluation as to outcomes for ecology and water quality and recreation

Evidence

Water quality and ecology

[69] Dr Marc Schallenberg, a witness for FOLH, gave evidence as to the declining water quality in Lake Hayes. Dr Schallenberg is undoubtedly an authority on this topic and his evidence was well backed by investigations and reports undertaken over several years. What he describes is plainly a matter for concern, as is reflected in the PDP's prioritisation of improvement. For example, during summers over the past decade, there have been severe algal blooms, fishing has been poor and there have been multiple reports of fish kills. E coli and cyanobacteria exceedances are causing multiple lake closures. Regularly, deoxygenation occurs in the bottom waters of the lake.⁴³ Dr Schallenberg notes that the lake and its main tributary, Mill Creek, "fail multiple national and regional water quality and ecosystem health limits and targets".⁴⁴ He summarises this position as follows:⁴⁵

... the lake is currently in quite a degraded state compared to its reference (unimpacted) condition and this is exemplified by numerous indicators (e.g., fishery, algal blooms, swimmability) which currently substantially reduce the values and benefits that this lake could provide to the community.

[70] Dr Ruth Goldsmith assesses aquatic ecological effects as may be associated with development of the Site under the zoning options proposed by WPDL. Her unchallenged opinion is that a development of the Site under the Modified Precinct option would have positive water quality and related ecological effects.⁴⁶ Her opinion is supported by other technical evidence called by WPDL on matters as

⁴³ Schallenberg EIC, at [4.2].

⁴⁴ Schallenberg EIC, at [6.2].

⁴⁵ Schallenberg EIC, at [4.8].

⁴⁶ Goldsmith EIC, including [3.1]-[3.9], [5.12]-[5.21].

to farming economics and systems, water and wastewater reticulation and stormwater management.

[71] Respectfully, we do not accord significant weight to the contrary opinions offered by Prof Brian McGlynn, an environmental scientist and witness for FOLH. He did not display the independence required of an expert. Rather, his evidence was substantially an argument against what he understood WPDL to seek to do by way of developing the Site. On that matter, he observed that the “likely impacts of the proposed Waterfall Park Development are of concern to individuals and local community groups who have been actively involved in the study and rehabilitation of Lake Hayes and its catchment for many decades”.⁴⁷ The appeal is not to determine whether or not a so-termed “Waterfall Park Development as proposed” is approved. Rather, we are concerned with the zoning options available subject to which any future consent application for the development of the Site would be considered.

[72] Mr Meehan explains the significant contributions WPDL has made to date in riparian enhancement and water quality improvement of Mill Creek as part of its development of Waterfall Park.⁴⁸ He comments that, unless housing development is approved on the western paddocks, WPDL “would have no choice but to return the land to farming in order [to] keep the property in shape”.⁴⁹

[73] Ms Mudge is an expert and certified adviser in nutrient management, providing such advice to farmers as part of advising them on their farm management systems. She explains that merino trading and vegetable seed production are the most profitable productive farming scenario for Ayrburn Farm. She calculates that undertaking such farming would more than double nitrogen

⁴⁷ McGlynn EIC, at [3].

⁴⁸ We have also considered the evidence of urban designer Mr Gerald Barratt-Boyes. He describes the urban design attributes of a development of the Site as desired by WPDL.

⁴⁹ Meehan EIC, including at [65].

losses and increase phosphate losses by an estimated 25%.⁵⁰

Recreational benefits

[74] Recreational expert, Dr Shayne Galloway, describes the potential recreational benefits, particularly to cyclists, of enhanced public trail facilities as WDPL intends should it achieve its rezoning aspirations.⁵¹

Evaluation

[75] WPDL's riparian enhancement and associated works for development of Waterfall Park have assisted the achievement of Obj 24.2.4 and associated policies. The stretch of Mill Creek that runs through Ayrburn Domain and Ayrburn Farm is also significant in those terms.

[76] The Modified Precinct option would better ensure the achievement of Obj 24.2.4 and its associated policies than would the status quo WBRAZ option. In particular, it would facilitate enhancement of water and ecological quality, particularly in Lake Hayes and Mill Creek and public access to the margins of that watercourse, in the control of the subdivision and development of the Site. That is because the Modified Precinct approach provides for subdivision and development to be according to a proposed structure plan and related policies and standards to:

- (a) materially enhance the ecology and water quality of Mill Creek; and
- (b) incentivise and encourage development of additional recreational trails through Ayrburn Domain that would help enhance user experience of the Countryside Trail.

[77] The status quo WBRAZ would be less likely to result in enhancement in

⁵⁰ Mudge EIC, at [15].

⁵¹ Galloway EIC.

terms of those inter-related outcomes and PDP intentions. The lack of structure planning and the non-complying activity status for subdivision (given the 80 ha minimum lot size) would not incentivise investment in riparian enhancement, an important ingredient for water quality improvement, nor enhancement of public access to that valued watercourse. The court's site visit to the adjoining Waterfall Park development assisted our understanding of the evidence of Dr Goldsmith and other WPDL witnesses on these matters.

[78] However, the non-complying activity status that would be accorded to any subdivision of Ayrburn Farm under a WBRAZ zoning would still enable for development controls to maintain water quality, ecological quality, and recreational values. Non-complying activity status would allow for the consenting of developments that assisted to achieve relevant PDP objectives and policies (including on water quality) and decline of those that do not.

[79] With respect, Mr Meehan's evidence as to what WPDL would do if it does not secure its desired zoning outcome is not evidence that WBRAZ would fail to achieve Obj 24.2.4. Rather, it is evidence as to what a particular landowner would chose to do under such a scenario. Another responsible landowner could make different choices. One could be to keep land use unchanged, but in a condition that helped to maintain water quality outcomes. While such a choice may mean uncompensated financial outlays by the land owner, that does not significantly weigh against the status quo WBRAZ. Furthermore, Mr Meehan's argument would appear to leave aside regional plan regulations that also pertain to the conditions under which any productive farming usage of Ayrburn Farm could resume. The fact that farming is a permitted activity under a district plan does not set aside restrictions in ss 13 and 15 RMA as to uses of riparian margins and the discharge of contaminants (e.g. nutrients) onto land in circumstances where such contaminants may enter water.

[80] With respect to Obj 24.2.4 and associated policies, we find that:

- (a) a Modified Precinct outcome would be likely to result in enhancements of ecology and water quality and public access to the margins of Mill Creek and hence better assist achievement of the PDP's intentions expressed in those provisions;
- (b) a WBRAZ outcome would be inferior to that option but would nevertheless allow for those provisions to be applied in the consideration of consent applications for subdivision so as to ensure that the existing ecological and water quality and the present extent of public access to the margins of Mill Creek are maintained. As such, WBRAZ zoning would also assist to achieve the PDP's intentions expressed in those provisions;
- (c) a modified WBRAZ outcome that allowed greater opportunity for residential development of Ayrburn Farm could better achieve those PDP intentions than an unmodified WBRAZ outcome.

