

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

Decision No. [2023] NZEnvC 226

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN M SCAIFE

(ENV-2021-CHC-022)

Appellant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

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

Hearing: at Queenstown on 28 February 2023

Appearances: M Scaife and C Byrch in person
M G Wakefield and S L Richardson (via AVL)
for the respondent
M Holm and L Ford for Matakauri Lodge Limited

Last case event: 19 April 2023

Date of Decision: 31 October 2023

Date of Issue: 31 October 2023

INTERIM DECISION OF THE ENVIRONMENT COURT
Topic 38, subtopic 2 – Rural Visitor Zone

A: Modified Rural Visitor Zone is confirmed as the most appropriate zoning
for Matakauri Lodge.

SCAIFE v QLDC – TOPIC 38 – INTERIM DECISION



- B: Those provisions as recommended in QLDC’s closing submissions are the most appropriate, except insofar as we otherwise specify.
- C: Directions are made for the purposes of supplementary closing submissions on those provisions we identify as requiring further refinement for the purposes of the court’s final decision.
- D: Therefore, the appeal is allowed in part.
- E: Costs are reserved, but applications are not encouraged.

REASONS

Introduction

[1] This decision in the staged consideration of appeals in the review of the Queenstown Lakes District Plan (‘PDP’) concerns Topic 38, subtopic 2 as to the proposed Rural Visitor Zone (‘RVZ’). More specifically, it concerns the appropriate zoning of Matakauri Lodge, a boutique luxury lodge at 569 Glenorchy-Queenstown Road, Closeburn, some 7.5 km west of Queenstown (‘Matakauri’, ‘Lodge’, ‘Site’). It is located just west of 7 Mile Point and close to Wilson Bay. Access to the Lodge is via Farrycroft, a ROW shared by the appellant, Jan-Marc Servaas Scaife. His property is at 573 Glenorchy-Queenstown Road just south-west of the Lodge.

[2] Mr Scaife opposes the zoning of Matakauri as RVZ, seeking that it revert to Rural Living Zone (‘RLZ’) as was originally notified in the PDP.¹ Although the appeal is in Mr Scaife’s name, by consent he presented his case together with his partner, Ms Christine Byrch, and we treat their case accordingly.

[3] Under the PDP, the Lodge and Mr Scaife’s property are included within

¹ Mr Scaife’s right of appeal arises from his further submission (31062) in opposition to Matakauri’s submission on the notified PDP.

the mapped boundaries of an Outstanding Natural Landscape (‘ONL’). Mr Scaife and Ms Byrch do not challenge that notation in his appeal. The ONL encompasses a vast area, including Lake Wakatipu. The Lodge is designed and orientated to enjoy unobstructed views over the lake towards Cecil and Walter Peaks which are also within ONL. In addition, the ONL encompasses several notable peaks, bushed foothills and other landscape features on the northern flanks of the lake, as well as the more modified environs of the Glenorchy-Queenstown Road and the lake foreshore.

[4] Annexure 4 includes copies of various plans and maps from evidence and the PDP showing the Lodge, the existing configuration of buildings on it, its environs, the RVZ zoning and the dimensions of the ONL in the relevant locality of the Site.

Statutory framework and principles

[5] In our de novo consideration of the appeal, we have the powers, duties and discretions that QLDC (and its independent commissioners) had in regard to the decision appealed (s290, RMA). We have regard to the appealed decision (s290A). The determination of the zoning outcome should be according to what is most appropriate for achieving relevant PDP objectives (relevant objectives and related policies and other provisions being identified in the QLDC memorandum as to issues and recorded in Annexure 1) (s32(1)(b), RMA). We also evaluate zoning options with reference to the provisions of pt 2, the territorial authority’s functions (under s31, RMA) and national policy statements (s74(1) RMA).² However, we record that the PDP materially gives effect to those higher order instruments and accords with relevant RMA requirements such that we can safely evaluate the zoning options primarily with reference simply to its objectives, policies and other

² That is a synopsis of what we have set out in *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* [2021] NZEnvC 189 and in several other decisions on the PDP on matters that were not contentious in this case.

provisions.

The evidence

[6] We heard from two landscape experts (Matthew Jones, called by QLDC and Rebecca Lucas, called by Matakauri) and two planners (Victoria (Vicki) Jones, a QLDC officer and Scott Freeman, called by Matakauri). Mr Scaife elected not to call evidence. Together with Ms Byrch, he made representations and cross-examined the experts called by the other parties.

[7] To assist us to contextualise the evidence, we inspected Matakauri Lodge and viewed it from public viewpoints and a chartered vessel, according to an itinerary recommended by the parties. That itinerary did not invite us to take a viewing of or from Mr Scaife's property and we did not do so.

The issues

[8] As directed, parties conferred before the hearing and QLDC filed a memorandum as to the issues for determination ('QLDC memorandum as to issues').³

Is RVZ a valid and available zoning option?

[9] A preliminary issue raised is whether RVZ is a valid and available zoning option. On this preliminary issue, the QLDC memorandum as to issues records the following as questions Mr Scaife seeks be answered:

21. Is the District Plan Review the correct forum for considering the zoning of individual sites and to create single-site bespoke 'zones' based on assessments of the effects on landscape and amenity for an individual site

³ Memorandum of counsel for QLDC regarding statement of issues, dated 21 October 2022, at [8].

in isolation?

22. How is a RVZ compatible with QLDC principles for rezoning and avoiding 'spot zones'?
23. How is it correct to review the zoning of the Appeal Land when that site has already been considered as part of the review of the RLZ (chapter 22)?
24. What assessment has been made to ensure that RVZs will be limited in extent as required by the purpose of the RVZ as stated in Chapter 46? For example, in the ONL landscape that the Appeal Land is a part of, how many other sites exist that would also be classified as areas of low landscape sensitivity and thus also qualify for RVZ zoning?

[10] In their representations, Mr Scaife and Ms Byrch raise concerns about whether the bespoke zoning model, as is applied through the RVZ (in this case with bespoke provisions just for the Lodge), is valid. Their representations question that, both in terms of planning principles and in light of the procedural history in terms of which RVZ came to be applied to the Lodge. They traverse the consenting history of the Lodge. It commenced as a small boutique resort. Under the current ownership, it was incrementally developed and expanded now to operate as a luxury lodge that can accommodate up to 32 overnight guests and allows for some associated commercial activities. That was through various consenting stages. Mr Scaife explains that neighbours' approvals were obtained in the initial stages of consenting but not more recently.

[11] Mr Scaife and Ms Byrch go on to discuss the history of the PDP review under which different zoning treatments were proposed. Initially, in Stage 1, a Matakauri Visitor Accommodation sub-zone was proposed. That was replaced with RLZ, a zoning that Mr Scaife supports. However, that was replaced subsequently by RVZ, the zoning that Mr Scaife has appealed.

What is the most appropriate zoning for Matakauri Lodge?

[12] The primary issues concern the most appropriate zoning outcome for Matakauri Lodge. The QLDC memorandum as to issues identifies this set of issues as concerning whether the most appropriate zoning choice is on the spectrum between RLZ as sought by Mr Scaife and RVZ, or modifications to RVZ.⁴ The memorandum identifies some seventeen associated issues (and some related sub-issues) in essence as matters that go to informing the most appropriate zoning outcome. These can be summarised as follows:

- (a) would each zoning option protect the landscape values of the ONL having regard to associated landscape sensitivities?
- (b) would RVZ zoning of Matakauri Lodge be incompatible with the surrounding RLZ zoning and harm PDP plan integrity?
- (c) should any site-specific modifications be made to the PDP decision version of the RVZ in relation to Matakauri Lodge if RVZ is more appropriate than RLZ?

[13] We find those issues as summarised present a helpful framework of the key evidential matters on which we must make findings to inform our choice of the most appropriate zoning outcome. In essence, the most appropriate zoning outcome is to be found within the spectrum of RLZ or some form of modified RVZ.

RVZ is a valid and available zoning option for Matakauri Lodge

[14] As to this preliminary issue, we acknowledge that spot zoning can give rise to issues of cross-boundary incompatibility as between competing land uses. However, we find nothing legally unsound in the use and application of the RVZ

⁴ Memorandum of counsel for QLDC regarding statement of issues, dated 21 October 2022, at [8]-[12]. As we further discuss in Annexure 1, it is also within the scope of the appeal to consider a modified RLZ outcome. However, that outcome was not advanced by any party in their evidence, nor by Mr Scaife in his representations.

as a zoning class in the PDP. Nor do we identify any procedural defect in how the zoning of Matakauri as RVZ has come about (although also noting that a role of de novo appeals is to remediate procedural deficiencies at first instance).

[15] Under the National Planning Standards 2019 ('PS 19'), there is no specification of a 'Rural Visitor Zone' as such, nor any class intended to cater specifically for a type of rural visitor activity that enables people to appreciate a district's landscapes. Perhaps the closest equivalent zoning class in PS 8 Table 13 is "Settlement zone" defined as "Areas used predominantly for a cluster of residential, commercial, light industrial and/or community activities that are located in rural areas or coastal environments." However, as we note in *Wakatipu Equities Ltd v Queenstown Lakes District Council*, QLDC is currently exempt from having to comply with those standards.⁵

[16] We appreciate the frustrations that can arise for participants in a staged plan review in which earlier zoning proposals are revisited. Councils need to be wary not to unduly test the faith of participants whose effective engagement helps bed home community confidence in planning outcomes. However, we find nothing legally remiss in what has occurred in this case.

Our evaluative approach to the issue of the most appropriate zoning outcome

[17] The remainder of this decision concerns the primary issue in the appeal as to whether the most appropriate zoning of Matakauri is RLZ or a modified RVZ. There are several dimensions to this issue, so we approach it in stages as follows:

- (a) starting with a discussion of the PDP's design intentions for the RLZ and RVZ;
- (b) in light of our findings on that, then evaluating the evidence as, in

⁵ *Wakatipu Equities Ltd v Queenstown Lakes District Council* [2023] NZEnvC 188, at fns 11-15.

- terms of those PDP design intentions;
- (c) then setting out why we find the RVZ more appropriate than RLZ for the Lodge; and
 - (d) lastly setting out our findings on how the RVZ should be modified so as to be the most appropriate zoning choice for the Lodge.

The purposes of the RLZ and the RVZ within the PDP

[18] According to the principles we have noted, the choice of zoning outcome is significantly informed by the design purposes of RLZ and RVZ within the PDP, as reflected in relevant PDP objectives and policies and Zone Purpose statements. The provisions we now discuss are set out or summarised for reference in Annexure 1.⁶

Chs 3 and 6

[19] Of most significance in Chs 3 and 6 are objectives and policies as to:

- (a) avoiding adverse effects on ONL landscape values where there is little capacity to absorb change; and
- (b) ensuring all buildings and other structures and all changes to landform or other physical changes to the appearance of land are reasonably difficult to see from beyond the boundary of the site in question, in this case Matakauri Lodge.

Ch 22 as to the RLZ

[20] The explanation of the purpose of the RLZ in 22.1 Zone Purpose refers to the RLZ as providing for “rural living opportunities with an overall density of one residential unit per two hectares across a subdivision”. That is reflected in Obj

⁶ Annexure 1 largely draws from the provisions as set out or summarised in the QLDC memorandum as to issues.

22.2.2, which refers to the “predominant land uses” of the RLZ as being “rural and residential activities”. In implementation of that intention:

(a) Pol 22.2.2.1 is:

Enable residential and farming activities in both zones, and provide for community and visitor accommodation activities which, in terms of location, scale and type, community are compatible with and enhance the predominant activities of the relevant zone.

(b) Pol 22.2.2.3 is:

Discourage commercial, community and other non-residential activities, including restaurants, visitor accommodation and industrial activities that would diminish amenity values and the quality and character of the rural living environment.

[21] As those policies reflect, the design of the RLZ is biased in favour of rural and rural living, including by maintaining the amenity values of those who live in the zone and the quality and character of the rural environment.

[22] While visitor accommodation is provided for in the RLZ, this is on a more qualified basis than in the RVZ. For example, visitor accommodation (including the construction or use of buildings) is classed as a discretionary activity (r 22.4.10) (whereas the RVZ classes it as a permitted activity). The qualified provision for visitor accommodation in the RLZ is also reflected in rules on matters of control and discretion and associated standards and in a lack of any signal that consent applications for such activities would be non-notified (22.6).⁷

[23] As is the case for other zones for the district’s rural environment, the RLZ gives emphasis to the protection of ONF/Ls and the maintenance of landscape character and maintenance or enhancement of visual amenity values of rural

⁷ In contrast, r 22.6.2 signals limited notification for “residential visitor accommodation” and “homestay” under applicable activity class rules.

character landscapes (e.g. in Obj 22.2.1 and Pol 22.2.1.4). However, in significant contrast to the RLZ, the regime for that is relatively unstructured.⁸ In essence, the protection of ONF/L values, the maintenance of landscape character and the maintenance or enhancement of visual amenity values is anticipated to occur as part of the overall management of subdivision and development. That is reflected in the following extracts from the 22.1 Zone Purpose statement:

...a minimum allotment size is necessary to maintain the character and quality of the zones and the open space, rural and natural landscape values of the surrounding Rural Zone ...

Building platforms are identified at the time of subdivision to manage the sprawl of buildings, manage adverse effects on landscape values and to manage other identified constraints such as natural hazards and servicing.

Many of the Rural Lifestyle zones are located within sensitive parts of the district's distinctive landscapes. While residential development is anticipated within these zones, provisions are included to manage the visual prominence of buildings, control residential density and generally discourage commercial activities. Building location is controlled by the identification of building platforms, bulk and location standards and, where required, design and landscaping controls imposed at the time of subdivision.

Ch 46 as to the RVZ

[24] In discussing the provisions in Ch 46, we are mindful of the several modifications that parties identify as being needed to its provisions should the court confirm RVZ for the Lodge. As noted, no party presents a case to leave the decisions version RVZ provisions unmodified. Nevertheless, none of the changes sought by parties fundamentally change their overall intentions as are expressed in relevant objectives and policies. Rather, changes pursued to Ch 46's policies, rules

⁸ The unstructured approach of the RLZ to these matters is also in contrast to the Wakatipu Rural Amenity Zone for the Wakatipu Basin, where these matters are addressed by reference to mapped landscape character units (Ch 24).

and other provisions seek to sharpen, clarify and make them more effective for achieving its specified objectives. We consider the Ch 46 provisions on that basis.

[25] As provided for in Ch 46, the RVZ is a form of spot zone whereby it applies to specified visitor accommodation facilities only and on a basis where there are bespoke zoning modifications for particular facilities. The attachment to the evidence-in-chief of Ms Vicki Jones identifies that Matakauri Lodge is one of six facilities included in the RVZ (others including Arcadia, Gibbston Valley, Walter Peak and Maungawera).⁹

[26] In contrast to the RLZ, the RVZ is biased in favour of the following activities as described in Obj 46.2.1:

visitor accommodation, commercial recreational activities and ancillary commercial activities ... at a small scale and low intensity in rural locations.

[27] By way of further contrast with the RLZ, the RVZ includes a policy to avoid residential activity in the zone other than staff accommodation (which is provided for on a qualified basis) (Pol 46.2.1.5).¹⁰

[28] The RVZ intends to provide for visitor accommodation and the other noted activities on a qualified basis and the extent to which Matakauri Lodge does so is in issue in the appeal. Firstly, visitor accommodation and the other activities are intended to be “at a small scale and low intensity”. Secondly, Obj 46.2.1 prescribes that this is to be in a manner that achieves seven specified environmental outcomes, namely:¹¹

⁹ There is another 12.5 ha site simply noted as “Rural Visitor Zone”.

¹⁰ This policy makes some qualified provision for residential activity in the Arcadia RVZ but that is not relevant in this case.

¹¹ We note that this objective is in slight contrast to the statement in 46.1 Purpose that the “principal activities” in the RVZ “are visitor accommodation and related ancillary commercial activities, commercial recreational activities and recreational activities”. We discuss this further under the heading Uncertainty as to “recreation” and “recreational activity” at [132] and following.

- a. protects the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes;
- b. maintains landscape character, and maintains or enhances visual amenity values in areas not within Outstanding Natural Features or Outstanding Natural Landscapes;
- c. avoids adverse effects, including cumulative effects in conjunction with other activities, buildings and development, which do not protect the values specified in a. or maintain or enhance the values specified in b;
- d. maintains amenity values of the surrounding environment;
- e. does not compromise the operation of existing activities or those enabled by the zones in the surrounding environment as a result of reverse sensitivity effects;
- f. activities anticipated within each Zoned area can be adequately serviced with wastewater treatment and disposal, potable and firefighting water supply, and safe vehicle access or alternative water or air-based transport; and
- g. avoids significant or intolerable risks from natural hazards to people and the community.

[29] It can be observed that several of those outcomes reflect the fact that RVZ is a form of spot zone for identified facilities where there can be issues arising in their settings. In particular, outcomes a. and d. intend that visitor accommodation, commercial recreational activities and ancillary commercial activities is only to be provided for if this:

- (a) “protects the landscape values” of the ONL within which Matakauri Lodge is located; and
- (b) “maintains amenity values of the surrounding environment” including the environment within which Mr Scaife and Ms Byrch reside.

[30] Particularly in regard to the protection of ONF/L landscape values, the RVZ takes a notably more structured approach than does the RLZ. As part of this, Obj 46.2.2 is:

Buildings and development that have a visitor industry related use are provided for at a small scale and low density within the Rural Visitor Zone in areas of lower landscape sensitivity where:

- a. the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected;
- b. in rural areas not within Outstanding Natural Features or Outstanding Natural Landscapes, the landscape character is maintained and the visual amenity values maintained or enhanced;
- c. adverse effects, including cumulative effects in conjunction with other activities, buildings and development, which do not protect the values specified in a. or maintain or enhance the values specified in b. are avoided; and
- d. amenity values of the surrounding environment are maintained.

[31] In regard to the protection of ONF/L values, this structured approach includes the use of landscape sensitivity mapping as a form of structure planning for each site within the RVZ. A copy of this was included in the evidence-in-chief of Ms Jones. There are associated policy directions in Pols 46.2.2.1 and 46.2.2.2 in summary to the following effect:

Landscape sensitivity areas	Policy directions as to building development
High Landscape Sensitivity Areas	Avoid buildings
Moderate-High Landscape Sensitivity Areas	Restrict buildings unless they are located and designed, and adverse effects are mitigated, to ensure ONF/L landscape values are protected

Areas outside High or Moderate-High Landscape Sensitivity	Enable and consolidate buildings
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[32] Obj 46.2.2 also reflects an intention that the positioning of buildings and the undertaking of other “visitor industry” development on a RVZ site maintain the amenity values of the surrounding environment. That is reinforced by a number of associated policies. We note, for example:

- (a) Pol 46.2.1.2 as to enablement of visitor accommodation and the various other noted commercial activities (including onsite staff accommodation) within a RVZ is qualified including by the specification “where ... the landscape character of the landscape the Zone sits within is maintained and the visual amenity values are maintained or enhanced”; and
- (b) Pol 46.2.1.3 relevantly gives direction to ensure “the location, nature, scale and intensity of visitor accommodation, commercial recreational activities, and associated aspects such as traffic generation, access and parking, informal airports, noise and lighting” “maintain amenity values beyond the Zone”.

[33] “Visitor accommodation” and “commercial recreational activities and ancillary onsite staff accommodation” are specified as permitted activities (rr 46.4.2, 46.4.3). However, that is subject to associated standards that are designed to help implement relevant policies for the achievement of the noted objectives. Some standards are specific to particular RVZ facilities. For example, for Matakauri, the total maximum ground floor area standard is specified as 1650m² for all buildings (r 46.5.3). For commercial recreational activity, a standard specifies a cap of 30 persons per group for outdoor activity (r 46.5.7).

[34] For listed permitted activities, breach of standards triggers various activity classes requiring consent. For building height, that is as a non-complying activity (r 46.5.1). For most other standards, breach triggers restricted discretionary activity classification. Associated matters of discretion are generally confined to

the matters identified as significant outcomes, including for the surrounding environment (e.g. r 46.5.2). By contrast to the RLZ, the non-notification provision allows generous discretion for the non-notification of resource consent applications for restricted discretionary activities (46.6).¹²

RVZ is better attuned to the management of important environmental outcomes

[35] We return to this theme in light of our findings on the landscape evidence, but record at this stage that our evaluation of the purposes of the RLZ and the RVZ within the PDP help inform our finding that RVZ is a more appropriate zoning choice. That is particularly because it is better attuned to the management of important environmental outcomes. In particular, it provides for:

- (a) a sound structure planning approach to the protection of ONL values; and
- (b) subject to further refinement, would be comparatively better able to maintain the amenity values in the receiving environment beyond the Site.

Evaluation of the evidence

Introduction

[36] In this part of the decision, we focus primarily on the evidence of the landscape experts, Rebecca Lucas and Matthew Jones. The planners' evidence on matters concerning the most appropriate zoning outcome largely draws from the landscape experts' opinions. As such, we do not need to traverse the substance of those further opinions other than to record that they each assist us in making our findings. The planners' opinions concerning amenity values and other planning

¹² Unlike the equivalent provision for the RLZ in Ch 22, 46.6 is not specified to be a rule. Desirably, this inconsistency should be resolved and we allow for this in our directions.

considerations are offered on the basis that they agree that RVZ is more appropriate than RLZ as a zoning outcome. Predominantly, their differences concern how the RVZ's provisions should be modified so as to be most appropriate in achieving relevant PDP objectives. We deal with those differences later in this decision.

The landscape experts applied sound methodologies

[37] Ms Lucas and Mr Jones are experienced landscape experts. They applied the methodology recommended in *Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines* ('Assessment Guidelines').¹³ They did so duly cognisant of the relevant intentions of the PDP. Ultimately, they differed in relatively confined respects relevant to how the RVZ should be modified to ensure effective protection of ONL values.

ONL landscape values

[38] Ms Lucas and Mr Jones do not materially differ in their opinions concerning ONL landscape values. We accept their evidence in finding that the ONL has a highly natural, scenic quality that is shared and recognised due to the natural landscape and a scale that dominates any built form, or evidence of human modification. Each expert characterised the associated landscape values in similar terms. We draw largely from Mr Jones' evidence in summarising those values as including:

- (a) naturalness, or perhaps more precisely, perceptions of naturalness, in higher elevations due to the absence of buildings;
- (b) coherent landscape patterns, including landform and vegetation;
- (c) high legibility of natural landforms and hydrological patterns and features including steep sloping mountain landforms (notably including Wedge Peak (1086m) and Bob's Peak (1099m), Lake

¹³ Published by Tuia Pito Ora New Zealand Institute of Landscape Architects, July 2022.

Wakatipu, elevated ridgelines and spurs, rolling topography, and Seven Mile Creek/Close Burn and tributaries;

- (d) scenic views as are strongly associated with this landscape setting;
- (e) seclusion and remoteness, more strongly in higher elevations but, given the enclosed topography and vegetation patterns, also present to a reduced extent nearer the Lake, notwithstanding the presence of development;
- (f) recreational associations such as boating, swimming, recreational hiking and tourism activities in the vicinity and historical associations with the landscape; and
- (g) transient values relating to seasonal changes in weather patterns and, to an extent, in exotic vegetation.

[39] The experts each record their understanding that there are significant Manawhenua associations with this environment. However, neither provided us with any sources we can treat as authoritative. We accept that the PDP classifies Lake Wakatipu as Wahi Tupuna, of special significance to local iwi but consider any further findings are better left to a context where authoritative evidence including as to tikanga and mātauranga Māori evidence is before the decision-maker.

[40] The experts' material differences concern the Site's landscape sensitivity ratings (informed by their visual assessments) and what modifications should be made to the RVZ's development standards. Those differences are very confined as we next explain.

Visual assessments

[41] To inform their landscape assessments, the experts assessed the visual impact of development of the Site from identified public viewpoints. The court's site visits were also from a selection of those viewpoints. The experts agree that development of the Site would have the most significant visual impact from

Viewpoints 2, 3 and 4, each of which was from the Lake.¹⁴ For those viewpoints, the experts' agreed visual impact ratings are Very Low, Low and Very Low respectively.¹⁵ Following our Site visits, we indicated to parties that our impression of the existing Lodge from Viewpoint 3 is that it has a Moderate visual impact. Ms Lucas agreed with that relative impact assessment, confirming that her approach was to assess the incremental difference of development,¹⁶ as distinct from the overall, cumulative impact. We understand Mr Jones took a similar approach.

[42] Although the experts derive the same visual impact ratings, this is from different starting premises. Ms Lucas considers there is relatively less landscape sensitivity in parts of the Site and greater development capacity than does Mr Jones. Nevertheless, in answer to Mr Scaife, Ms Lucas agreed that it is important "to keep the steep terrace slope above the lake shore free of development".¹⁷

Landscape sensitivity ratings for the Site

[43] Drawing from the Assessment Guidelines, Mr Jones explained how 'landscape sensitivity' is closely related to 'landscape capacity' as tools for the landscape assessment of future proposals. 'Landscape sensitivity' refers to the susceptibility of a landscape's values to potential effects of proposals. 'Landscape capacity' refers to an estimate of how much of a proposal could be accommodated while still retaining specific landscape values.¹⁸

[44] As we have noted, part of the design of the RVZ is the mapping of landscape sensitivity areas on the relevant Site. The relevant sensitivity classes are:

14 The viewpoints are identified in App A to the EIC of Mr Jones.

15 Lucas EIC at [62]-[67], M Jones EIC at [7.17], [7.24] and [7.26].

16 Transcript, p 26.

17 Transcript, p 21, l 22-23.

18 M Jones EIC at [6.1], referring to Assessment Guidelines at [5.49].

- (a) High Landscape Sensitivity ('HLS');
- (b) Moderate-High Landscape Sensitivity ('MHLS'); and
- (c) Low Landscape Sensitivity ('LLS').

[45] The current online PDP mapping tool identifies the Site as including a 1.4 ha area of HLS.¹⁹ Mr Jones recommends that this PDP mapping notation be modified in light of his more detailed analysis of the landscape attributes of the Site and the wider ONL. His map is reproduced as Fig 2 in Annexure 4. As can be seen, he considers:

- (a) the central area of the Site coloured purple on Fig 2, including the accessway and carparks, main Lodge, gym and spa building and chalets 1 and 2 is a LLS area;
- (b) the small adjoining area to the south-west, coloured turquoise blue, is a MHLS area; and
- (c) the remainder of the Site, coloured salmon on Fig 2 and surrounding the other areas, is a HLS area.

[46] Ms Lucas agrees except to the extent that she recommends that a portion of what Mr Jones recommends for the HLS Area instead be mapped as MHLS.²⁰ The area in contention is shown coloured yellow on Fig 3 in Annexure 4 ('Yellow Area').²¹

[47] In terms of the design of the RVZ, the mapped allocation of different landscape sensitivities across a site has implications for the site's development potential. In particular, that is the case for the construction or exterior alteration of buildings (within associated maximum ground floor area standards). The implications arise from activity classifications for consenting purposes and

¹⁹ This is reproduced in App 2 to the EIC of Ms V Jones.

²⁰ Lucas summary of evidence, dated 28 February 2023, at [3], referring to M Jones EIC App A, Fig 8.

²¹ Annexure 3 is a reproduction of a plan that Ms Lucas included in her summary statement.

associated policy directions, generally as follows:²²

	Activity status	Policy intention
<i>HLS</i>	Non-complying	Avoid
<i>MHLS</i>	Discretionary	Restrict unless located and designed to ensure ONF/L landscape values are protected (and adverse effects are mitigated).
<i>LLS</i>	Controlled	Enabled

[48] In essence, the construction or exterior alteration of buildings (within associated maximum ground floor area standards) in the Yellow Area would be:

- (a) a non-complying activity considered according to an avoidance policy if the Yellow Area is included in the mapped HLS Area as Mr Jones recommends;
- (b) a discretionary activity to be scrutinised for whether it is located and designed to ensure ONF/L landscape values are protected (and adverse effects are mitigated) if the Yellow Area is included in the MHLS Area as Ms Lucas recommends.

[49] The Yellow Area is on a sloping part of the Site that spills in the order of 4-5 m below a terrace that is legible from the Lake, as we adjudge from Viewpoints 3. In particular, we compare Fig 3 with Fig 4 of Annexure 4. It is a reproduction of a topographical map produced in evidence by Mr Jones. A comparison of these Figures indicates that the Yellow Area would sit in a gully below Villas 1 – 4.