Evaluation as to landscape character and capacity and visual amenity

Expert opinions

[81] Each of the landscape experts is duly familiar with the landscapes of the Wakatipu Basin, complied with the Code for Expert Witnesses in the court's Practice Note and used established methodologies in accordance with the NZILA *Best Practice Guide: Landscape Assessment And Sustainable Management*. Where Mr S Brown differs materially from the other experts is in his understanding of the PDP's intentions for landscape character outcomes and his evaluation of landscape capacity.

[82] In regard to landscape character, we are more particularly concerned with what Sch 24.8 describes as the "eastern portion" of LCU 8. For this portion, Sch 24.8 specifies "environmental characteristics and visual amenity values to be maintained and enhanced" as follows:

Integration of buildings with landform and/or planting.

Maintenance of a spacious and open outlook in views from the Queenstown Trail and Arrowtown Lakes Hayes Road, including the southbound view as one descends Christine's Hill.

Maintenance of openness in views from Hogans Gully Road to the backdropping hill/escarpment landforms and broader ONL mountain context.

[83] As for the second noted priority, Mr S Brown acknowledges there would inevitably be “some loss of visual openness at the foot of Christine's Hill”.⁵² Nevertheless, he considers that development under the Modified Precinct option “would integrate with the existing lifestyle development in that area”. He considers that it would not adversely affect the spaciousness and open outlook associated with views towards the main body of the Wakatipu Basin from elevated parts of the Countryside Trail – including those in a south-bound direction. For the most part, he considers that it “would affect parts of the landscape on the periphery of key views to Lake Hayes, Slope Hill, Morven Hill and The Remarkables, rather than those actual features of the ‘viewshafts’ to them”.⁵³

[84] Subject to those qualifications, Mr S Brown considers that the Modified Precinct option accords with the above-noted Sch 24.8 priorities. In particular, he considers that this zoning option would effectively ensure the integration of built form with the Christine's Hill and Speargrass Flat landforms and existing shelterbelts, hedgerows and other vegetation. He considers that integration would be promoted through proposed development controls. Furthermore, he observes that the Modified Precinct option would scarcely affect the rural character and openness of views from Hogans Gully Road towards Coronet Peak and nearby ONLs. Overall, he concludes that the Modified Precinct option would be

⁵² S Brown EIC, at [137].

⁵³ S Brown EIC, at [137].

“acceptable from a landscape and amenity standpoint”.⁵⁴ He considers this option:⁵⁵

would have a relatively low profile and would be quite recessive – largely because of the site’s connection with existing residential development and limited exposure to other public vantage points. However, the physical profile of the site and the limited landscape values of its central and western paddocks (in particular) has also played a significant part in my assessment.

[85] Mr S Brown considers that parts of Ayrburn Farm have significantly greater landscape capacity than is reflected in the Low rating assigned to the eastern portion of LCU 8 by Sch 24.8. He considers that rating, and the High rating assigned to the adjacent LCU 12, do not reflect the “shades of grey” and intermingling of landscape qualities and sensitivities in the vicinity.⁵⁶ Related to that, he considers that there is a lack of legibility in where the boundaries of LCU 8 and LCU 12 are presently drawn. In his opinion a more legible LCU 8/LCU 12 boundary would be at the “point of topographic transition” “near the foot of Christine’s Hill”.⁵⁷ In particular, he considers that the central and western paddocks of the Site are small remnants that are “very significantly influenced by” the pocket of much larger established lifestyle blocks that border them on the north side of Speargrass Flat Road. By contrast, he does not consider there is a readable connection between those paddocks and the “unmistakably rural landscape” of the pastoral open space and paddocks of Speargrass Flat between Dalefield/Hunter Roads and Arrowtown Lake Hayes Road.⁵⁸ He considers all the relevant parts of Ayrburn Farm should be removed from LCU 8 to be reassigned to LCU 12.⁵⁹

[86] In his opinion, a Modified Precinct zoning in conjunction with this change

⁵⁴ S Brown EIC, at [150].

⁵⁵ S Brown EIC, at [149].

⁵⁶ S Brown EIC, at [54]-[57].

⁵⁷ S Brown EIC, at [57].

⁵⁸ S Brown EIC, at [56].

⁵⁹ S Brown EIC, at [57].

to the LCU boundaries would assist to integrate the existing pocket of lifestyle development along the northern side of Speargrass Flat Road with new development proposed for Ayrburn (commenting that the “intensity” of that development is ultimately less important). Furthermore, in his view the enclosing topography of Christine’s Hill and shelterbelts near the Countryside Trail would assist that integration.⁶⁰ In essence, he considers new development through to the foot of Christine’s Hill would be “a logical and incremental extension to that which already exists”.⁶¹

[87] Dr Galloway’s evidence supplements those opinions as to effective integrated management. He is an experienced user of trails in the Queenstown district. He considers the most significant views from the Countryside Trail, are from the top. He comments that the Christine’s Hill section of the Trail is poorly designed for shared use (according to national and local trail design standards) and hazardous (principally due to its steep gradient).⁶² He considers the new trail connections would be enabled and encouraged under a Modified Precinct option.⁶³

[88] Ms Mellsop agrees with Mr S Brown that the spillage of rural living development across to the northern side of Speargrass Flat Road in the vicinity of the Site, “reduces the coherence of the landscape as a whole”.⁶⁴ However, rather than being an incremental or logical addition to existing development, she considers that the Modified Precinct option would “inevitably lead to incremental degradation of the valued rural landscape character of” the Basin.⁶⁵ In her opinion, “the remaining pastoral land, when considered together with the slopes of Christine’s Hill, is particularly important especially for views from the Countryside Trail.”⁶⁶ In her view, the open character and spaciousness of those areas provide

⁶⁰ S Brown rebuttal, at [45].

⁶¹ S Brown EIC, at [17].

⁶² Galloway EIC at [4.2], [9.1].

⁶³ Galloway EIC, at [4.4], [9.3].

⁶⁴ Mellsop EIC, at [6.3], [7.1]-[7.4].

⁶⁵ Mellsop EIC, at [10.39].

⁶⁶ Mellsop EIC, at [7.11].

an important “rural ‘breathing space’ between areas of more intensive rural living or urban-type development”.⁶⁷

[89] She is concerned that the Modified Precinct option would “remove” that open pastoral character “of the foreground in upper trail views” along the Countryside Trail. Furthermore, she comments that plantings likely to be implemented for privacy would enclose and restrict easterly views from the lower section of trail in particular.⁶⁸ Similarly, she does not support the development of lots on the Arrowtown Lake Hayes frontage, describing these as resulting in “creep of development” that would cause “moderate-high adverse effects on visual amenity values”.⁶⁹

[90] Overall, she considers that the Modified Precinct option would not maintain landscape character and values and adverse effects on those things would be “moderate in extent”.⁷⁰

[91] However, Ms Mellsop acknowledges there is some potential to absorb a reduced extent of Precinct development (applying the Precinct’s 6000m² minimum net site and 1 ha average densities) within the central paddock bounded by Mill Creek, the ephemeral stream and the toe of Christine’s Hill/steeper slopes of the alluvial fan. As for the LCU 8/LCU 12 boundary, she considers that a “defensible topographical/landscape feature boundary” could be:⁷¹

... at the Mill Creek floodplain, at the line where the eastern toe of Christine’s Hill coincides with the steepening of the alluvial fan (RL 357 to the east and RL 363 to the west), and at the spring-fed ephemeral stream flowing from the hill slopes.