[50] The differences between Ms Lucas and Mr Jones as to the relative landscape sensitivity of the Yellow Area come back to judgement. Ms Lucas considers that this part of the Site could accommodate sensitively located and designed building development. That is particularly given that it sits slightly lower than the remainder

²² Our reference is to the version of PDP Ch 46 in App 2 to the evidence of V Jones, including to Pols 46.2.2.1, 46.2.2.2, 46.2.2.3 and rr 46.4.12, 46.4.13, 46.4.7.1.

of the terrace slope. Ms Lucas reads this topography as offering an enhanced development capability in accordance with the PDP's intentions.²³ She considers that allowing for development of the Yellow Area would have a "positive" landscape outcome in the sense of breaking the current linearity in built form. She acknowledged she has not assessed how development of the Yellow Area would impact on ONL landscape values. She considers this can be addressed during consenting processes.²⁴

[51] Mr Jones was not cross-examined on this aspect of his evidence by counsel for Matakauri.

Modifications to the RVZ standards

[52] To assist to ensure that ONL values are protected according to the PDP's intentions, Mr Jones recommends that some RVZ standards be modified namely:²⁵

- (a) the 10m minimum separation distance between buildings (r 46.5.10.1), which he recommends be increased to 15m;
- (b) the 500m² maximum ground floor area (GFA) (r 46.5.3.1) which he recommends be reduced to 300m²; and
- (c) the 1650m² total maximum ground floor area ('tGFA') of all buildings in Matakauri RVZ (r 45.5.3.2) breach of which is a restricted discretionary activity, which Mr Jones recommends be replaced with a dual standards' regime:
 - (i) development up to a limit of 2250m² tGFA would be a discretionary activity;
 - (ii) a 2250m² standard with breach defaulting to a non-complying activity.

²³ Lucas summary statement of evidence, at [5].

²⁴ Transcript, p 10, l 6-18 – p 11, l 11.

²⁵ M Jones EIC at [3.1](b), [8.8]-[8.15].

[53] As for his recommended expanded building separation distance, Mr Jones explains that this would assist integration of future buildings into the ONL. That is in conjunction with requirements under the standard for native plantings.

[54] Mr Jones' recommendations concerning GFA and tGFA arise from his landscape sensitivity and capacity assessment. An important aspect of his recommendation is to replace the present discretionary classification with a non-complying one for exceedance of the revised tGFA.

[55] As Mr Jones explains,²⁶ the current extent of built development coverage at the Site is in the order of 1634m². The IHP framed the present 1650m² discretionary activity standard in light of that, finding that in terms of the scale, intensity of activity, and density of buildings, "the existing development on the site is consistent with the outcomes sought through" the PDP objectives.²⁷ However, the PDP decisions version standard would leave open the capacity to develop the Site well beyond its existing scale as a discretionary activity (other than in the 1.4 ha portion denoted as HLS).

[56] Mr Jones recommends his reframed approach, including non-complying status for contravention, on the basis of his assessment of the landscape capacity of the Site.²⁸ He considers this would effectively protect ONL values and achieve the PDP's intentions. In his view, if the revised 300m² GFA standard applies to both new buildings and expansions, that would help protect "cohesive and legible patterns" as ONL values. That is in conjunction with his other recommendations concerning the standards. More particularly, he considers that his recommended revised GFA and tGFA would be effective in ensuring new development is "reasonably difficult to see" and of "a small scale and low intensity" and that the

²⁶ The existing site coverage is taken from Jones EIC, at [8.12].

²⁷ Report and Recommendations of the Independent Commissioners, 20.7 Ch 46, Commissioners Trevor Robinson (Chair), Sarah Dawson, Greg Hill, Calum Macleod, at [499].

²⁸ M Jones EIC, at [8.15].

ONL's natural landscape values would "remain visually dominant".²⁹

[57] In regard to these standards, Ms Lucas disagrees only in respect to Mr Jones' recommended 2250m² maximum for tGFA.

[58] Accepting that exceedance of the relevant tGFA standard should be non-complying, Ms Lucas considers this should be specified to be 2500m². She comments that her expanded MHLS area does not "contain any significant native vegetation" or "form a part of the wider legible natural landscape pattern".³⁰ She notes that it is on land that has a gentle slope set back from the terrace edge and has Low visibility from outside of the Site.³¹ She points out that the MHLS classification of this Yellow Area would confer on QLDC "appropriate control over any future proposal to ensure that the values and attributes of the surrounding ONL are maintained".³²

[59] Mr Jones was firm in his opinion that the Site does not have the additional capacity Ms Lucas envisages, commenting that any more would "degrade the values of the ONL in terms of naturalness and the cohesive landscape patterns".³³ He added:

Although the low landscape sensitivity area is predominantly set to the north, beyond the terrace edge and existing buildings where there is less visibility, additional development to up to 2500m² as proposed by Matakauri Lodge Ltd would result in adverse visual effects in relation to the extent of built form.

[60] Counsel for Matakauri cross-examined him on matters concerning a 2017 consent application that is apparently now "on hold". He did not further test Mr

²⁹ M Jones EIC, at [3.1](c), [3.2].

³⁰ Lucas summary statement of evidence, at [7].

³¹ Lucas summary statement of evidence, at [7].

³² Lucas summary statement of evidence, at [8]-[10]. Ms Lucas' calculation assumes the areas of Moderate – High and High Landscape Sensitivity are 3,876m² and 17,146m² respectively, with a combined area of 21,022m².

³³ M Jones EIC, at [8.15].

Jones on the justification for his more conservative opinion on landscape capacity. Nevertheless, Mr Jones made clear that he did not derive his opinion on matters such as the 2017 consent application but rather on “the capacity and what could be undertaken” on the Site.³⁴

Submissions

[61] In this discussion, we leave aside the submissions and representations made concerning various matters of detail as to how RVZ should be modified if confirmed for the Lodge. We do not need to traverse submissions for QLDC and Matakauri as to why we should prefer one or other of the landscape experts’ opinions. On all material matters of difference, we are able to apply our judgment given each expert applied sound assessment methodology in accordance with the Code of Conduct for Expert Witnesses in the court’s Practice Note.

[62] Mr Scaife raises concerns that the landscape experts did not assess viewpoints from elevated neighbouring lots located north and above the Site. He maintains that there is a lack of evidence on how development of the Lodge would impact on the amenity values of local residents.³⁵ On all matters concerning the ONL and the protection of landscape values, we do not need to traverse Mr Scaife’s representations. That is because those representations were made without the benefit of expert evidence and we find the relevant experts applied sound methodologies in undertaking their assessments for our purposes.

The landscape experts applied sound assessment methodologies

[63] Mr Jones and Ms Lucas each applied sound assessment methodologies, duly informed of relevant PDP intentions, to derive their opinions. Their assessments was more confined than what we must consider, in two key respects. They confine their evaluations to development they envisage if the Lodge is zoned RVZ,

³⁴ Transcript, p 63, l 29 – p 64, l 16.

³⁵ Closing representations by Mr Scaife, dated 19 April 2023, at section 5.

whereas we must evaluate the available zoning outcomes. They focus predominantly on whether ONL landscape values would be protected whereas we must also evaluate a range of other matters including how zoning choices would impact on the maintenance of visual and other amenity values beyond the Site. However, on each of those matters, we also draw from the planning opinions, the contextual assistance given by our site visits, the representations on behalf of Mr Scaife and our capacity to draw reasonable inferences from the evidence. Through that broader lens we can make all necessary findings.

[64] We have earlier noted that we tested the landscape witnesses on their visual assessment ratings. Specifically, those ratings are about the incremental change that would occur through envisaged future development of the Site. The experts do not include a separate rating for the visual presence of existing buildings within the ONL. However, on reflection, we find that their approach is sound in those respects. In particular, they properly account for the existence of those buildings in their consideration of the ONLs landscape values. That is also how we have approached our findings.

Relevant ONL landscape values and their bearing

[65] We accept the landscape experts' opinions on the relevant ONL values as we set out under "ONL landscape values". We accept as sound and sufficient for landscape assessment purposes the landscape assessment unit produced by Ms Lucas (as Exhibit RL1 and which we reproduce as Fig 1 in Annexure 4.

[66] The Site is in a part of the ONL where there is relatively greater capacity for development and change. That is particularly by reason of the established presence of buildings, roads and other colonising features on the Site and wider environs. Nevertheless, we recognise that insensitively located or excessive development of the Site would degrade ONL values. The relevant values at risk are primarily as to perceptions of naturalness and the legibility of landforms, particularly the presently unbuilt terrace and lower slopes below the existing

Matakauri buildings to the Lake shore. Those perceptions are associated with public viewpoints across the Site, especially those gained by users of the Lake.

The landscape sensitivity areas are as mapped by Mr Jones

[67] Although the experts' identification of 'landscape sensitivity areas' was to inform their opinions on whether the RVZ provisions for the protection of ONL landscape values are appropriate, their opinions on this serve our broader evaluative purposes. That is, they assist us to compare the relative differences as may arise in regard to the protection of ONL values under each zoning outcome scenario.

[68] Any introduction of new built form materially below the terrace area would degrade ONL landscape values. The terrace is a discernible geomorphological feature. Whilst it is highly localised, nevertheless it is part of the foreground views of the many who use and enjoy Lake Wakatipu. We infer that development spilling below the terrace would be a noticeable further colonisation of the ONL. Rather than having a Low or Very Low visual impact as Ms Lucas concludes, we find that impact would be at least Moderate for Viewpoint 2 and possibly others. We find it would impede, rather than assist to achieve, relevant objectives and policies for the protection of ONL values from inappropriate development. Therefore, we prefer Mr Jones' opinion and find that his mapping accurately reflects the different landscape sensitivities across the Site. As we find that modified RVZ is the most appropriate zoning outcome for the Site, we direct that the Ch 46 landscape sensitivity maps for Matakauri be amended accordingly.

RVZ would pose a low risk of degradation of ONL values

[69] On the evidence, and in light of our site visits, we find that development of the Site under RVZ zoning would have no more than a Low visual impact from all relevant public viewpoints. We find the greatest such impact would be from Viewpoint 3. We record that finding is informed by our determinations on other matters including in accepting Mr Jones' opinion on the mapping of landscape

sensitivity areas. We do not agree with Ms Lucas that the greater area of development that would be enabled under her modified mapping of those areas would give rise to only Very Low or Low visual impacts from Lake Wakatipu viewpoints. Rather, we find that development that spilled below the terrace would read as a material further colonisation of the presently undeveloped lower parts of this ONL closer to the Lake shore. That would in turn degrade ONL values in this locality.

[70] Accepting as appropriate Mr Jones' mapping of landscape sensitivity areas, we find that suitably modified RVZ provisions would mean there would be only a low risk of development of the Site degrading ONL values. That is as a consequence of the objectives, policies and rules that underpin the landscape sensitivity mapping under the RVZ. According to Mr Jones' recommended mapping approach:

- (a) HLS notation would properly signal a need to avoid development in those parts of the Site in view of ONL values;
- (b) MHLS notation would signal the need to carefully scrutinise any development proposal so as to protect those values; and
- (c) LLS notation would serve to enable development that is sufficiently set back from the terrace edge so that any buildings are reasonably difficult to see.

RLZ would pose relatively greater risk of degradation of ONL values

[71] We do not have direct evidence from the landscape experts on how a RLZ zoning outcome would compare in regard to the potential visual impact of development of the Site. However, we are in a position to infer that a RLZ zoning outcome would pose relatively greater risk of significant visual impact and associated loss of ONL landscape values. That elevated risk arises because there is no landscape sensitivity structure plan or similar tool under the RLZ. That would carry with it associated greater uncertainty as to where development

proposals are located on the Site. For example, there would be less direction to avoid development beyond geomorphological markers such as the terrace. We acknowledge that RLZ zoning would be less enabling of visitor development. However, it would be relatively more enabling of residential development and this could also be a source of significant degradation of ONL landscape values, especially if located in a more sensitive visual location.

Modified RVZ would help maintain visual amenity values and landscape character

[72] On the basis of those findings, and our further findings on appropriate modifications to the RVZ, we find that the Modified RVZ option would maintain visual amenity values and landscape character from all viewpoints from and across Lake Wakatipu.

[73] From the landward side, Matakauri Lodge has a relatively confined visual catchment. Users of the 7 Mile track get some glimpses of it as do a few residents (including Mr Scaife and others with accesses from Farrycroft Right of Way). However, it is otherwise essentially unseen from its landward side. Those who would see changes that could occur to the Lodge's built form and or activities associated with it would do so in the context of the established facility. In any case, under either RVZ or RLZ, the rules governing activity classes and standards would allow sufficient capacity for a consent authority, duly administering the PDP, to ensure outcomes that maintain both visual amenity values and landscape character. The only rider to that is that we make some adjustments to some recommended RVZ provisions to better assure such outcomes.

RLZ presents a greater risk to visual amenity values and landscape character

[74] The RVZ provisions in the PDP decisions version pose relatively greater risk that visual amenity values and landscape character would not be maintained. One reason for that is the less well refined Landscape Sensitivity mapping. That

carries with it greater risk of buildings being located that degrade ONL values as well as landscape character and visual amenity values more generally, by being insensitively located. That risk is aggravated by the more open ended regime applying to developments that increase tGFA. That is in addition to its less refined other standards as to building separation distances and GFA.

[75] We find the position similar for RLZ, again by reason of its lack of structured planning controls pertaining to relative landscape sensitivity across the Site.

Modified RVZ would better maintain amenity values beyond the Site

[76] The focus of much of Mr Scaife's representations are on whether different zoning outcomes would maintain the amenity values and qualities enjoyed in the surrounding environment. Whilst he has a clear preference for RLZ, we find that the superior option for the maintenance of those values and qualities is a modified RVZ. As we have noted, a point of consensus is that the RVZ would need to be modified including to be properly effective in maintaining amenity values beyond the Site boundaries. That is also what we find on the evidence.

[77] Subject to such modifications being made, we find RVZ would be more effective in delivering the outcomes intended by the PDP in regard to amenity values and other qualities of the environment beyond the Site and where Mr Scaife resides. We do not accept Mr Scaife's representation that the RLZ would provide for more stringent and comprehensive controls for these matters.³⁶ In making that representation, Mr Scaife is to some extent addressing the fact that the PDP's general chapters provide supplementary controls on matters such as noise and traffic management. It is important to bear those additional controls in mind as they are part of the PDP's design for the maintenance of amenity values. However, the more significant point is that the RVZ provides a more structured and certain

³⁶ Closing representations by Mr Scaife, dated 19 April 2023, at section 2, referring to transcript pp 81-87.

approach to the management of development and visitor accommodation and other anticipated activities than would RLZ.