[92] She observes that enhancement of riparian vegetation along the stream

⁶⁷ Mellsop EIC, at [10.25].

⁶⁸ Mellsop EIC, at [10.40].

⁶⁹ Mellsop EIC, at [10.39].

⁷⁰ Mellsop EIC, at [10.41]-[10.44].

⁷¹ Mellsop EIC, at [7.11], [10.59].

could increase the visual prominence of this natural boundary as it crosses the flatter paddocks. In her opinion, any development within those approximate boundaries should be in keeping with what is enabled elsewhere in the Precinct (not with bespoke concessional density provisions) to avoid adverse effects on landscape character and visual amenity values.⁷²

[93] In contrast, Ms Mellsop considers that retaining the WBRAZ zoning of Ayrburn Farm would achieve the landscape outcomes anticipated by the PDP.⁷³

[94] We do not need to traverse Mr Espie's opinion in detail as it is materially in accordance with Ms Mellsop's.⁷⁴ Similarly, planning witnesses express materially similar opinions to the respective planning witnesses.

Mrs Hadley

[95] Mrs Hadley is qualified in landscape architecture. As a s274 party, she does not offer opinions as an expert witness but as a resident who lives near to the Site and the Countryside Trail. She is concerned that Modified Precinct would allow development that would destroy a landscape that has rural amenity values that are, in her view, very important to the amenity of the Wakatipu Basin and the community.⁷⁵

Submissions

[96] The submissions of parties on these matters generally reflect the different theories of approach in the landscape and planning evidence.

⁷² Mellsop EIC, at [10.59], [10.60].

⁷³ Mellsop EIC, at [3.1](d).

⁷⁴ Espie EIC, at [3.2], [3.3].

⁷⁵ Hadley EIC, at [87].

WPDL

[97] Mr Goldsmith submits that various factors support a finding that Ayrburn Farm has Moderate landscape capacity.⁷⁶ As for viewpoints from the Trail, he submits that the court should prefer Mr S Brown’s opinion. He urges that the court take a properly holistic approach. He points out that parts of the Countryside Trail are not a public place for PDP purposes. He refers also to the unchallenged opinion of Dr Galloway as to the comparatively poor recreational value of this part of the Trail. He also notes that WPDL now proposes to expand the landscape setback along the Trail to 75m. He challenges the importance placed by Ms Mellsop and Mr Espie on maintaining a “rural breathing space” between more intensively developed areas of the Basin. He points out that Sch 24.8 makes no reference to any such concept. In any case, he submits that any “rural breathing space” in the locality would not be adversely affected by development under the Modified Precinct option.⁷⁷

[98] With regard to the appropriateness of rural living development in the south-east corner of Ayrburn Farm south of Ayr Avenue,⁷⁸ Mr Goldsmith submits that Mr S Brown’s opinion should be preferred. He quotes an extract from findings in a resource consent appeal decision of this court in *Beadle v Queenstown Lakes District Council* (in confirming consent for the now formed Ayr Avenue) which he submits are materially consistent with that evidence.⁷⁹ He submits that allowing rural living as proposed in this locality would assist to achieve PDP Pol 24.2.1.14 as to the maintenance of a defensible edge between areas of rural living in the Precinct and the balance of the WBRAZ. That is on the footing that Ayr Avenue (with its associated planting) would be a more defensible edge than the existing Precinct boundary (a cadastral boundary only marked by a fence).⁸⁰

⁷⁶ WPDL closing submissions, dated 18 August 2022, at [30].

⁷⁷ WPDL closing submissions, dated 18 August 2022, at [37].

⁷⁸ In areas marked ‘R’ on the Modified Precinct option structure plan.

⁷⁹ *Beadle v Queenstown Lakes District Council* [2019] NZEnvC 92 at [119].

⁸⁰ WPDL closing submissions, dated 18 August 2022, at [25]-[27].

[99] As for Mr S Brown’s recommendation to reposition the LCU8/LCU 12 boundary, Mr Goldsmith submits that no particular difficulty would arise from the consequential splitting of LCU 8 two separate areas. Rather, counsel submit that the important point is that the LCU 8 descriptions are accurate for each area.⁸¹

[100] Mr Goldsmith also points out that there is a private covenant registered in favour of the McGuinness property that prevents any extension westwards from Ayrburn Farm of roading and other infrastructure.⁸²

[101] Mr Goldsmith also submits that the bespoke “policies and rules” recommended by Mr J Brown would help to achieve the “more generally worded” Ch 24 objectives and policies.⁸³

QLDC

[102] Mr Wakefield submits that a weakness in Mr S Brown’s approach is his reliance on visibility (or “isolated glimpses”) as a singular frame of reference. He submits that the PDP’s policy directions on landscape outcomes are “more wide-ranging than this”, referring to various authorities.⁸⁴ He points out that Mr S Brown acknowledges that development under a Modified Precinct option would “result in a significant change to the character of the central and western paddocks” of the Site. He submits that a “significant change” to landscape character would not accord with the PDP’s intentions that landscape character be maintained.⁸⁵ Overall, Mr Wakefield submits that, on the weight of evidence, the most appropriate zoning outcome is WBRAZ.

⁸¹ WPDL closing submissions, dated 18 August 2022, at [75]-[78].

⁸² WPDL closing submissions, dated 18 August 2022, at [41].

⁸³ WPDL closing submissions, dated 18 August 2022, at [19]-[21].

⁸⁴ QLDC opening submissions for QLDC, dated 22 July 2022 at [11.20]-[11.25], referring to *Waterfall Park Developments Ltd v Hadley* [2022] NZHC 376 at [46], *Brial v Queenstown Lakes District Council* [2021] NZHC 3609 at [36]. Counsel also refer to this court’s observations in *Barnhill Corporate Trustee Ltd & Ors v Queenstown Lakes District Council* [2022] NZEnvC 58 at [55].

⁸⁵ QLDC opening submissions, dated 22 July 2022, at [11.17].

Hadleys and J Andersson

[103] Mr Page submits that Ms Mellsop’s and Mr Espie’s emphasis on the importance of maintaining the “‘rural’ breathing space between areas of more intensive development” is well supported. He points to similar observations made in the WBLUS that underpins the Wakatipu Basin variation.⁸⁶ He also refers to observations in the first interim decision in *Barnhill Corporate Trustee Ltd & Ors v Queenstown Lakes District Council* as to the “more spacious ‘working’ rural” areas being “character-defining for the Basin as a whole”.⁸⁷ He submits that it is not now open for WPDLC to relitigate the “finding that the rural areas are character defining for the Basin as a whole”.⁸⁸ He submits that the evidence before the court does not disturb the soundness of the findings made by the commissioners at first instance, following their “fine grained landscape assessments”.⁸⁹

ORC

[104] ORC’s submissions essentially align with those for QLDC. However, ORC would not oppose “a Precinct form of development” of Ayrburn Farm provided that this “respects and maintains the landscape character and visual amenity of the LCUs and, more generally, the Wakatipu Basin”.⁹⁰

FOLH

[105] In his representations Mr Davis explains that FOLH considers any zoning allowing for greater intensification is not appropriate to the extent that it would

⁸⁶ Opening submissions for the Hadleys and Jan Andersson, dated 22 July 2022, at [4], [9].

⁸⁷ *Barnhill Corporate Trustee Ltd & Ors v Queenstown Lakes District Council* [2022] NZEnvC 58 at [41].

⁸⁸ Opening submissions for the Hadleys and Jan Andersson, dated 22 July 2022, at [12].

⁸⁹ Opening submissions for the Hadleys and Jan Andersson, dated 22 July 2022 at [13], referring to Hearing of Submissions on Proposed District Plan *Report and recommendations of Independent Commissioners regarding mapping of Wakatipu Basin and Arrowtown (includes Stage 1 submissions not previously heard)* Report 18.5 – Area C Central Basin, Commissioners Denis Nugent (Chair), Rachel Dimery, Trevor Robinson, Quentin Smith.

⁹⁰ ORC opening submissions, dated 22 July 2022, at [8].

fail to improve water quality in Lake Hayes.

Evaluation

LCU 8/LCU 12 boundary should remain unchanged

[106] We find that the present LCU 8/LCU 12 boundary is legible, defensible and appropriate in terms of the purposes it serves within the PDP. West of Mill Creek, it follows the base of a prominent terrace landform for about 320m. The remainder through to Arrowtown Lake Hayes Road follows cadastral boundaries. That stretch is plainly less legible but is nonetheless quite visible and defensible, marked by fences and shelter belt plantings that follow the land parcel boundaries. As such, we do not find any landscape legibility reason to reposition these boundaries. A further difficulty in adjusting the LCU 8/LCU 12 boundary in the location recommended by WPDL is that LCU 8 would be split into two separate, disconnected parts. We find that would not assist the implementation of Sch 24.8 nor the policies that refer to it.

[107] Therefore, we find the present LCU 8/LCU 12 boundary is the most appropriate and decline this aspect of WPDL's relief as it pertains to Sch 24.8.

Description of environmental characteristics and values in Sch 24.8 is appropriate

[108] We find each of the "environmental characteristics and visual amenity values" listed in Sch 24.8 for the eastern portion of LCU 8 well supported on the evidence and appropriate.

The Modified Precinct option would not maintain the landscape character and visual amenity values of the Basin and LCU 8

[109] We largely accept Ms Mellsoy's opinion in finding that the Modified Precinct option would enable development that would not maintain the landscape character and visual amenity values of the Basin and LCU 8.

[110] The issues are different for public viewpoints from the Countryside Trail and Arrowtown Lake Hayes Road.

[111] In regard to viewpoints from the Countryside Trail, we accept Dr Galloway's opinion in finding that the Speargrass Flat Road – Millbrook stretch of the Trail could undoubtedly be enhanced for the greater benefit of trail users. Nevertheless, that stretch is a functional part of a very popular trail traversing the Basin as part of an extensive network of cycling and walking tracks across the District. As such, it is an integral part of a corridor that is important to perceptions of the landscape character and visual amenity values of the Basin as a whole.

[112] As Ms Mellsop explains, perceptions from a corridor of this kind of landscape character are not static or from assigned viewpoints. A rider or hiker heading south out of Millbrook would presently enjoy a sense of leaving behind an urbanised area and entering a much more rural and open breathing space. That is before they approach and cross Speargrass Flat Road to traverse a stretch that is comparatively more enclosed and urban.

[113] In the case of views from the Countryside Trail, we find that:

- (a) LCU 8 has a Low landscape capacity as is identified in the decisions version of PDP Sch 24.8 except for the relatively enclosed pocket of the Site that we describe shortly; and
- (b) the Modified Precinct option, by allowing rural living development to spill westwards across the ephemeral stream valley in clear view of the Trail, would reduce the open pastoral character of the foreground in upper Trail views.

[114] WPDL's proposal, offered in closing submissions, to expand the setback to 75m in this locality as a means of mitigating effects was not properly tested in evidence. In any case, we largely accept Ms Mellsop's opinion in finding that this and associated landscape treatment would not fully mitigate the reduction in open pastoral character in this locality. That is, users of the Trail would be left with

some impression of an expansion of the rural living enclave on the northern side of Speargrass Flat Road back and into the pastoral land that presently borders it. We accept that there is a private covenant registered to protect against incremental development creep westward of the Trail. However, our findings pertain to views east and south-east of the Trail across the Site.

[115] Therefore, we find that the Modified Precinct option would not maintain the landscape character and visual amenity values of the Basin and LCU 8 for viewpoints from the Trail.

[116] We find that there is Moderate capacity for rural living development of the approximately 3.8 ha part of Ayrburn Farm bounded as follows (assuming associated landscape and riparian margin treatments to enhance the legibility of relevant boundaries):

- (a) to the south by the top of the terrace that marks the northern boundary of LCU 12;
- (b) to the east by the top of the terrace that marks the edge of the Mill Creek valley;
- (c) to the northwest along the existing farm track and shelter belt; and
- (d) to the west by the top of the terrace that marks the eastern side of the ephemeral stream valley.

[117] In essence, that area generally coincides with what Ms Mellsop describes as “the central paddock bounded by Mill Creek, the ephemeral stream and the toe of Christine’s Hill / steeper slopes of the alluvial fan”.⁹¹ It is somewhat further refined by our appreciation of the Site from our site visit and in light of the various plans offered in evidence. We agree with Ms Mellsop that this area of Ayrburn Farm has capacity for development according to a 6000 m² minimum/1 ha average standard for subdivision (although we ultimately find this should be as a

⁹¹ Mellsop EIC, at [3.1(d)].

modification of the WBRAZ rather than extension of the Precinct).

[118] The landscape issues from viewpoints from the Arrowtown Lake Hayes Road and Hogans Gully Road are somewhat different. The Arrowtown Lake Hayes Road is an important arterial link that bisects the Basin. Users of it can form impressions of the character of the wider Basin. Those travelling north presently experience a relatively urbanised environment that feathers into a predominantly pastoral setting once they pass the Speargrass Flat Road/Hogans Gully Road intersection. As is also recognised in Sch 24.8, the risk that the Modified Precinct option presents is of a perception of incremental creep of rural living development beyond the North Lake Hayes Precinct and into the rural heart of the Basin.