[78] It would appear that Mr Scaife has assumed that the bias of the RLZ in favour of rural and rural living, as opposed to visitor accommodation and associated commercial activities, would better ensure that amenity values are maintained. However, whilst the RLZ is biased in those terms, it also contemplates that consents may be sought for the range of activities as are undertaken or contemplated for the Lodge. Hence an RLZ outcome would not provide any assurance against future consented development of the Site and the activities that may occur there.

[79] Importantly, the RLZ includes direction to provide for visitor accommodation that is compatible with or enhances the predominant activities of the zone. That allows for significant discretionary judgement to be applied in consenting processes. Similarly, broad discretion is available to adjudge whether any visitor accommodation would diminish amenity values and the quality and character of the rural living environment. For example, a development that offered some enhancement for instance to the recreational attributes of the local area could well be treated as maintaining amenity values even if some residents found the development unwelcome.

[80] An advantage in the design of the RVZ, as a spot zone, is that it gives explicit recognition to maintaining amenity values beyond the Zone. For instance, that focus is emphasised in Objs 46.2.1.d and 46.2.2.d and the associated policies as we have set out. We accept that the landscape sensitivity mapping is driven by consideration of ONFL values rather than the maintenance of off-Zone amenity values per se. However, in this case, that does not result in building development being clustered in those parts of the Site that would pose any materially elevated risk to amenity values beyond the RVZ boundaries. Rather, they would be clustered in those parts of the Site where buildings, accessways and other facilities are well-established. On the other hand, the landscape sensitivity mapping would

assist to protect against any loss of visual amenity values enjoyed by neighbours including Mr Scaife as may be associated with their existing views across Lake Wakatipu and other parts of the ONL.

[81] Subject to our further findings on how the RVZ is to be modified, we find that Modified RVZ would be more effective (or at least no less effective) than RLZ for the purposes of maintaining amenity values and other qualities of the receiving environment within which Mr Scaife resides.

A Modified RVZ is more appropriate than RLZ

[82] Prior to the adjournment for closing submissions, the court made the preliminary observations in Annexure 2 in essence indicating a preference for RVZ over RLZ zoning. We confirm those observations as reflecting our findings under the heading ‘Evaluation of the evidence’. Hence, we find that RVZ suitably modified is more appropriate than RLZ for achieving all relevant objectives and associated policies.

Submissions as to modifications to the decisions version RVZ

[83] The remainder of this decision sets out our findings on the modifications that should be made to what the decisions version PDP specified for the Matakauri RVZ.

General approach to the consideration of proposed modifications

[84] Before we discuss particular modifications proposed by parties in their closing submissions, we address a matter of due process touched on by counsel for Matakauri. Responding to some modifications that QLDC proposes in response to issues and concerns raised by Mr Scaife, counsel for Matakauri make something of the lack of “tangible evidence” to justify those modifications.

[85] Our processes are both adversarial and inquisitorial. Notwithstanding the

fact that Mr Scaife did not call evidence, we find we can entertain what QLDC and Mr Scaife propose by way of RVZ modifications.

[86] In part, we can do so to the extent that RVZ policies and rules serve the statutory purpose of achieving settled PDP objectives. Insofar as the appeal challenges the appropriateness of RVZ zoning of the Site, it is open for us to evaluate its provisions on the available evidence, including from both planning witnesses and as contextualised by our site visits, so as to be satisfied the outcome will be sound and complete for the purposes of achieving relevant objectives. We can also call upon our experience in these matters, subject of course to natural justice principles. As we later discuss, in terms of those principles we make directions later in this decision for supplementary submissions on some confined matters.

QLDC's proposed modifications

[87] Ms Jones helpfully recommended various refinements to the QLDC decisions version Ch 46 provisions, reflecting her understanding of the landscape evidence and responding to the opinions of Mr Freeman and her understanding of Mr Scaife's concerns. In their closing submissions, counsel recommend some confined refinements to those recommended provisions ('QLDC closing version'). Largely, those are in response to the submissions of other parties.³⁷

The maximum numbers of overnight guests and limits on other visitor numbers

[88] QLDC proposes a combination of additional provisions for inclusion in Ch 46 for the management of the effects arising from overnight guests and other visitors on the maintenance of amenity values beyond the Zone. These would include the following amendment to Pol 46.2.1 to extend its application to the

³⁷ Closing submissions for QLDC, dated 24 March 2023, at [6.2].

Matakauri RVZ:³⁸

Ensure the nature and scale of the combined activities in the Matakauri and Maungawera Rural Visitor Zones maintain amenity values beyond the Zone by specifically managing group size of commercial recreational activities and the capacity of visitor accommodation.

[89] In addition, QLDC proposes that Table 46.5 – Standards be amended by including the following new standard 46.5.XX:

46.5.XX	<p>Visitor accommodation capacity in the Matakauri Rural Visitor Zone</p> <p>46.5.XX.1 In the Matakauri Rural Visitor Zone, the configuration of the visitor accommodation units shall be such that the maximum number of overnight guests that can be accommodated in the Zone is 45.</p> <p>46.5.XX.2 The maximum number of visitors to the Matakauri Rural Visitor Zone for the purpose of using any activity that is ancillary to visitor accommodation, and who are not overnight guests, shall be limited to 20 persons on site at any one time or 45 persons per day.</p>	<p>46.5.XX.1 NC 46.5.XX.2 RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> a. Location, nature, scale and intensity, including cumulative adverse effects and reverse sensitivity effects; b. Hours of operation; c. The extent and location of signage; d. Transport and access; e. Noise; and f. Effects on amenity values from the location, nature, scale and intensity of activities undertaken in the zone and from any increase in traffic generation, or associated parking, access, and manoeuvring of vehicles.
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[90] As can be observed, the new standard is unusual in the fact that, while purporting to govern ‘visitor accommodation capacity’ in the Matakauri RVZ, it

³⁸

Closing submissions for QLDC, dated 24 March 2023, at [2.1]-[2.2].

would assign different activity classifications to breaches of the standard, i.e:

- (a) non-complying activity classification to any contravention of 46.5.XX.1; and
- (b) restricted discretionary activity classification to any contravention of 46.5.XX.2 (with associated matters to which discretion is restricted applying to contravention of 46.5.XX.2).

[91] Furthermore, the different limbs of the proposed new standard would regulate different things and specify different activity classifications for breach of the specified standards:

- (a) 46.5.XX.1 would apply to “the configuration of the visitor accommodation units”, with its specified 45 overnight guest maximum serving that purpose, and breach of the configuration standard would trigger non-complying activity classification; whereas
- (b) 46.5.XX.2 is not building configuration standard but a limit on the number of visitors to Matakauri who are not overnight guests. Breach of this visitor number standard would trigger restricted discretionary activity classification (with the associated matters to which discretion is restricted being specified as a. – f. in the third column of Table 46.5).

[92] In regard to 46.5.XX.1, counsel for QLDC propose the 45 guest building configuration limit on the basis of QLDC’s evidence in favour of a total maximum ground floor area cap of 2250m².³⁹

[93] In regard to 46.5.XX.1, we record that Ms V Jones does not consider this further standard is warranted given other PDP controls. Counsel for QLDC also acknowledge the inherent difficulty in imposing such a standard, noting that a cap on visitor numbers would not necessarily be “effects-based”. However, they

³⁹ Closing submissions for QLDC, dated 24 March 2023, at [2.3]-[2.6].

record that QLDC considers there is merit in specifying the proposed standard “in order to provide greater certainty that the primary role of any on-site facilities will be to service overnight guests”.⁴⁰ They explain that the proposed maximum visitor limits in 46.5.XX.1 (20 persons at any one time, 45 per day) are based on the premise that there should be more overnight guests on Site than visitors. They submit that restricted discretionary activity status is appropriate given the location of the Site and the lower landscape sensitivity area within it where development would be possible.⁴¹

Clarifying total maximum ground floor area r 46.5.3 and proposed associated policy

[94] The amended Matakauri RVZ provisions initially proposed in evidence specified two standards on total maximum ground floor area, with the intention that:

- (a) exceedance of a limit of 1650m² would be a restricted discretionary activity; and
- (b) exceedance of a limit of 2230m² would be non-complying.

[95] Noting the importance of these controls for fulfilling the intentions of the RVZ, counsel recommend new policy 42.2.2.X and some refinements to the standards as follows:

42.2.2.X In the Matakauri Rural Visitor Zone, avoid buildings that exceed the combined total maximum ground floor area specified in Rule 46.5.3.4.

46.5.3.2 In the Matakauri Rural Visitor Zone, the combined total ~~maximum~~ ground floor area of all buildings within the Zone shall be 1,650m².

46.5.3.4 In the Matakauri Rural Visitor Zone, the combined total maximum

⁴⁰ Closing submissions for QLDC, dated 24 March 2023, at [2.9].

⁴¹ Closing submissions for QLDC, dated 24 March 2023, at [2.10].

ground floor area of all buildings within the Zone shall be 2,250m².

[96] Regarding Pol 46.2.2.5, counsel acknowledge the court's comments in the hearing as to the lack of clarity in the preamble which is as follows (our emphasis):

Policy 46.2.2.5

Provide for buildings that exceed the bulk and scale standards, and the minimum setback separation distances between buildings in the Matakauri Rural Visitor Zone, only when adverse effects, including cumulative effects, **are minimised**, including through:

[97] Bearing in mind that policy is a product of a consent order, counsel invites the court to remove Matakauri RVZ from the auspice of that policy (i.e. by deleting “, and the minimum setback separation distances between buildings in the Matakauri Rural Visitor Zone” and to add the following bespoke new policy:

Policy 46.2.2.A

Provide for buildings in the Matakauri Rural Visitor Zone that exceed bulk, scale or minimum separation distance standards, only when any adverse effects, including cumulative effects, can be mitigated, including through:

- a. In Outstanding Natural Landscapes, siting buildings so that they are reasonably difficult to see from beyond the boundary of the Zone;
- b. Building design and screening (including through vegetation); and
- c. Design and control of other aspects associated with buildings, including earthworks, car parking, fencing, and landscaping.

[98] Counsel submits that this serves to clarify that specified outcomes must be achieved if buildings are to exceed specified standards (especially as to bulk and location). It would put emphasis on mitigation (as distinct from minimisation) of effects. Furthermore, counsel submit that, as an “avoid” policy, it would offer more effective support for non-complying activity status for buildings beyond the

maximum combined ground floor area standard.⁴²

Visual amenity effects on the surrounding environment (Pols 46.2.2.2, 46.2.2.4)

[99] Counsel reaffirm QLDC’s position that amenity effects beyond the Matakauri RVZ would be appropriately “regulated” by the RVZ. Subject to that, they invite the court to consider some confined amendments to the noted policies concerning the theme that buildings should be sited so as to be reasonably difficult to see beyond the RVZ.

[100] In Pol 46.2.2.2, that amendment would be as follows:

Restrict buildings within areas identified on the District Plan web mapping application as Moderate-High Landscape Sensitivity unless they are located and designed, and adverse effects are mitigated, to ensure:

...

c. in the Matakauri Rural Visitor Zone, that any buildings are positioned and/or screened (including by vegetation and/or existing buildings) so that they are reasonably difficult to see from beyond the boundary of the Zone.

[101] In Pol 46.2.2.4, that would be as follows:

Manage the effects of buildings and development on landscape values, landscape character and visual amenity values by:

- a. controlling the colour, scale, design, and height of buildings and associated infrastructure, vegetation, and landscape elements ~~and in the Matakauri Rural Visitor Zone, the separation between buildings;~~ and
- b. in the immediate vicinity of the Homestead Area at Walter Peak, and the historic homestead at Arcadia, ~~providing~~ providing for a range of external building colours that are not as recessive as required generally for rural

⁴² Closing submissions for QLDC, dated 24 March 2023, at [3.1]-[3.10].

environments, but are sympathetic to existing development; and

- c. in the Matakauri Rural Visitor Zone, requiring that buildings are separated and that the spaces between buildings are planted in order to reduce the dominance of built form when viewed from beyond the boundary of the Zone.

Change of use within a building

[102] Counsel refer to concerns being raised in the hearing about whether a change in land use activity at the Lodge could occur in a way that failed to regulate the consequential amenity effects beyond the RVZ. They explain that the capacity for that to occur as a permitted activity is very limited. In particular, they refer to the only “plausible change” that would not require consent would be from visitor accommodation to a commercial recreational activity (including ancillary on-site staff accommodation). Changes requiring modifications to external buildings (e.g. from accommodation villa to a spa or restaurant) would be a controlled activity under r 46.4.7. For such a theoretical eventuality, counsel invite the court to supplement the matters of control in that rule with the following:⁴³

- g. In the Matakauri Rural Visitor Zone, effects on amenity values beyond the zone from the location, nature, scale and intensity of activities undertaken in the building and from any increase in traffic generation, or associated parking, access, and manoeuvring of vehicles.

[103] Noting that Mr Scaife raised off-site amenity effect issues during the hearing, counsel make the observation that any new building near Mr Scaife’s property would be located in the High or Moderate-High Landscape Sensitivity areas. As such, it would require at least a discretionary consent. Hence, any effect on amenity values would be considered against Obj 46.2.1(d) and (e) and Pol

⁴³ Closing submissions for QLDC, dated 24 March 2023, at [5.1]-[5.4].

46.2.1.2 (alongside the intended use of the building).⁴⁴

Matakauri Lodge’s position concerning RVZ modifications

The maximum numbers of overnight guests and limits on other visitor numbers

[104] Provided that the proposed standard 46.5.XX.1 enables 50 overnight guests (rather than 45 as proposed by QLDC), Matakauri would accept the wording of QLDC’s proposed new standard 46.5.XX.2 regarding the maximum number of visitors to the site that are not overnight guests.⁴⁵

[105] Counsel refer to Mr Freeman’s confirmation that Matakauri had agreed to an amendment to commercial activity r 46.5.7.4 to read “six persons per day on site”.⁴⁶ They also note the evidence that Matakauri has consent for up to 10 people on Site for public dining at any one time, with the practical effect of potentially up to 30 people per day.⁴⁷

[106] As for Matakauri’s opposition to QLDC’s proposed 45 overnight guest limit in 46.5.XX.1, counsel record that agreement was reached with QLDC before the hearing that the maximum number of overnight guests at the Lodge should be 50. Furthermore, they submit that there is no evidence that setting the cap at 50 overnight guests would be inappropriate with regard to amenity or any other credible environmental effects. They refer in particular to answers given by Ms Jones in cross-examination. When questioned by Ms Byrch, she commented that a cap of 50 overnight guests is appropriate and PDP provisions (at the time of hearing) provided QLDC with an ability to consider the amenity effects of guests at the time of resource consenting.⁴⁸ Furthermore, Ms Jones commented that the “square meterage is sufficient standard and trigger to capture the concerns that

⁴⁴ Closing submissions for QLDC, dated 24 March 2023, at [5.5]-[5.6].

⁴⁵ Closing submissions for Matakauri, dated 31 March 2023, at [8].

⁴⁶ Referring to transcript, p 35, l 18-27.

⁴⁷ Transcript, p 43, l 1-19.

⁴⁸ Transcript, p 82, l 20-25.

stem more from the number of people that will be within those buildings as opposed to visual amenity or that side of the actual built form itself”.⁴⁹

[107] Counsel submit that allowing for a 50 overnight guests limit would “ensure there is reasonable flexibility to ensure long term sustainability and economic viability of Matakauri Lodge’s outstanding tourism qualities, as well as helping maintain its significant contribution to the tourism industry in Queenstown”.⁵⁰

Built form including the total maximum ground floor area regime

[108] Matakauri accepts QLDC’s proposed new Pol 46.2.2.A subject to the following amendment to subclause (b):

- b. ~~Building design and screening (including through vegetation)~~ The design and location of buildings and opportunities for mitigating bulk, form and density.

[109] Matakauri maintains its preference that the combined total maximum ground floor area of all buildings within the RVZ be specified as 2500m² (with exceedance specified as a non-complying). Counsel express their client’s strong opposition to QLDC’s proposed 2,250m² standard and the associated proposed “avoid” Pol 46.2.2.B. However, they would accept that policy addition if the court were to specify the more generous limit they seek. Counsel maintain that QLDC’s regime would “significantly reduce the future reasonable activities which help ensure the future sustainability of the Lodge and its associated tourism benefit”.⁵¹ On the evidence of Ms Lucas and Mr Freeman, they submit that, if their preferred limit were specified, there would be “substantial policy direction” for protection of ONL areas of Landscape Sensitivity and the appropriate management of effects. In essence, their more generous limit would provide important flexibility without

⁴⁹ Transcript, p 85, l 13-16.

⁵⁰ Closing submissions for Matakauri, dated 31 March 2023, at [1]-[7].

⁵¹ Closing submissions for Matakauri, dated 31 March 2023, at [15].

compromising the PDP's intentions in regard to ONLs and related matters.⁵²

Visual amenity effects on the surrounding environment

[110] Counsel note that the areas of Landscape Sensitivity were the key issue in the hearing and are provided for in Obj 46.2.2. and associated policies. They point out that differences on these matters between Mr Jones and Ms Lucas were confined – in essence as to whether to Ms Lucas “yellow area” should be assigned to the High Landscape Sensitivity area (where development is non-complying) or the Moderate-High Landscape Sensitivity area (where development is discretionary). Counsel submit that the new limbs to Pols 46.2.2.2 and 46.2.2.4 that QLDC offered in closing are unwarranted. That is on the basis of the evidence of Mr Freeman and Ms Lucas.⁵³

Change of use within a building

[111] Counsel notes that on the evidence of Mr Freeman and Ms Jones, the amenity effects of change of use would be able to be considered in consenting. Nevertheless, they record that Matakauri would accept QLDC's proposed addition of 46.4.7(g) as a matter of control.⁵⁴

Modifications sought by Mr Scaife

[112] Mr Scaife's closing representations include several recommended modifications to the decisions version RVZ provisions, prepared in light of consideration of the closing submissions for QLDC and Matakauri. He proposes these not resiling from his primary position that the most appropriate zoning outcome is RLZ. We record that the drafting offered in these representations is to a high standard, reflecting as we understand it, the combined efforts and skills

⁵² Closing submissions for Matakauri, dated 31 March 2023, at [12]-[17].

⁵³ Closing submissions for Matakauri, dated 31 March 2023, at [18]-[22].

⁵⁴ Closing submissions for Matakauri, dated 31 March 2023, at [23]-[25].

of Mr Scaife and Ms Byrch. Their work is a fine example for lay participants in these processes in that quality drafting as they offer significantly help the court to understand their precise positions on the relevant matters.

Pol 46.2.2.2

[113] As an alternative to that second mapping change, Mr Scaife proposes that Pol 46.2.2.2 be excluded from applying to the Matakauri Lodge RVZ and that a new non-complying activity rule be included in Ch 46 as follows:

Rule 46.4.12.x Construction or exterior alteration of buildings within an area of moderate-high landscape sensitivity within the Matakauri RVZ.

Non compliance activity status – non complying

Amendment to the 'reasonably difficult to see' policy

[114] Mr Scaife seeks amendments to the policy on visibility of development from beyond the Site so that it applies to not just buildings but also changes to landform and physical appearance of land (such as the addition of carparks, utility areas etc). That is in order to provide for consistency with the approach to ONLs under PDP Pol 6.3.3.1 (b). His proposed policy is as follows:

46.2.2.X In the Matakauri Rural Visitor Zone, provide for buildings and building alterations that exceed bulk standards or the ground floor area standard of 1650m² or the minimum separation distance standard, and all changes to landform and other physical changes to the appearance of land (such as carparks, utility areas etc) only when any adverse effects, including cumulative effects, can be mitigated, including through:

- a. requiring buildings and all changes to the appearance of land to be reasonably difficult to see from beyond the boundary of the Zone;

- b. building design and screening (including through vegetation).

Associated changes sought to Ch 46 objectives and policies as to amenity and character

[115] In view of his noted concerns as to the inadequacy of the RVZ for maintaining the amenity values of the surrounding environment, Mr Scaife seeks additional objectives and policies. He explains that these would serve to give guidance as to how the amenity and character of the environment surrounding the Matakauri RVZ zone will be maintained.

[116] Mr Scaife proposes the following new objective 46.2.3 and associated policies:

- 46.2.3 Ensure the combined activities and developments of the Matakauri Rural Visitor Zone maintain the character, quality and amenity of the surrounding Rural Lifestyle Zone.
 - 46.2.3.1 Provide for visitor accommodation activities which, in terms of location, scale and type, are compatible with and enhance the predominant activities of the surrounding Rural Lifestyle zone.
 - 46.2.3.2 Discourage commercial and community activities, including restaurants, visitor accommodation and industrial activities that would diminish amenity values and the quality and character of the Rural Living environment.
 - 46.2.3.3 The bulk, scale and intensity of buildings used for visitor accommodation are to be commensurate with the anticipated development of the Rural Lifestyle zone and surrounding residential activities.
 - 46.2.3.4 In the Matakauri RVZ zone, avoid more than a total of 55 guests per day. This total comprises guests for all activities including visitor accommodation, commercial recreation, commercial activities and recreation.

[117] Furthermore, he proposes the following new policy in relation to Obj 46.2.2(e):

- 46.2.2.x For the Matakauri RVZ, ensure the location, nature, scale and intensity of all buildings, the activities they house, and associated aspects such as traffic generation, access and parking, informal airports, noise and lighting:
- a. maintain amenity values beyond the Zone, and specifically those of the surrounding Rural Lifestyle zone; and
 - b. do not compromise the operation of existing activities or those enabled by the zones in the surrounding environment as a result of reverse sensitivity effects.

Activity status concerning maximum ground floor area standard

[118] Mr Scaife supports the specification of a cap on total ground floor area. However, he invites the court to set a lower cap than the 2250m² recommended by Mr M Jones. That is in view of what he describes as the “contingency” concerning whether “all buildings” would be “reasonably difficult to see”. We understand his reference to that policy intention in the PDP to encompass buildings cumulatively, including those already established. In addition, he seeks that the rules regarding the total maximum ground floor area be framed such that any increase above 1650m² and up to 2250m² is full discretionary activity. That is on the basis that, to this point, there has been no assessment of the effects on landscape character or values, or of amenity, of the cumulative total of development in addition to what exists now.

The maximum numbers of overnight guests and limits on other visitor numbers

[119] Mr Scaife’s proposed new rules on these matters are as follows:

46.5.XX Visitor accommodation capacity in the Matakauri Rural Visitor Zone

46.5.XX.1 In the Matakauri Rural Visitor Zone the maximum number of overnight guests that can be accommodated in the Zone is 32.

Non compliance status – Discretionary

46.5.XX.2 The maximum number of visitors to the Matakauri Rural Visitor Zone for the purpose of using any activity that is ancillary to visitor accommodation, and who are not overnight guests, shall be limited to a daily total of 10% of the number of overnight guests, and these non overnight guests must be at the invitation of the overnight guests. For example, if there are 32 overnight guests, three non overnight guests may be invited by overnight guests to use the facilities ancillary to overnight accommodation.

Non compliance status – Non Complying.

[120] In essence, Mr Scaife’s revised standard 46.5.XX.1 is as to overnight guest numbers rather than as a building configuration standard. As to his proposal that any more than 32 guests is a discretionary activity, he refers to answers given in cross-examination by Ms Jones. Mr Scaife characterises Ms Jones to acknowledge that there has been no assessment of the effect of increasing the number of overnight guests beyond that number.⁵⁵ However, the gist of what Ms Jones said was that she had assessed applicable PDP rules and was satisfied that these would enable proper assessment of the effects of additional people on site.⁵⁶ As for QLDC’s proposed r 46.5.XX.2, he seeks that the associated daily limit for non-overnight guests be set on a ratio of one non overnight guest per day for every ten overnight guests.

⁵⁵ Closing representations by Mr Scaife, dated 19 April 2023, at section 3.2, referring to transcript pp 81 and 82.

⁵⁶ Transcript p 81, l 19-32, p 82, l 1-19.

Staff accommodation limits

[121] Mr Scaife seeks a new rule to limit staff accommodation. On his understanding that the Lodge has indicated only one staff member stays overnight at the lodge and that this would not increase even if there were 50 guests, he proposes a new r 46.5.XX.3 in essence to prescribe that more than one staff member staying overnight would be a non-complying activity.⁵⁷

Commercial and other recreation rules

[122] Mr Scaife seeks new or amended rules to the effect that recreation and recreational activities associated with the Matakauri RVZ zone are non-complying. He seeks that r 46.5.7.4 be amended to better control commercial recreation associated with the Matakauri RVZ zone.

[123] He proposes the following additional rules:

46.4.4 Recreation and recreational activity other than for activities associated with the Matakauri RVZ zone covered by Rule 46.4.21

46.4.21 Recreation and recreational activity within the Matakauri RVZ zone

Activity status – non complying

46.4.x Commercial recreational activities in the Matakauri RVZ

Activity status – Discretionary

46.4.xx Onsite staff accommodation ancillary to commercial recreational activities in the Matakauri RVZ

⁵⁷ Closing representations by Mr Scaife, dated 19 April 2023, at section 3.3.

Activity status – non complying

Rules – Standards

- 46.5.7.4 Any commercial recreational activity associated with the Matakauri RVZ shall not involve more than 6 persons per day (inclusive of guides or instructors).

Non-compliance status – non complying.

Total cap on all guest numbers

[124] In addition, Mr Scaife seeks that a limit be set on the total number of guests on the Matakauri RVZ zone for all activities. He proposes that this be limited to 55 per day with a non-compliance activity status of non-complying. That is on the basis of his analysis of the various resource consents for the Lodge and the evidence presented. He surmises that, at present, the consented number of guests on site is 32 overnight guests, possibly 10 per day public diners, 20 per day public users of the health spa and some 100 members of the public attending a function 4 days per year. He proposes the following associated new rule:⁵⁸

- 46.5.XXXX The combined total number of guests visiting or staying at the Matakauri Lodge RVZ each day shall be no more than 55. This includes all guests in all capacities including overnight guests, guests using facilities ancillary to overnight accommodation who are not staying overnight, guests for commercial activities and guests for commercial recreational activities.

Non compliance status – non complying

Non-notification rule

[125] Mr Scaife explains that his closing points concerning consent notification

⁵⁸ Closing representations by Mr Scaife, dated 19 April 2023, at section 3.6.

rules are informed by his experience. He says that Matakauri and QLDC planners have consistently maintained that neighbours' amenity would not be affected by developments on the Site. He records that, nevertheless, Mr Freeman commented that, in dealing with future consent applications for the Lodge, maintaining amenity "will be at the forefront" of any decision-maker's mind.⁵⁹ He seeks an addition to r 46.6 that excepts all resource consents associated with the Matakauri RVZ zone, such that these are excluded from this non-notification empowering rule.

How the RVZ should be modified

QLDC closing version provisions are generally appropriate

[126] Except where we specify otherwise, we find that the QLDC closing version reflects our evidential findings and is the most appropriate for achieving relevant PDP objectives. The exceptions we identify are primarily in provisions for the maintenance of amenity values beyond the Zone, as we discuss shortly.

[127] Our finding that the QLDC closing version is generally appropriate includes our finding in favour of QLDC's recommended tGFA of 2250m² rather than the 2500m² tGFA sought by Matakauri. We find the lower tGFA more appropriate in light of our acceptance of the evidence of M Jones and V Jones on these matters over the contrary opinions of Matakauri's experts.

[128] A reduced financial potential return from the Site may well follow from the reduced development potential. On the evidence, we cannot quantify how this would impact on the District's visitor economy but can infer that any such effect is likely to be very small if not inconsequential. In any case, the PDP policy framework we have outlined does not invite us to trade off the protection of ONL values for any marginal financial gain as Matakauri may accrue from the more

⁵⁹ Closing representations by Mr Scaife, dated 19 April 2023, at section 6, referring to Freeman EIC, at p 44.

generous allowance it seeks.

Overview of shortcomings in QLDC closing version

[129] As we now discuss, we find some shortcomings in the QLDC closing version provisions. That is, we find various improvements as we specify are needed so that relevant objectives are properly supported by implementing policies and rules. The issues we now discuss include:

- (a) uncertainty as to the scope of what the RVZ allows for by way of “recreation” and “recreational activity” beyond “commercial recreation”;
- (b) deficiencies in proposed policy directions concerning the management of cumulative effects on amenity values; and
- (c) deficiencies in associated guest and visitor cap rules.

[130] However, those defects are relatively confined and we find each is readily able to be addressed. Whilst we have carefully considered Mr Scaife’s proposed provisions, for the reasons we give, we find they generally overreach what is warranted. An important exception to that concerns his proposal for a global cap on guest and visitors for all purposes. Whilst we take a different approach to the one he recommends on those matters, we find that in this area the QLDC closing version needs some refinement. That is both in regard to policy direction and related standards.