[119] Generally, we accept Ms Mellsop's opinion in finding that the Modified Precinct option, by enabling rural living development to extend north to Ayr Avenue, would materially reduce the openness of this presently predominantly pastoral view for drivers travelling north. Also on the evidence, we find that:

- (a) LCU 8 has a Low landscape capacity as is identified in the decisions version of PDP Sch 24.8;
- (b) the extent of rural lifestyle development proposed to be enabled in this part of Ayrburn Farm would have a Moderate-High adverse effect on landscape character and visual amenity values from Arrowtown Lake Hayes Road (and to a lesser extent from Hogans Gully Road). That is particularly in the fact that it would appear as further rural living colonisation of what is now predominantly pastoral in how it is perceived; and
- (c) that Moderate-High adverse effect would not be materially mitigated by reverting to the Precinct's usual 6000m²/1 ha minimum lot size standards.

[120] Therefore, we find that the Modified Precinct option would not maintain

or enhance the landscape character and visual amenity values of LCU 8 and the Basin as a whole.

[121] It is notable that, relying on Mr S Brown's landscape assessment, Mr J Brown proposes to add a new Obj 27.3.20. That objective would inevitably qualify the PDP's relevant intentions concerning the maintenance or enhancement of landscape character by adding that "Rural living is provided for in a way that is sympathetic to the natural setting and has regard to location-specific opportunities and constraints".⁹² That compromise of the fundamental intentions of the WBRAZ would be further reinforced by Mr J Brown's associated new policies, including Pol 27.3.20.2 to protect the open space values of Christine's Hill and the rural values of the paddocks adjoining Arrowtown Lake Hayes Road. In essence, that policy would allow for development according to a Modified Precinct approach that does not entirely maintain the landscape character and visual amenity values of the Basin and the relevant LCU.

[122] However, we find that the unmodified imposition of WBRAZ would create a risk of incremental degradation of that landscape character over time and hence not achieve SO 3.2.5.8 and Obj 24.2.1. That is in respect to important viewpoints from Arrowtown Lake Hayes Road (and to a lesser extent Hogans Gully Road).

[123] As is recognised in Sch 24.8, it is important for the maintenance of landscape character and visual amenities in the eastern portion of LCU 8 that there is effective integration of buildings with landform and landscape treatment.

[124] Mill Creek is important to the landscape character of LCU 8 on the Arrowtown Lake Hayes frontage of this Site. That is particularly given the value the PDP assigns to it and the health of its riparian margins. A significant disadvantage of the WBRAZ is that it does not presently mandate structure planning to help protect this watercourse. Rather, WBRAZ would tend to

⁹² J Brown rebuttal, Attachment 8.

incentivise piecemeal development under a simple regime whereby subdivision that contravenes the 80 ha minimum lot size standard would be a non-complying activity. In conceptual terms, a structure plan framework is preferable in that it would better ensure outcomes where riparian and ecological and open space and landscape enhancement treatments are realised. That would assist the achievement of the PDP's intentions both for landscape character and water quality improvements for Lake Hayes.

[125] We find that appropriately structure-planned development could be enabled according to a 6000 m² minimum/1 ha average standard for the approximately 2.75 ha portion of the Site bounded as follows (assuming associated landscape and riparian margin treatments to enhance the legibility of relevant boundaries):

- (a) to the north by Ayr Avenue;
- (b) to the west by Arrowtown Lake Hayes Road;
- (c) to the south by the boundary of LCU 12; and
- (d) to the west by the top of the terrace that marks the western edge of the Mill Creek floodplain.

[126] For that pocket of the Site, we find there is Moderate rather than Low landscape capacity for rural living development by reason of the visible presence of Ayr Avenue and the anticipated enhancement of the landscaped entrance to Waterfall Park and Ayrburn Domain under the expanded WPZ.

[127] As we have noted, our findings on the enhanced development capacity in those parts of Ayrburn Farm are contingent on such development being in accordance with a structure plan. A revised structure plan would need to be submitted to the court for approval. That is to best assist achievement of SO 3.2.5.8, Obj 24.2.1 and Obj 24.2.4.

[128] Those findings are on the premise that the Modified WBRAZ option we have described is pursued.

Elements of the Modified WBRAZ option

[129] Those findings inform our following description of the key aspects of a modified WBRAZ option for Ayrburn Farm (‘Modified WBRAZ option’).

[130] The Modified WBRAZ option would include a structure plan that is based on WPDL Plan A1 but with the modifications we specify in the final paragraph under the heading ‘Evaluation as to landscape character and capacity and visual amenity’ (including so as to show as R only those areas we refer to as the South-west Pocket and South-east Pocket).

[131] Subject to that, the Modified WBRAZ option would include the associated set of policies and rules as recommended by Mr J Brown for inclusion in Chs 24 and 27, subject to any modifications necessary to reflect our evidential findings i.e.:

- (a) Pols 27.3.20.1 – 27.3.20.11;
- (b) rr 24.4.27.1 and 24.4.26;
- (c) rr 24.4.27.2 and 24.4.27.3 on fertilizers and livestock farming;
- (d) a replacement of Mr J Brown’s r 27.6.1 to prescribe the Precinct’s usual dual 6000m² minimum/1 ha average lot size standard for restricted discretionary subdivision under the Precinct in those parts of the amended structure plan identified as R;
- (e) a revised r 27.7.18.1 to the effect that subdivision is non-complying if not consistent with the structure plan (our provisional view subject to supplementary submissions as directed is that r 27.7.18.1A may not be warranted);
- (f) r 27.7.18.2 to the effect that subdivision is non-complying if it would not impose certain “controls” pertaining to vegetation and tree planting, avoidance of buildings within and the management of areas denoted OS, building heights, application of nitrogen or phosphorous in fertilisers and commercial livestock farming;
- (g) rr 27.7.18.3 and 27.7.18.4 to the effect that subdivision is non-

complying if the plan of subdivision:

- (i) is deposited prior to specified works being undertaken (as to indigenous plantings along Mill Creek and the ephemeral stream within Ayrburn Farm, stock exclusion and other riparian treatment works); or
- (ii) does not include a consent notice to require ongoing maintenance of plantings.

[132] We leave reserved the extent if any to which there should be requirements for public walking and cycling trails to connect to the Countryside Trail via a route shown on the structure plan (i.e. Mr J Brown's r 27.1.18.5). We appreciate that those environmental enhancements may not be as financially viable under the Modified WBRAZ option. We record that they are not essential to a finding in favour of the WBRAZ option.

The most appropriate zoning option for Ayrburn Farm

[133] As we have explained in our discussion of the Statutory Framework and in Annexure 1, our evaluation of options is on the basis we are satisfied that the PDP's objectives and policies duly reflect the directions given by Higher Order policy instruments and the RMA.

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

- (a) the Modified Precinct option (whether as Version 1, 2 or 3) would be inconsistent with and not assist to achieve SO 3.2.5.8 and Obj 24.2.1 (and associated policies) and, therefore, is not appropriate;
- (b) unmodified Precinct zoning would be inconsistent with and not assist to achieve SO 3.2.5.8 and Obj 24.2.1 (and associated policies) and, therefore, is not appropriate;
- (c) subject to the directions we now give:
 - (i) unmodified WBRAZ would be capable of achieving SO 3.2.5.8, Obj 24.2.1 and Obj 24.2.4 (and associated policies) and would

be the most appropriate unless the Modified WBRAZ option can be confirmed by further decision;

- (ii) the Modified WBRAZ option zoning has the potential to be determined to be most appropriate for achieving those objectives and related policies if it can be confirmed by further decision.