[131] To provide context, we refer to the checklist of matters we set out in Annexure 3 as these essentially summarise what our findings as follows identify as areas requiring further refinement before our final decision is issued.

Uncertainty as to “recreation” and “recreational activity”

[132] The Zone Purpose statement in 46.1 includes the following statement (emphasis added):

The principal activities in the Zone are visitor accommodation and related ancillary commercial activities, commercial recreational activities **and recreational activities**.

[133] The highlighted words extend further than what Obj 46.2.1 describes the RVZ to provide for, namely:

visitor accommodation, commercial recreational activities and ancillary commercial activities to occur at a small scale and low intensity in rural locations.

[134] As can be observed:

- (a) the quoted extract from the Zone Purpose statement does not mention small scale or low intensity;
- (b) Obj 46.2.1 makes no reference to “recreational activities” other than “commercial recreational activities”.

[135] Yet, r 46.4.4 identifies ‘recreation and recreational activity’ as a permitted activity. This class of activity is not defined by the PDP and it is unclear what it encompasses beyond the defined “commercial recreational activities”. Furthermore, Ch 46 does not prescribe any associated standard to ensure “recreation and recreational activity” would remain “small scale and low intensity”. On the other hand, the definition of “visitor accommodation” would appear broad enough to encompass informal recreation that is offered to visitors of the Lodge (i.e. services or facilities that are directly associated with, and ancillary to, the visitor accommodation, such as ... recreational facilities and others of a similar nature if such facilities are associated with the visitor accommodation activity). As something undertaken ancillary to visitor accommodation, it would be subject to associated standards.

Remedy for this uncertainty

[136] This is a material defect in the RVZ in that such looseness in what the Zone enables could result in a failure to maintain amenity values. We are mindful that

we are considering these matters within the scope of an appeal that is primarily concerned with Matakauri Lodge. Within that scope, we find this defect is most appropriately addressed as follows:

- (a) the Zone Purpose statement should be amended as follows:

The principal activities in the Zone are small scale and low intensity visitor accommodation and related ancillary commercial activities and commercial recreational activities ~~and recreational activities~~.

- (b) r 46.4.4. should be amended to exclude its application to Matakauri Lodge, i.e:

Recreation and recreational activity except in the Matakauri Rural Visitor Zone.

Deficiencies in proposed policies as to the management of cumulative effects on amenity values

[137] The QLDC closing version records an amendment to Pol 46.2.1.4 recommended by Mr Freeman to the following effect:

- 46.2.1.4 Ensure the nature and scale of the combined activities in the Matakauri and Maungawera Rural Visitor Zones maintain amenity values beyond the Zone by specifically managing group size of commercial recreational activities and the capacity of visitor accommodation.

[138] This recommendation identifies a present policy gap as to the management of the cumulative effects of the various activities anticipated to be undertaken at Matakauri under the various activity classes. In the absence of a suitably directive policy, there would be little guidance on outcome intentions for consenting purposes, especially in regard to effects on amenity values beyond the Zone boundary.

[139] However, rather than the proposed amendment to Pol 46.2.1.4, we find the

better approach would be to add a policy on these matters that is bespoke to Matakauri.

[140] One reason for that is that Pol 46.2.1.4 does not encompass the full range of activities contemplated for Matakauri RVZ. In particular, it does not refer to “commercial activities, retail or service activities” which is a prescribed non-complying (r 46.4.16).⁶⁰ Mr Freeman explains that Matakauri has two resource consents for the undertaking of commercial activities on the Site. One is for “a small scale boutique public dining activity for up to 10 non-overnight guests” (RM100669). The other authorises “up to four commercial functions per year” and provides for “public use of the health care facility” (RM100804). Given that one limb of the non-complying activity consenting threshold test in s104D RMA is as to whether a proposal would not be contrary to a plan’s objectives and policies, policy clarity on cumulative effects’ management is important. Hence, it needs to be properly comprehensive in its coverage of anticipated potential activities.

[141] That leads to our further reason for including in Ch 46 a bespoke policy for Matakauri on these matters. In addition to being comprehensive, it is important that any policy on the management of cumulative effects of this nature is clear in its acknowledgement and direction concerning guest or visitor number caps.

[142] As we discuss shortly, we find merit in imposing cap-based standards along the lines proposed in the QLDC closing version (although differently framed for reasons we come to shortly). In addition, we find some merit in Mr Scaife’s proposal for a global cap on total daily visitor numbers as we explain (again on a differently framed basis however from what Mr Scaife proposes).

[143] Therefore, we find that a better option than extending Pol 46.2.1.4 to Matakauri RVZ would be to add the following new bespoke policy to Ch 46 (or to

⁶⁰ Nor does it refer to “recreation and recreational activity”. However, for the reasons we have given, we have determined that this permitted activity class (r 46.4.4).

similar intent):

- 46.2.1.4A Ensure the nature and scale of the combined activities in the Matakauri Rural Visitor Zone maintain amenity values beyond the Zone by managing:
- a. the capacity of visitor accommodation;
 - b. the nature and scale of commercial recreational activities including by managing group sizes individually and cumulatively within individual and total visitor caps;
 - c. the nature and scale of any commercial activities, retail or service activities; and
 - d. any incremental or other cumulative effects of those matters on those amenity values.

QLDC's further refinements to policies are warranted and appropriate

[144] On the basis of our evidential findings, we find appropriate all other refinements and additions proposed to the Ch 46 policies in the QLDC closing version, namely:

- (a) amendments to Pol 46.2.2.2 to add Pol 46.2.2.2.c concerning the positioning and/or screening of buildings in the Matakauri RVZ to be “reasonably difficult to see” beyond the Zone boundary;
- (b) amendments to Pol 46.2.2.3 including to provide bespoke direction in Pol 46.2.2.3.c as to building separation and planting;
- (c) amendment to Pol 46.2.2.5 (as to provision for buildings that exceed the bulk and location standards) so it does not apply to Matakauri RVZ together with the addition of Pol 46.2.2.X as follows:

46.2.2.X Provide for buildings in the Matakauri Rural Visitor Zone that exceed bulk, scale or minimum separation

distance standards, only when any adverse effects, including cumulative effects, can be mitigated, including through:

- a. In Outstanding Natural Landscapes, siting buildings so that they are reasonably difficult to see from beyond the boundary of the Zone;
- b. Building design and screening (including through vegetation); and
- c. Design and control of other aspects associated with buildings, including earthworks, car parking, fencing, and landscaping.

(d) addition of Pol 46.2.2.X as follows:

46.2.2.X In the Matakauri Rural Visitor Zone, avoid buildings that exceed the combined maximum total ground floor area specified in Rule 46.5.3.4.

[145] In particular, we find those changes to the Ch 46 policy framework properly respond to our findings on the landscape and planning evidence and fulfil the statutory purposes of assisting to achieve related objectives and giving direction for the proper application of rules designed to implement them. That is the case notwithstanding various further refinements we direct to related rules and other provisions.

[146] Respectfully, we find Mr Scaife's proposed new objectives and policies significantly overreach what is appropriate.

[147] His new Objs 24.2.3 and 46.2.2.x would make the maintenance of amenity values beyond the RVZ an absolute requirement for the justification of any development. His Obj 46.2.2.x would also cut across the above-noted district wide chapters that govern transport and noise. His proposal for a Pol 46.2.3.1 giving

direction to “enhance the predominant activities” of the surrounding RLZ is not supported on the evidence. His Pol 46.2.3.2 on discouraging commercial and community activities would conflict with aspects of the RLZ purpose concerning commercial recreation. His Pol 46.2.3.3 would not apply a meaningful measure in regard to bulk, scale and location and is not justified on the evidence.

[148] Therefore, we decline to make any of those proposed further changes to Ch 46 objectives and policies.

Deficiencies in associated guest and visitor cap rules

[149] Closing submissions suggest that all parties recognise that built dimension controls are not themselves sufficient for the management of potential effects on amenity values beyond the Zone from activities anticipated to take place at Matakauri. Notwithstanding the lack of evidence on these matters from Mr Scaife, both Ms Jones and Mr Freeman applied their planning experience in framing their recommendations on these aspects of Ch 46.

[150] In light of our evidential findings, submissions and the representations made by Mr Scaife (and Ms Byrch on his behalf), the court finds that the decisions version Ch 46 rules (under 46.3) are materially deficient in these respects. As we have discussed, a well-recognised challenge with spot zoning is the management of cross-boundary effects. Objs 46.2.1 and 42.2.2 plainly acknowledge that in their specifications that enabled activities in the RVZ are “at a small scale and low density” and that an intended outcome is “amenity values of the surrounding environment are maintained”. Those intentions are also reflected in associated policies as we have discussed. Unless rules for the implementation of those policies and achievement of the objectives are properly framed, there is a plain risk that, over time, those living in the vicinity of the Lodge will experience degradation of their amenity values. Activity standards have an important role in those terms.

[151] Effects on amenity values enjoyed beyond the Zone would be typically experienced in a cumulative sense. For instance, intrusions into a resident’s quiet

enjoyment of their dwelling would not allocate it to a particular activity such as overnight guest accommodation or visitor dining or even commercial recreational activities. Rather, any such intrusion will be as a consequence of the residents' experience of such activities as are occurring the Lodge at any one time.

[152] On this matter, we find the QLDC closing version somewhat deficient in not including a global cap on all guest and visitor usage of the Lodge. That contrasts with Mr Scaife's proposal that there be a standard specifying a global limit encompassing both overnight guests and other visitors to the Lodge. For the effective achievement of the noted objectives, we find that Ch 46 needs to include a total numbers cap for all guests and visitors to the effect that, if it is breached, visitor accommodation and commercial recreational activities are rendered non-complying.

[153] Without such a cap and associated non-complying activity classification for breach, we have no confidence on the evidence that the noted objectives would be achieved.

[154] The relevant standard in the QLDC closing version is proposed r 46.5.XX. A further unsatisfactory dimension of this rule is that its two limbs are designed on different control premises and with different activity status outcomes for breach:

- (a) 46.5.XX.1 is a building configuration standard (framed by reference to a maximum overnight guest number, but not controlling that number itself), with the consequence of breach being that the activity is non-complying;
- (b) 46.5.XX.2 is simply a visitor limit standard (not including an associated building configuration control), with the consequence of breach being that the activity is restricted discretionary.

[155] By contrast, Mr Scaife's version of these provisions would control people numbers, rather than building configuration per se. We acknowledge QLDC's

closing submission as to the administrative challenges that can be presented with people-number standards. Whilst building dimension and configuration standards are a helpful proxy for the management of the scale of activity undertaken at a site, we acknowledge that such standards are not a complete answer. On the other hand, we find Mr Scaife's people numbers control approach would go too far in those terms, in that this approach would create significant administrative uncertainty. As we have noted, nor do we find QLDC's approach of mixing building configuration and people number controls helpful.

[156] Our provisional view is that a more workable and effective approach involves amendments to both Table 46.4 – Activities and Table 46.5 – Standards as follows. We start with the caps in Table 46.5.

Table 46.5: global cap

[157] In Table 46.5, a new r 46.5.WW should be added to the following effect:

	Table 46.5 – Standards	Non-compliance status
46.5.WW	Total guest and visitor numbers in the Matakauri Rural Visitor Zone: 46.5.WW.1: the combined total maximum number of guests and/or visitors for visitor accommodation and commercial recreational activities and ancillary onsite staff accommodation is [100/110] persons per day.	NC

Table 46.5: visitor accommodation overnight guest and visitor caps

[158] In Table 46.5, new r 46.5.XX should be to the following effect:

	Table 46.5 – Standards	Non-compliance status
46.5.XX	<p>For visitor accommodation, buildings in the Matakauri Rural Visitor Zone must be of a size and configuration that does not allow:</p> <p>46.5.XX.1: more than 45 overnight guests to be accommodated in the Zone; or</p> <p>46.5.XX.2: in addition to overnight guests more than 20 persons at any one time or 45 persons per day to be on site for any activity that is ancillary to visitor accommodation.</p>	<p>RC if rule 46.5.WW is not breached.</p> <p>NC if rule 46.5.WW is breached.</p> <p>Discretion if RC is restricted to:</p> <p>a. Location, nature, scale and intensity, including cumulative adverse effects and reverse sensitivity effects;</p> <p>b. Hours of operation;</p> <p>c. The extent and location of signage;</p> <p>d. Transport and access;</p> <p>e. Noise; and</p> <p>f. Effects on amenity values from the location, nature, scale and intensity of activities undertaken in the zone and from any increase in traffic generation, or associated parking, access, and manoeuvring of vehicles.</p>

Table 46.5: commercial recreation activity

[159] In Table 46.5, new r 46.5.7.4 should be as recommended in the QLDC closing version in all respects other than as to “non-compliance status” where non-complying, rather than restricted discretionary, status would be triggered also if r 46.5.WW is breached.

Table 46.4: visitor accommodation

[160] In Table 46.4, r 46.4.2 should be amended to exclude Matakauri RVZ. Two

further rules should be added:

- (a) a new r 46.4.2A to specify visitor accommodation as a permitted activity in the Matakauri RVZ provided that the new global cap standard (r 46.5.WW) is not breached; and
- (b) a new r 46.4.19A to the effect that visitor accommodation is a non-complying activity if r 46.5.WW is breached.

Table 46.4: commercial recreational activities and ancillary onsite staff accommodation

[161] In Table 46.4, r 46.4.3 should be amended to exclude Matakauri RVZ. Two further rules should be added (in conjunction with amendment to 46.4.4 to exclude Matakauri RVZ):

- (a) a new r 46.4.3A to specify that commercial recreational activities and ancillary onsite staff accommodation is a permitted activity in the Matakauri RVZ provided that r 46.5.WW) is not breached; and
- (b) a new r 46.4.19B to the effect that commercial recreational activities and ancillary onsite staff accommodation is a non-complying activity if r 46.5.WW is breached.

[162] In r 46.5.XX.1 and 46.5.XX.2, on the basis of our evidential findings, we prefer the numerical caps recommended by QLDC of others.

[163] The lower cap proposed by Mr Scaife for 46.5.XX.1 would allow for significantly less overnight guests than our 2250m² tGFA would reasonably accommodate. In that respect, it would be anomalous. Nor are Mr Scaife's caps supported on the evidence, particularly of Ms Jones and Mr Freeman. We find they would not further advance the achievement of the relevant PDP objectives as to the maintenance of amenity values. In contrast, we find Matakauri's higher caps would potentially work against those objectives, noting that it is in part premised on the greater tGFA recommended by Ms Lucas and which we have not accepted.

[164] Our finding in favour of QLDC's recommended caps is also in light of our determination that a global cap should also be specified as a new r 46.5.WW as we have set out.

[165] As for commercial recreation activity that is undertaken outdoors, we find on the evidence that QLDC's proposed r 46.5.7.4 is the most appropriate for achieving relevant objectives (6 persons within the zone, per day (inclusive of guides or instructors)).

[166] In addition, we find appropriate QLDC's recommended additional matter of control e.g. in controlled activity r 46.4.7 as to the construction or exterior alteration of buildings.

[167] In terms of the global cap standard, we have specified this on a provisional basis as in the range of 100 – 110 persons per day. We will finally determine an appropriate cap within that range in light of supplementary closing submission as we direct. At this stage, we identify this potential range mindful that this was not the subject of direct evidence.

[168] We are mindful that this range is significantly greater than the 55 person cap proposed by Mr Scaife (his proposed r 46.5.XXXX), although we also specify that breach of our cap would trigger non-complying activity classification. We find Mr Scaife's much lower limit unduly onerous. Insofar as it reflects his analysis of various consents held by the Lodge, it does not follow that significantly greater total numbers of guests and visitors on any given day would not maintain amenity values.

[169] In allowing for a significantly larger global cap than Mr Scaife proposes, we also draw assistance from Ms Jones' evidence. In particular, we refer to her answers to the effect that a cap of 50 overnight guests is appropriate and PDP provisions (at the time of hearing) provided QLDC with an ability to consider the amenity effects of guests at the time of resource consenting.

[170] On the basis that the caps for overnight guests and other visitors would allow up to a combined total of 90 per day, our provisional view is that the global cap could be set somewhere in the region of 100 – 110 on the basis that contextual judgements can be applied in the contest of the consideration of consent applications.

[171] As to those applications, we find that the matters that the QLDC closing version specifies discretion would be restricted to for the purposes of QLDC's proposed restricted discretionary r 46.5.XX.2 are sound and complete also for consideration of applications pertaining to exceedance of the overnight guests' cap (i.e. r 46.5.XX.1). In particular, on the evidence of Ms Jones and Mr Freeman, we find that the those listed considerations would allow a consent authority to duly address amenity value considerations and hence assist to achieve relevant objectives and implement associated policies.

[172] In addition, as we have explained, we have determined that Table 46.5 should include a global cap limit (r 46.5.WW), breach of which would trigger a non-complying activity classification (whether for visitor accommodation or commercial recreation).

[173] In light of the inclusion in Table 46.5 of the global cap standard, we find it unnecessary and inappropriate to specify a staff member limit. Firstly, that is because new r 46.5.WW would extend to “commercial recreational activities and ancillary onsite staff accommodation” (i.e. the full extent of the relevant activity specified in Table 46.4). In addition, whilst guest/staff ratios may change from time to time, we infer from the evidence that this is not likely to generate unanticipated off-zone impacts to the extent that amenity values would not be maintained.

[174] Given those matters, we find that restricted discretionary activity is the most appropriate classification for each of the limbs of r 45.5.XX.1. Not only do the listed matters for discretion properly allow for consideration of amenity values,

the enhanced policy framework would ensure due consideration of cumulative effects on these matters should the global cap be exceeded.

[175] It follows that we find it would not be appropriate to prescribe any intermediate ‘discretionary activity’ class as Mr Scaife recommends.

Non-notification of applications

[176] On the basis of those provisional findings, we are satisfied that provision 46.6 as to the non-notification of applications, can remain unchanged. We record that an important premise for that is that r 46.4.4 as to recreation and recreational activity would be amended so as to not apply to Matakauri RVZ. That is because we are satisfied that our provisional amendments to the QLDC closing submissions version of Ch 46 would fairly and sufficiently maintain amenity values beyond RLZ boundaries.

Ch 46 provisions are otherwise appropriate

[177] Subject to the further refinements recommended on QLDC’s closing submissions we find the provisions in Ch 46 are otherwise appropriate for achieving of relevant PDP objectives. In reaching that view, we have considered the PDP’s district-wide standards and other controls on a range of matters that have some bearing on the maintenance of amenity values including for residents such as Mr Scaife. In particular, we refer to provisions as to earthworks, subdivision and development (Chs 25, 27), transport (Ch 29), signs (Ch 31), temporary activities and relocated buildings (Ch 35) and noise (Ch 36). None of those parts of the PDP are subject to this appeal. In essence, their standards and controls supplement those in the RVZ and are to be treated as also serving to achieve those objectives.

Outcome and directions

[178] Therefore, the position we reach overall is as follows:

- (a) modified RVZ is the most appropriate zoning for Matakauri Lodge for achieving relevant PDP objectives and in terms of the other RMA principles we have set out under ‘Statutory framework and principles’ and in Annexure 1;
- (b) the RVZ provisions modified as recommended in QLDC’s closing submissions are the most appropriate in those terms subject to where we set out provisional findings under the heading ‘Provisions for the maintenance of amenity values beyond Zone boundaries’; and
- (c) for the set of modified RVZ provisions we discuss under the heading ‘Provisions for the maintenance of amenity values beyond Zone boundaries’, some refinements are to be made to the provisions as recommended in QLDC’s closing submissions so as to reflect our evidential findings in this decision.

[179] For that set of modified RVZ provisions we discuss under the heading ‘Provisions for the maintenance of amenity values beyond Zone boundaries’, we allow scope for supplementary closing submissions on matters of drafting. However, we do not invite parties to make submissions seeking that we revisit our evidential findings on that set of provisions. To assist parties to engage in those further drafting matters, Annexure 3 is a checklist for the drafting of those provisions. Our directions allow for a sequential approach to those supplementary submissions aided by further drafting assistance from the planning experts. That is so as to assist the court to make a final decision giving directions for the updating of the PDP.

Directions

[180] It is directed:

- (a) QLDC is to prepare a preliminary working draft updated set of provisions for the purposes of the following directions, leaving unchanged any update of the provisions discussed in this decision

under the heading ‘Provisions for the maintenance of amenity values beyond Zone boundaries’ (‘QLDC penultimate draft updated provisions’);

- (b) in accordance with the Code, Ms Jones and Mr Freeman are to undertake expert witness conferencing on those QLDC penultimate draft updated provisions and recommend by joint witness statement how those provisions left aside in the QLDC penultimate draft updated provisions should be updated so as to give effect to the findings in this decision (leaving all other aspects of the QLDC penultimate draft updated provisions unchanged except to any necessary extent to which any need consequential change) (‘JWS – recommended updated provisions’);
- (c) supplementary closing submissions on any changes to the QLDC penultimate draft updated provisions as are recommended by the JWS – recommended updated provisions, including any by joint memorandum, may be filed according to the timetabling directions as are agreed or directed;
- (d) QLDC is to confer with other parties and, within 15 working days, propose a timetable direction for the matters in (a) – (c), that timetable applying subject to any further directions as the court may issue;
- (e) leave is reserved to seek further (or amended) directions;
- (f) costs are reserved, but applications are not encouraged bearing in mind the findings herein. A timetable will be set, if requested, in due course.

For the court

J M Hassan
Environment Judge



Annexure 1

PDP provisions identified in QLDC memorandum as to issues (with any updates since confirmed by Environment Court decision)

Chapter 3 – Strategic Direction

3.1B.1

For the purpose of plan development, including plan changes, the Strategic Objectives and Strategic Policies in this Chapter provide direction for the development of the more detailed provisions contained elsewhere in the District Plan in relation to the Strategic Issues.

3.1B.5

In this Chapter:

- a. ‘Exception Zone’ means any of the following, to the extent that the Zone (or SubZone) is depicted on the planning maps:
 - i. The Ski Area Sub-Zone;
 - ii. The Rural Residential Zone and Rural Lifestyle Zone (Chapter 22);
 - iii. The Gibbston Character Zone (Chapter 23);
 - iv. The Jacks Point Zone (Chapter 41).
 - ...
- b. ‘Rural Living’ means residential-type development in 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;...

3.1B.6

The following Strategic Objectives and Strategic Policies (or specified parts thereof) do not apply to the consideration or determination of any applications for any subdivision, use or development within any of the Exception Zones except insofar as the receiving environment includes an Outstanding Natural Feature or Outstanding Natural Landscape (or part thereof) that is outside the Exception Zone:

- a. SO 3.2.1.7.a, SO 3.2.1.8.a, SO 3.2.5.1, SO 3.2.5.2; and
- b. SP 3.3.2.a, SP 3.3.21.a, SP 3.3.23.a, SP 3.3.29, SP 3.3.30, SP 3.3.31.

For avoidance of doubt, the above identified Strategic Objectives and Strategic Policies apply to plan development, including Plan Changes.

Strategic objectives

SO 3.2.1

The development of a prosperous, resilient and equitable economy in the District.

3.2.1.1

The significant socioeconomic benefits of well-designed and appropriately located visitor industry places, facilities and services are realised across the District.

3.2.1.6

Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.

3.2.1.8

Diversification of land use in rural areas beyond traditional activities, including farming, provided that:

- a. the landscape values of Outstanding Natural Features and Outstanding

Natural Landscapes are protected;

- b. the landscape character of Rural Character Landscapes is maintained and their visual amenity values are maintained or enhanced; and
- c. significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintained.

SO 3.2.5

The retention of the District's distinctive landscapes.

3.2.5.1

The District's Outstanding Natural Features and Outstanding Natural Landscapes and their landscape values and related landscape capacity are identified.

3.2.5.3

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

3.2.5.4

In each Exception Zone located within or part within Outstanding Natural Features and Outstanding Natural Landscapes, any application for subdivision, use and development is provided for:

- a. to the extent anticipated by that Exception Zone; and
- b. on the basis that any additional subdivision, use and development not provided for by that Exception Zone protects the landscape values of the relevant Outstanding Natural Feature or Outstanding Natural Landscape.

SO 3.2.6

The District's residents and communities are able to provide for their social, cultural and economic wellbeing and their health and safety.

3.2.6.1

The accessibility needs of the District's residents and communities to places, services and facilities are met.

Strategic Policies*3.3.2*

In rural areas, provide for commercial recreation and tourism related activities that enable people to access and appreciate the District's landscapes provided that those activities are located and designed and are of a nature that:

- a. protects the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes; and
- b. ...

3.3.22

Provide for rural living opportunities in areas identified on the District Plan web mapping application as appropriate for rural living developments.

3.2.23

Ensure that the effect of cumulative subdivision and development for the purposes of Rural Living does not compromise:

- a. the protection of the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes; and
- b. ...

3.3.24

Provide for non-residential development with a functional need to locate in the rural environment, including regionally significant infrastructure where applicable, through a planning framework that recognises its locational constraints, while ensuring maintenance and enhancement of the rural environment.

3.3.27

Seek opportunities to provide public access to the natural environment at the time of plan change, subdivision or development.

3.3.29

For Outstanding Natural Features and Outstanding Natural Landscapes, identify landscape values and landscape capacity:

- a. ...
- b. outside of identified Priority Areas, in accordance with the landscape assessment methodology in SP 3.3.45 and through best practice landscape assessment methodology.

3.3.30

Protect the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes. (relevant to SO 3.2.1, 3.2.1.7, 3.2.1.8, 3.2.5, 3.2.5.2, 3.2.5.3, 3.2.5.4 and 3.2.5.6).

3.3.31

Avoid adverse effects on the landscape values of the District's Outstanding Natural Features and Outstanding Natural Landscapes from residential subdivision, use and development where there is little capacity to absorb change. (relevant to SO 3.2.2, 3.2.2.1, 3.2.5, 3.2.5.2 – 3.2.5.4).

3.3.43

In applying the Strategic Objectives and Strategic Policies for Outstanding Natural Features, Outstanding Natural Landscapes and Rural Character Landscapes, including the values identification frameworks in SP 3.3.37, 3.3.38, 3.3.40 and 3.3.41 and the landscape assessment methodology in SP 3.3.45, have regard to the following attributes:

- a. Physical attributes:
 - i. geology, geomorphology and topography;
 - ii. ecology;
 - iii. the presence of waterbodies including lakes, rivers, streams, wetlands, and their hydrology;
 - iv. land use (including settlements, buildings and structures; and
- b. Sensory (or experiential) attributes:
 - i. legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;
 - ii. aesthetic values including memorability and naturalness;
 - iii. wild or scenic values;
 - iv. transient values including values at certain times of the day or year;
 - v. experiential attributes, including the sounds and smells associated with the landscape; and
- c. Associative attributes:
 - i. whether the attributes identified in (a) and (b) are shared and recognised;

- ii. cultural and spiritual values for Tangata Whenua;
- iii. historical and heritage associations; and
- iv. recreational values.

3.3.45

Landscape assessments shall:

- a. for Outstanding Natural Features and Outstanding Natural Landscapes:
 - i. identify landscape attributes and values; and
 - ii. assess effects on those values and on related landscape capacity;
- b. ...
- c. in each case apply a consistent rating scale for attributes, values and effects.
Note: QLDC may, from time to time, promulgate and update guidelines that provide assistance in the application of best practice landscape assessment methodologies

3.3.46(a)

The Landscape Assessment Methodology required by SP 3.3.45 is to be implemented when assessing:

- a. a proposed plan change affecting the rural environment;

Chapter 6 – Landscape and Rural Character

Policy 6.3.1

Rural Landscape Categorisation

6.3.1.3

Provide a separate regulatory regime for the Gibbston Valley (identified as the Gibbston Character Zone), Rural Residential Zone, Rural Lifestyle Zone and the Special Zones within which the Outstanding Natural Feature, Outstanding Natural Landscape and Rural Character Landscape categories and the policies of this Chapter related to those categories do not apply unless otherwise stated. (SO 3.1B.5 and 3.1B.6).

Policy 6.3.2

Managing Activities in the Rural Zone, the Gibbston Character Zone, the Rural Residential Zone and the Rural Lifestyle Zone.

6.3.2.2

Ensure that the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and of landscape character, including of the sense of remoteness where it is an important part of that character. (SO 3.2.5, 3.2.5.2, 3.2.5.3, 3.2.5.4, 3.2.5.5, 3.2.5.6, and SP 3.3.20, 3.3.23, 3.3.30, 3.3.31, 3.3.34, 3.3.35).