Conclusion and directions

[135] Subject to those findings, we reserve our ultimate determination of which of the following two alternatives is the most appropriate zoning outcome for Ayrburn Farm:

- (a) unmodified WBRAZ; or
- (b) the Modified WBRAZ as we have described under ‘Elements of the Modified WBRAZ option’ (subject to any further refinements we make in light of supplementary submissions from WPD L and/or QLDC as we direct).

[136] If WPD L does not wish to pursue the Modified WBRAZ option, our final decision in due course will be to confirm WBRAZ for this part of the Site and otherwise decline this part of its appeal.

[137] If WPD L does wish to pursue the Modified WBRAZ option, it is appropriate that we allow opportunity for WPD L and QLDC to seek to agree on its content. If matters are not agreed, our directions allow for supplementary submissions on points of difference between those parties.

[138] Our findings in this decision frame the parameters of what we would entertain as the Modified WBRAZ option. Hence, we do not anticipate a need for supplementary submissions from other parties other than QLDC and WPD L.

[139] If WPD L does wish to pursue the Modified WBRAZ option, our ultimate

choice of the most appropriate option will be:

- (a) WBRAZ; or
- (b) Modified WBRAZ on provisions we will finally determine.

Directions

[140] Therefore, it is directed:

- (a) within **15 working days** of the date of this decision, WPDL must file a memorandum to advise on whether or not it wishes to pursue the Modified WBRAZ option for Ayrburn Farm and, if it does wish to pursue it, propose timetabling directions for the subsequent filing of:
 - (i) any joint memorandum as to all provisions of the Modified WBRAZ option (in a form suitable for our final decision, including a revised structure plan); and
 - (ii) any supplementary closing submissions (including all proposed related Modified WBRAZ provisions);
- (b) a final decision determining the zoning outcome will be made in due course;
- (c) leave is reserved to all parties to seek further or amended directions by memorandum following consultation with all other parties; and
- (d) costs are reserved and a timetable will be set, if need be, following any request to do so in due course.

For the court



J J M Hassan
Environment Judge



Annexure 1

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

Introduction

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

Statutory framework and principles

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

[3] Counsel for QLDC has helpfully summarised these matters in their opening submissions for this and other Topic 31 appeals.⁹³ Those submissions draw from earlier decisions of this court in determining other PDP Topics, notably *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* (another rezoning appeal).⁹⁴ It is convenient to refer to those submissions in quoting the same extracts:⁹⁵

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

In terms of the directions in s 32, RMA, our evaluation is essentially concerned with which of Option A or Option B is the most appropriate for achieving relevant PDP objectives. Those objectives are now beyond challenge (including those to be included in the PDP in implementation of other Environment Court decisions in the review).

⁹³ Opening submissions for QLDC dated 22 July 2022, at [6.3].

⁹⁴ *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* [2021] NZEnvC 189.

⁹⁵ At [27]-[30].

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

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

[our emphasis]

- [4] In summary, for each of the relevant Topic 31 appeals:
- (a) there is a range of **options** for evaluation as advanced by parties and generally falling between:
 - (i) the ‘status quo’ of the zoning regime (and its associated provisions) as applied by the ‘decision version’ of the PDP that is subject to appeal; and
 - (ii) the zoning outcome (including associated provisions) pursued by way of relief on appeal.
 - (b) we evaluate those options to determine **what is the most appropriate for achieving the relevant PDP objectives**. Most of the relevant objectives are now determined by the Court’s decisions in other related Stages (particularly as they pertain to PDP Chapters 3 (Strategic Directions), 24 (Wakatipu Basin) and 27 (Subdivision and Development)). However, we also consider provisions determined by our Topic 30 Decisions as appropriate for inclusion in the PDP even if QLDC has not yet incorporated them into the updated PDP; and
 - (c) our evaluation encompasses what the evidence reveals as the actual and potential effect on the environment of the activities they would enable, including any adverse effect (s 76(3), RMA).

Relevant PDP framework of objectives and policies

[5] We start with those provisions or extracts of particular relevance in providing a framework for our evaluation of options for what is most appropriate for achieving relevant PDP objectives.⁹⁶ These are particularly in:

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

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

Ch 3: Strategic Direction

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

...sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities.

[8] These are then listed to include:

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

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

Within the Wakatipu Basin Rural Amenity Zone:

- a. the landscape character and visual amenity values of the Basin and of its Landscape Character Units, as identified in Schedule 24.8 are maintained or enhanced; and

⁹⁶ Not all provisions discussed in the JWS Planning are traversed here.

- b. the landscape capacity of each Landscape Character Unit and of the basin as a whole is not exceeded.

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

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

- (a) as updated by the court’s Topic 30 decisions, ‘landscape capacity’ is defined to mean as follows:

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

- (b) ‘rural living’ is defined as follows:

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

Chapter 24 – Wakatipu Basin

24.1 Zone Purpose

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

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

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

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

The Precinct is applied to specific areas of land within the broader Rural Amenity Zone that have capacity to absorb rural living development. These areas have a variety of existing lot sizes and patterns of development, with landscape character also varying across the Precinct. This includes existing vegetation, including

shelterbelts, hedgerows and exotic amenity plantings, which characterise certain areas. Within the Precinct, sympathetically located and well-designed rural living development which achieves minimum and average lot sizes, is anticipated, while still achieving the overall objectives of the Rural Amenity Zone.

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

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

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

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

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

[13] When considering our findings on the various Topic 31 appeals in the Wakatipu Basin, we must keep in mind the settled positions expressed in our Topic

30 decisions.⁹⁷ In this context, it is relevant to point out that the Proposed Plan does not simply promote a rigid preservation of the status quo in terms of land uses and patterns of development. Rather, the Proposed Plan envisages the potential for changes in land use so long as they do not compromise identified landscape values.

Obj 24.2.1

[14] This objective is:

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

Policies to achieve and implement Obj 24.2.1

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

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

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

24.2.1.1 Subdivision or residential development in all areas outside of the Precinct that are identified in Schedule 24.8 to have Very Low, Low or Moderate-Low capacity must be of a scale, nature and design that:

⁹⁷ *Barnhill Corporate Trustee Ltd & Ors v Queenstown Lakes District Council* [2022] NZEnvC 58, [2023] NZEnvC 41, [2023] NZEnvC 91.

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

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

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

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

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

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

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

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

Obj 24.2.4

[16] This objective is:

Subdivision and development, and use of land, maintains or enhances water quality, ecological quality, and recreation values while ensuring the efficient provision of infrastructure.