6.3.2.6

Encourage subdivision and development proposals to promote indigenous biodiversity protection and regeneration where the landscape values and nature conservation values would be maintained or enhanced, particularly where the subdivision or development constitutes a change in the intensity in the land use or the retirement of productive farm land.

6.3.2.8

Encourage any landscaping to be ecologically viable and consistent with the established character of the area.

Policy 6.3.3

Managing Activities on Outstanding Natural Features and in Outstanding Natural

Landscapes.

6.3.3.1

Recognise that subdivision and development is inappropriate on Outstanding Natural Features or in Outstanding Natural Landscapes unless:

- a. landscape values are protected; and
- b. in the case of any subdivision or development, all buildings and other structures and all changes to landform or other physical changes to the appearance of land will be reasonably difficult to see from beyond the boundary of the site in question.

Chapter 22 – Rural Residential and Rural Lifestyle Zone (relevant to the amending proposal)

Objective 22.2.1

Rural living opportunities are enabled in areas that can absorb development, on the basis that the density, scale and form of the development:

- a. Protects the landscape values of the District's Outstanding Natural Features and Outstanding Natural Landscapes;
- b. Maintains the landscape character and maintains or enhances the visual amenity values of the District's Rural Character Landscapes.

22.2.1.1

Ensure the visual prominence of buildings is avoided, remedied or mitigated particularly development and associated earthworks on prominent slopes, ridges and skylines.

22.2.1.2

Set density and building coverage standards in order to maintain rural living character and amenity values and the open space and rural qualities of the District's

landscapes.

22.2.1.3

Allow for flexibility of the density provisions, where design-led and innovative patterns of subdivision and residential development, roading and planting would enhance the character and amenity values of the zone and the District's landscapes.

Objective 22.2.2

The predominant land uses within the Rural Residential and Rural Lifestyle Zones are rural and residential activities.

22.2.2.1

Enable residential and farming activities in both zones, and provide for community and visitor accommodation activities which, in terms of location, scale and type, community are compatible with and enhance the predominant activities of the relevant zone.

22.2.2.3

Discourage commercial, community and other non-residential activities, including restaurants, visitor accommodation and industrial activities that would diminish amenity values and the quality and character of the rural living environment.

22.2.2.4

The bulk, scale and intensity of buildings used for visitor accommodation, residential visitor accommodation and homestay activities are to be commensurate with the anticipated development of the zone and surrounding residential activities.

22.2.2.5

Enable residential visitor accommodation and homestays in conjunction with residential units (including residential flats) whilst limiting the scale, intensity and frequency of these activities.

Objective 22.2.4

Sensitive activities conflicting with existing and anticipated rural activities are managed.

22.2.4.1

Recognise existing and permitted activities, including activities within the surrounding Rural Zone might result in effects such as odour, noise, dust and traffic generation that are established, or reasonably expected to occur and will be noticeable to residents and visitors in rural areas.

Chapter 46 – Rural Visitor Zone*Objective 46.2.1*

The Rural Visitor Zone provides for visitor accommodation, commercial recreational activities and ancillary commercial activities to occur at a small scale and low intensity in rural locations in a manner that:

- a. protects the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes;
- b. ...;
- c. avoids adverse effects, including cumulative effects in conjunction with other activities, buildings and development, which do not protect the values specified in a. or maintain or enhance the values specified in b;
- d. maintains amenity values of the surrounding environment;
- e. does not compromise the operation of existing activities or those enabled by the zones in the surrounding environment as a result of reverse sensitivity effects;
- f. activities anticipated within each Zoned area can be adequately serviced with wastewater treatment and disposal, potable and firefighting water supply, and safe vehicle access or alternative water or air-based transport; and

- g. avoids significant or intolerable risks from natural hazards to people and the community.

46.2.1.1

Ensure that the location of the Zone is such that the activities anticipated within it are able to meet the requirements of Objective 46.2.1.

46.2.1.2

Enable visitor accommodation and commercial recreational activities within the Zone, including ancillary onsite staff accommodation, where the landscape values of the District's Outstanding Natural Features and Outstanding Natural Landscapes are protected, and for other rural areas, the landscape character of the landscape the Zone sits within is maintained and the visual amenity values are maintained or enhanced.

46.2.1.3

Ensure the location, nature, scale and intensity of visitor accommodation, commercial recreational activities, and associated aspects such as traffic generation, access and parking, informal airports, noise and lighting:

- a. maintain amenity values beyond the Zone; and
- b. do not compromise the operation of existing activities or those enabled by the zones in the surrounding environment as a result of reverse sensitivity effects.

46.2.1.5

Avoid residential activity within the Zone, except for enabling: a. onsite staff accommodation ancillary to visitor accommodation and commercial recreational activities, where this accommodation is consistent with the small scale and low intensity of the development within the Zone; and...

46.2.1.6

For commercial recreational activities that exceed the standards limiting their scale and intensity, ensure the activity will protect the landscape values of the District's Outstanding Natural Features and Outstanding Natural Landscapes, and for other rural areas, ensure the landscape character of the landscape the Zone sits within is maintained and the visual amenity values are maintained or enhanced.

Objective 46.2.2

Buildings and development that have a visitor industry related use are provided for at a small scale and low density within the Rural Visitor Zone in areas of lower landscape sensitivity where:

- a. the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected;
- b. ...;
- c. adverse effects, including cumulative effects in conjunction with other activities, buildings and development, which do not protect the values specified in a. or maintain or enhance the values specified in b. are avoided; and
- d. amenity values of the surrounding environment are maintained.

46.2.2.1

Enable and consolidate buildings outside of areas that are identified on the District Plan web mapping application as a High Landscape Sensitivity Area or Moderate-High Landscape Sensitivity Area.

46.2.2.2

Restrict buildings within areas identified on the District Plan web mapping application as Moderate-High Landscape Sensitivity unless they are located and designed, and adverse effects are mitigated, to ensure:

- a. landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are protected; and
- b. ...

46.2.2.3

Avoid buildings within areas identified on the District Plan web mapping application as High Landscape Sensitivity Areas.

46.2.2.4

Manage the effects of buildings and development on landscape values, landscape character and visual amenity values by: a. controlling the colour, scale, design, and height of buildings and associated infrastructure, vegetation and landscape elements; and

- b. in the immediate vicinity of the Homestead Area at Walter Peak, and the historic homestead at Arcadia, provide for a range of external building colours that are not as recessive as required generally for rural environments, but are sympathetic to existing development.

46.2.2.5

Provide for buildings that exceed the bulk and scale standards, only when adverse effects, including cumulative effects, are minimised, including through:

- a. In Outstanding Natural Landscapes, siting buildings so they are reasonably difficult to see from beyond the boundary of the Zone;
- b. ...
- c. The design and location of buildings and opportunities for mitigating bulk, form and density;
- d. Management of the associated aspects of the building(s) such as earthworks, car parking, fencing, and landscaping.

46.2.2.7

Encourage enhancement of nature conservation values as part of the use and development of the Zone.

46.2.2.8

Manage the location and direction of lights to ensure they do not cause glare or reduce the quality of views of the night sky beyond the boundaries of the Zone, or reduce the sense of remoteness where this is an important part of the landscape character of the Zone.

Chapter 27 – Subdivision

Objective 27.2.1

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

27.2.1.5

Recognise that there is an expectation by future landowners that the key effects of and resources required by anticipated land uses will have been resolved through the subdivision approval process.

Objective 27.2.2

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

27.2.2.6

Encourage innovative subdivision design that responds to the local context, climate, landforms and opportunities for views or shelter.

Objective 27.2.4

Natural features, indigenous biodiversity and heritage values are identified,

incorporated and enhanced within subdivision design.

Annexure 2

Preliminary observations made to the parties following the testing of evidence and prior to closing submissions⁶¹

As we signalled at the commencement, it is important for all parties to maintain focus on the most appropriate planning outcome. That is both as to Zone choice and substance.

On all of the expert evidence heard, and in light of all submissions and representations made so far, the Court's preliminary but reasonably clear view is that Rural Visitor Zone is more appropriate for achieving relevant PDP objectives than other available zoning outcomes, notably concerning the relief sought in the appeal.

In particular it is more appropriate than Rural Living or variants of such zoning.

The Court will receive sequential closing submissions and likely issue an interim decision at that stage. This will likely set out our final determination on the Zoning choice and on much of the substance of the provisions, but with directions for further input from parties on some matters. That input could be for instance by way of updated provisions for the preferred zoning outcome addressing the Court's findings, preliminary or otherwise, in that interim decision.

The Court's questioning of the experts, particularly Ms Jones, signal some matters of present interest for the Court on the basis that the Court's present preliminary view is that the RVZ needs some further tuning in its policy directions. That is to ensure greater certainty in delivering on the Zone intentions in light of the evidence heard and the proximity of the Lodge site to Rural Living zone.

⁶¹ Transcript, pp 96-97.

Annexure 3

Checklist for the drafting of provisions as refinements to the QLDC closing version⁶²

<i>46.1 Purpose</i>	Amend the noted sentence to read “The principal activities in the Zone are small scale and low intensity visitor accommodation and related ancillary commercial activities and commercial recreation activities”.
<i>46.2 objectives and policies</i>	
Pol 46.2.1.4	Amend to exclude Matakauri RVZ.
New pol 46.2.1.4A	Include a new policy bespoke to Matakauri RVZ as provisionally drafted in this decision or to similar effect.
Other	Make other amendments as recommended by QLDC’s closing submissions
<i>Table 46.4</i>	
r 46.4.2	Amend to exclude Matakauri RVZ.
New r 46.4.2A	Add a new rule to the effect that visitor accommodation in Matakauri RVZ is a permitted activity provided that new standard 46.5.WW is not breached.
New r 46.4.19A	Add a new rule to the effect that visitor accommodation in Matakauri RVZ is a non-complying activity if new standard 46.5.WW is breached.
r 46.4.3	Amend to exclude Matakauri RVZ.
New r 46.4.3A	Add a new rule to the effect that commercial recreational activities and ancillary onsite staff accommodation is a permitted activity in the Matakauri RVZ provided that new standard 46.5.WW below is not breached.
r 46.4.4	Amend to specify that it applies except in the Matakauri Rural Visitor Zone.
New r 46.4.19B	Add a new rule to the effect that commercial recreational activities and ancillary onsite staff accommodation is a non-complying activity in the Matakauri RVZ if new standard 46.5.WW is breached.
Other	Make other changes to 46.4 as per QLDC’s closing submissions.

⁶² Note 1 the numbering of policies and rules is not dictated but left to be considered by the planners in conferencing. Note 2: this checklist is only on what is to be changed in the QLDC closing version as specified in this decision.

<i>Table 46.5</i>	
New r 46.5.WW	Add a new rule prescribing as a standard that applies to visitor accommodation under new permitted activity r 46.4.2A prescribing as a maximum limit for all overnight guests, visitors for visitor accommodation and commercial recreational and ancillary onsite staff accommodation of [100/110] persons per day.
New r 46.5.XX including 46.5.XX.1 and 46.5.XX.2	Add a new rule updating that recommended in QLDC's closing submissions to the effect of prescribing a two limb standard to reflect our provisional revisions to QLDC's drafting, including as to where RDA and NCA classifications apply.
New r 46.5.7.4	Add a new standard for commercial recreation activity as recommended in QLDC's closing submissions.
Other	Make other changes to 46.4 as per QLDC's closing submissions.

Annexure 4

Figures and maps from evidence and PDP planning map extracts

Figure 1 – Exhibit RL1 Landscape unit boundaries



Figure 2 – Landscape Sensitivity Areas on the Site from M Jones,
Appendix A



Figure 3 – Reproduction of plan from R Lucas summary evidence showing area of disagreement with M Jones

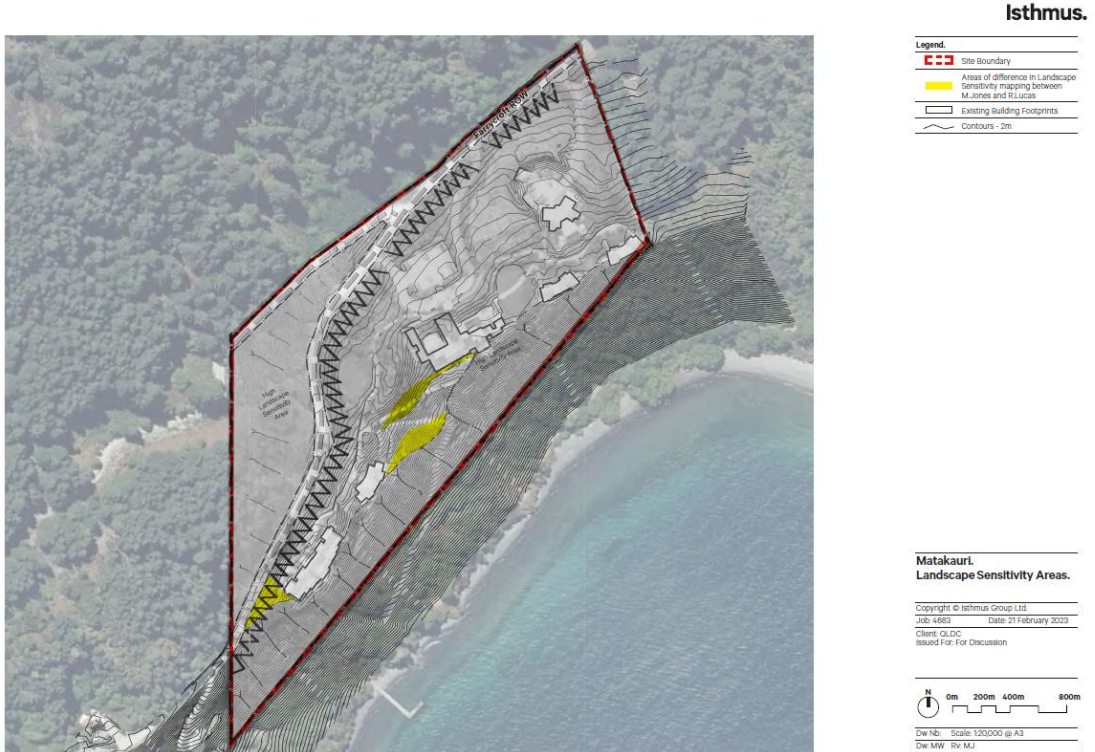


Figure 4 – Topographical map from M Jones, Appendix A



6