Policies to achieve and implement Obj 24.2.4

[17] Related policies include:

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

- 24.2.4.3 Provide for improved public access to, and the maintenance and enhancement of, the margins of waterbodies including Mill Creek and Lake Hayes.
- 24.2.4.6 Facilitate the provision of walkway and cycleway networks and consider opportunities for the provision of bridal path networks.
- 24.2.4.9 Encourage the planting, retention and enhancement of indigenous vegetation that is appropriate to the area and planted at a scale, density, pattern and composition that enhances indigenous biodiversity values, particularly in locations such as gullies and riparian areas, or to provide stability

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

[18] Obj 24.2.5 is:

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

Policies to achieve and implement Obj 24.2.5

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

- 24.2.5.1 Provide for rural living, subdivision, development and use of land in a way that maintains or enhances the landscape character and visual amenity values identified in Schedule 24.8 - Landscape Character Units.
- 24.2.5.2 Ensure that any development or landscape modification occurs in a sympathetic manner in both developed and undeveloped areas, by promoting design-led and innovative patterns of subdivision and development that maintain or enhance the landscape character and visual amenity values of the Wakatipu Basin overall.
- 24.2.5.4 Implement lot size and development standards that provide for subdivision and development while ensuring the landscape character and visual amenity values of the Precinct, as identified in Schedule

24.8 – Landscape Character Units, are not compromised by the cumulative adverse effects of development.

- 24.2.5.5 Encourage the retention and planting of vegetation that contributes to landscape character and visual amenity values of the Precinct, particularly where vegetation is identified as an important element in Schedule 24.8, provided it does not present a high risk of wilding spread.
- 24.2.5.6 Require buildings, or building platforms identified through subdivision, or any vehicle access located within a prescribed Escarpment. Ridgeline and River Cliff Features setback as identified on the District Plan web mapping application, to maintain the values of those features, including by:
- a. ensuring that any buildings, earthworks and landform modification are located and designed so that the values of the feature are maintained; while
 - b. recognising that for some sites compliance with the prescribed setback is not practicable due to the site size and dimensions, presence of existing buildings, or the application of other setback requirements

Schedule 24.8

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

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

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

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

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

Ch 27 Subdivision and Development

[21] 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.

[22] 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

Recorded preliminary observations and directions prior to closing submissions⁹⁸

Well effectively, the Court's preliminary view is that this is not in a suitable site for a retirement village type development at all. That's first and foremost. For a range of reasons, including landscape but also the other concerns that arise from sporadic urban intrusion into a rural setting and the integrity of the Plan in various ways including in regard to chapter 24 itself. So that's the first point. Secondly, the Court is also concerned that the alternative zoning proposal put by on behalf of your client, even though that would appear not to have been particularly a focus of the expert evidence called by the appellant, nevertheless acknowledged there, that that alternative zoning proposal also sits badly with chapter 24 in view of its intentions and objectives. While I acknowledge and the Court will obviously receive your fully rounded closing on how it compares with urban development, obviously the Court hears that, but nevertheless is concerned that it involves something in the nature of a departure from the integrity, and the intentions, the objectives and policies of chapter 24 which are very important in the consideration of all of the matters in the mix, that this is not a case of reverting back to some model of throwing everything into the balance and coming up with an outcome, that it is a more nuanced approach that is required by the Court that is actually to be well-informed by the objectives and policies of the planning instrument that this would be part of.

This is not a case about a development. This is a case about a zoning choice, under s 32, including in that regard s 32, in what is the most appropriate way of achieving relevant objectives and policies, and also part 2 of the Act to the extent that objectives are also in the mix. So, well at least to that extent.

It is difficult for the Court in one sense to receive evidence that is very much about a development proposition which is not, which may well be a matter to be considered in a more rounded sense at a consenting stage.

This is a planned choice case, not a resort consent development case per se, and

⁹⁸ Transcript at p 317-319.

there are important things to watch out for there, I must say in terms of making the wrong presumptive findings on matters to do with the development.

Part of the mix there, of course, is the request for whether the urban growth boundary should be adjusted. The Court sees all sorts of problems with that proposition, including in regard to Millbrook, and also in regard to the strategic purpose of chapter 4 of the Plan and its related objectives in Chapter 3 and how that bears on consideration of the request that has been made here.

So that brings the Court back to what is the most appropriate zoning outcome here and I have to say this is the biggest challenge, another big challenge for you Mr Goldsmith is in fact that while the Council's witnesses, and to some extent that Mr and Mrs Hadley's witnesses acknowledged the potential to some extent for some form of modified precinct of some of your client's land. That was something that was never – maybe I'm wrong about that, the Court may be informed about this better tomorrow - but it doesn't seem to me that that was really explored by your own experts, and the evidence that was received by way of rebuttal in response to the case presented by the other parties, including the Council, including on the opinions expressed by Mr Langman and Ms Mellsop, for instance, on the potential for precinct treatment of some of the land, wasn't picked up in any significant way in the rebuttal evidence of your own experts to the point where you have that evidence before the Court.

So, what do we do about that, is the question. And as I say, coming back to the ultimate question is what is the most appropriate zoning treatment of this land. Is it what the decision version said, or some other proposition? And rather than, should this land be allowed to be developed according to a scheme of development put before the Court on the basis that it benefits that argument, as I say, difficulties with that include that this is not a resource consent process and the Court does not have well-rounded evidence on that, it simply needs to look at what would be the best zoning treatment of the land in regard to those different outcomes that might occur in development terms.

For instance, if this land were to remain in rural usage, that's just one of the potential land use outcomes that could occur under the existing zoning framework that the decision version has allowed for. There are other things that occur with the land under the zoning regime as well.

Annexure 3

List of witnesses

Landscape and related amenity values

[23] The court heard landscape evidence from three experts – Mr Stephen Brown (called by WPDL), Ms Helen Mellsop (QLDC) and Mr Ben Espie (Hadleys). In addition, WPDL called Dr Shayne Galloway, an expert in recreation and leisure. He gave evidence on recreational usage of the Christine’s Hill section of the Queenstown Countryside Trail as part of the Queenstown trail network. He also addressed the additional benefits that would arise if trail users have the option of cycling through Ayrburn Domain according to WPDL’s intentions. In addition, WPDL called Gerald Barratt-Boyes on urban design matters pertaining to their development intentions for the Site.

Water quality and ecology and other issues

[24] WPDL called expert evidence on water quality and ecology. Written statements of evidence were provided by WPDL from Dr Ruth Goldsmith (aquatic ecology), Dr Stephen Rate (terrestrial ecology) and Jayne Richards (water and wastewater). FOLH called freshwater scientist, Dr Marc Schallenberg and environmental scientist, Brian McGlynn.

[25] WPDL also called Rachel Mudge (farming systems), Sally Lee (farming economics) Natalie Hampson (economics) and Adam Thompson (market demand). There were related briefs from Sam Ballam (surveyor), Stuart Minty (geotechnical engineer), Dr Bernice Chapman (contaminated soils), Alexis Patrylak (stormwater and flood management engineer), Jens Rekker (groundwater expert) and Andy Carr (transportation engineering). This evidence was not contested and was taken as read.

Planning

[26] The court heard planning evidence from four experts – Mr Jeffrey Brown (called by WPDL), Mr Marcus Langman (QLDC), Mr Carey Vivian (Hadleys) and Mr Andrew Maclennan (ORC).

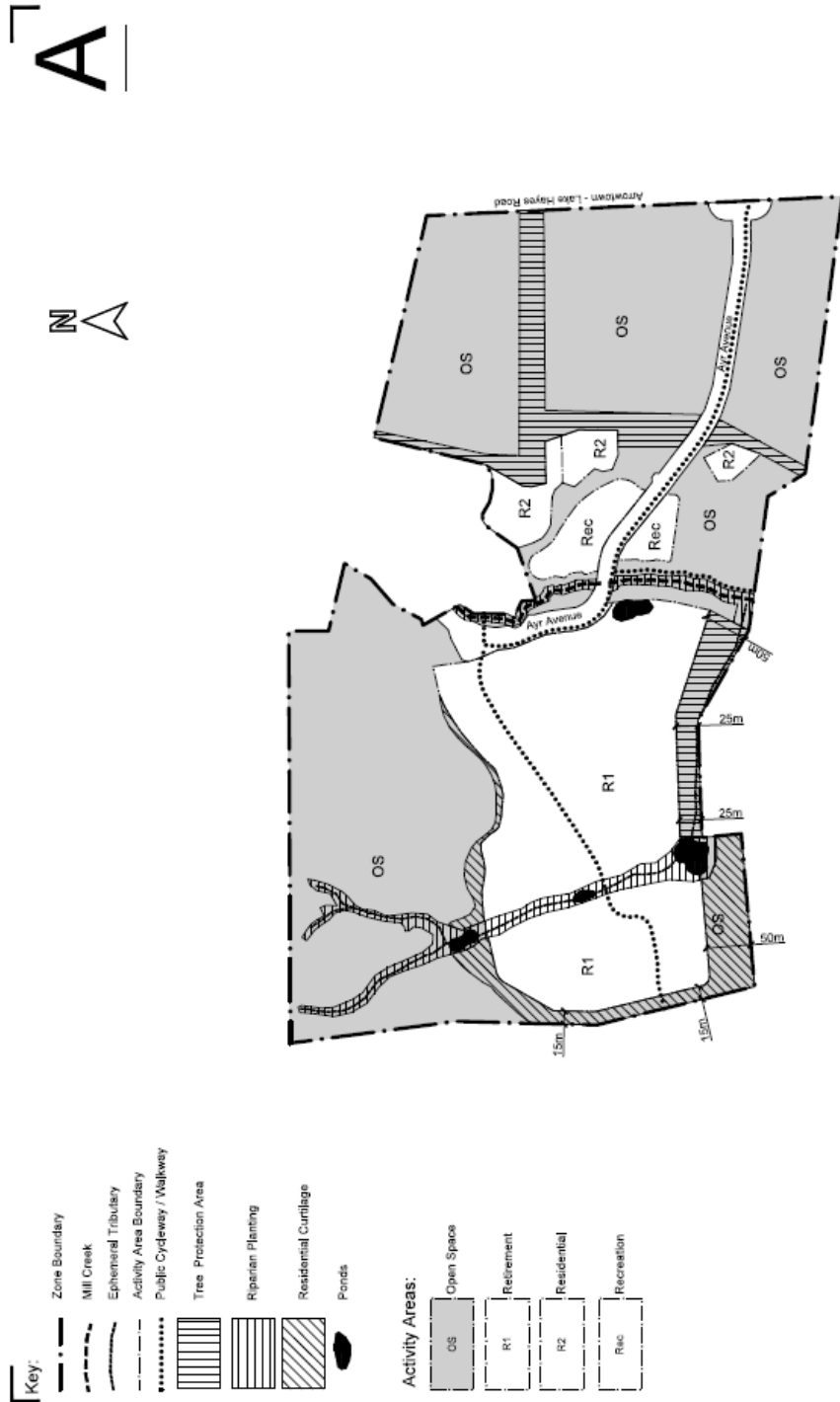
Party perspectives

[27] The court also heard evidence from various lay witnesses as to different parties perspectives on the relief pursued by WPDL. These included:

- (a) Chris Meehan, director of WPDL and George Wadworth-Watts, a consultant to WPDL in regard to the company's landscape strategy for the Site;
- (b) Brian Boyle is a member of the executive committee of FOLH; and
- (c) s274 party, Rebecca Hadley lives on Speargrass Flat Road close to the Queenstown Countryside Trail and the Site.

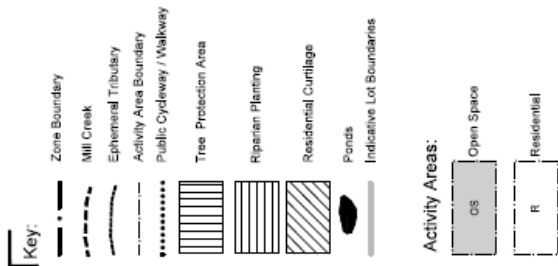
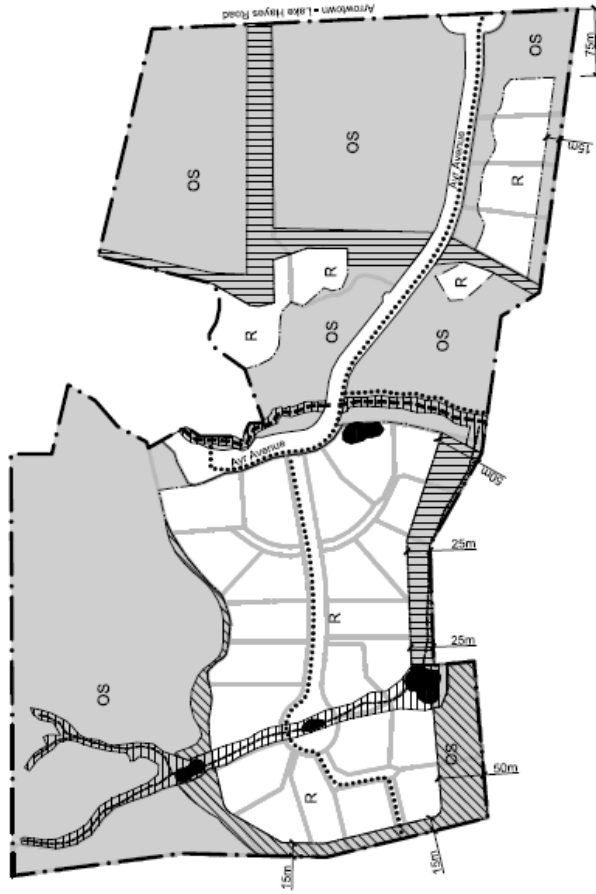
Annexure 4

Alternative structure plan layouts as proposed by WPDL



AYRBURN ZONE STRUCTURE PLAN - 3-Aug-21
Scale 1:4000 @ A3

B



AYRBURN LIFESTYLE PRECINCT STRUCTURE PLAN - 3-Aug-21
 Scale 1:4000 @ A3

