

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

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

Decision No. [2023] NZEnvC 190

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN ROGER LINDSAY DONALDSON

(ENV-2019-CHC-024)

Appellant

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

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

Hearing: at Queenstown on 31 October 2022

Appearances: G M Todd and B B Gresson for appellant
S J Scott and S B Hart for Queenstown Lakes District
Council
S Quinn for the Millbrook residents
J Macdonald for X-Ray Trust Ltd

Last case event: 17 February 2023

Date of Decision: 6 September 2023

Date of Issue: 6 September 2023

INTERIM DECISION OF THE ENVIRONMENT COURT
Topic 31: Donaldson – LCU 6: Wharehuanui Hills



- A: The appeal is allowed in part, the court finding that the decision version provisions are not appropriate and the most appropriate zoning treatment for the Site is modified WBRAZ Lifestyle Precinct including amendments to relevant objectives, policies, rules and other provisions in Chs 24 and 27 (and associated change to Sch 24.8).
- B: Directions are made for QLDC to confer with parties and file an updated final recommended set of provisions for the court's endorsement for inclusion in the PDP.
- C: Costs are reserved but applications are not encouraged given our findings.

REASONS

Introduction

[1] This proceeding concerns 'Topic 31' in the staged determination of appeals in the review of the Queenstown Lakes District Plan ('PDP'). Topic 31 concerns site-specific relief pursued in regard to the Wakatipu Basin Rural Amenity zone ('WBRAZ') including its 'Lifestyle Precinct' subzone ('Precinct').

[2] Roger Donaldson owns a 21.6 ha parcel of rural land on an elevated plateau of the Wharehuanui Hills (the 'Site'). It is generally along the southern flanks of Millbrook Resort.

[3] Under the notified version of the Wakatipu Basin variation, the Site was proposed to be included in the Precinct. Under Sch 24.8 to Ch 24 (Wakatipu Basin), it was included within Landscape Character Unit 6 ('LCU 6') and described to have a 'High' 'capability to absorb additional development'. In its decision version of the PDP, QLDC¹ removed the Site from the Precinct such that it became zoned simply WBRAZ. The decision version PDP also revised the notation of capability to absorb development of the eastern end of LCU 6

¹ Queenstown Lakes District Council.

(including the Site) to ‘Low’.

[4] Mr Donaldson appealed that decision. His initially-expressed relief was somewhat vague, but in essence sought that the rezoning be overturned (and that some other changes be made to particular rules and standards). In evidence before us, he refined that position to what we refer to as the ‘modified relief option’ (and described later in this decision under that heading). No party took issue with whether the modified relief option is within jurisdictional scope. According to the principles we discuss, we find it is.

[5] QLDC supports the modified relief option. Some neighbours who joined as s274 parties do not, preferring the status quo WBRAZ zoning (‘status quo option’).² Those include X-Ray Trust Ltd (‘XRT’) who own a rural lifestyle property that shares the southwest boundary of the Donaldson land. Some Millbrook Resort residents who have views over the land presented a joint case as s274 parties (‘Millbrook Residents Group’).³

Statutory framework

[6] We hear plan appeals de novo. We must have regard to the IHP Report and the related QLDC decision on the relevant aspects of the WBRAZ variation. Annexure 1 addresses the RMA⁴ statutory framework (and related legal principles).

² Other parties who joined the appeal but took no active part are Millbrook Country Club (who operate the Resort) (‘Millbrook’), Skipp Williamson and Friends of Lake Hayes Society Inc (‘FOLH’).

³ Millbrook Owners-Members Committee, Trustees of the HNT Trust (Hamish Edwards, Tineke Edwards, Andrew Finch), David and Anthea Shepherd, Geoffrey Breen and Frances Nicholas, Ian Rutherford and Jennifer Anne McPherson, Jan Andersson on behalf of the Jan Andersson Family Trust, Paul and Rachel Donovan, Trustees of the Kezza Family Trust (Maurice John Prendergast, Kerry Donna Prendergast, Henry Jansen), Trustees of the Thomas Lifestyle Trusts (Brendon Thomas, Katrina Mary Thomas and Turrall Trustee Services Ltd).

⁴ Resource Management Act 1991.

Wider matters

[7] PDP SO 3.2.6 is as to social, cultural and economic wellbeing. The planners called by Mr Donaldson and the Millbrook Residents Group expressed effectively contradictory opinions on its significance for evaluation of the options. Mr J Brown offered the opinion that the modified relief option is superior by this measure in that it can “better sustain the potential of the land to accommodate rural lifestyle growth, even if in a small way, while not causing unacceptable adverse effects on the environment”.⁵ Mr Jones, from his different starting premise as to the adverse effects of the modified relief option on landscape character and visual amenity values, reached the opposite view.⁶

[8] Ultimately, we find this objective is not determinative of the most appropriate zoning outcome.

[9] Some planning evidence included evaluation of the zoning options by reference to QLDC functions, pt 2 RMA, the National Policy Statement for Freshwater Management 2020 (‘NPSFM’), the Otago Regional Policy Statement (‘RPS’) and the partially-operative RPS. These matters were also touched on in legal submissions for some parties.

[10] In all relevant respects these matters are already sufficiently captured in directions given by the PDP’s relevant objectives and policies. None of the noted policy instruments materially weighs for or against any zoning option.

Background

[11] In terms of that framework, this ‘Background’ section traverses various matters backgrounding our evidential findings and determinations as to the zoning

⁵ J Brown EIC, at [7.12].

⁶ Jones EIC, at [65].

outcome.

The broad scope of outcome options

[12] The broad scope of what we may determine in this Topic 31 appeal range between the below-described modified relief and status quo options. Our scope is on a continuum as between those options, according to the principles we discuss in Annexure 1.

The modified relief option

[13] In essence, there are two limbs to the modified relief option as sought by Mr Donaldson and supported by QLDC:

- (a) reversion to Precinct sub-zoning but subject to a bespoke set of provisions for inclusion in Ch 24 including for a structure plan for subdivision and development of the Site; and
- (b) change to the description of “capability to absorb additional development” in PDP Sch 24.6 (as to ‘Landscape Character Units’) for ‘LCU 6’ such that the Site is re-asccribed a ‘High’ capacity (as opposed to ‘Low’).

The status quo option

[14] The status quo option, preferred by the s274 parties who presented evidence, is as that name suggests. That is, maintaining the current WBRAZ zoning and leaving the notation for LCU 6 unchanged.

Modified WBRAZ option

[15] As we discuss, a variation on both those options would be what we term the ‘modified WBRAZ option’. That would be to allow for structured development of the Site but not as part of the Precinct sub-zone. A form of this

was floated by XRT in their closing submissions but it was not developed in their evidence.

The Site and environs

[16] As we have explained, the Site is on an elevated plateau of the Wharehuanui Hills. It is bare land presently used for hay production and intermittent grazing. It has an undulating form which we find is amenable to sensitive development. As fairly described by Mr S Brown, it has three component areas:

- (a) gently undulating paddocks west of the Arrow Irrigation race that meanders north to south through the Site and around a wetland in the southwest corner;
- (b) central paddocks between the race and some steeper topography and a narrow wetland; and
- (c) an eastern paddock east of the narrow wetland and west of Dalesman Lane.

[17] The Arrow Irrigation race, wetlands and other small water courses are part of the Lake Hayes catchment.

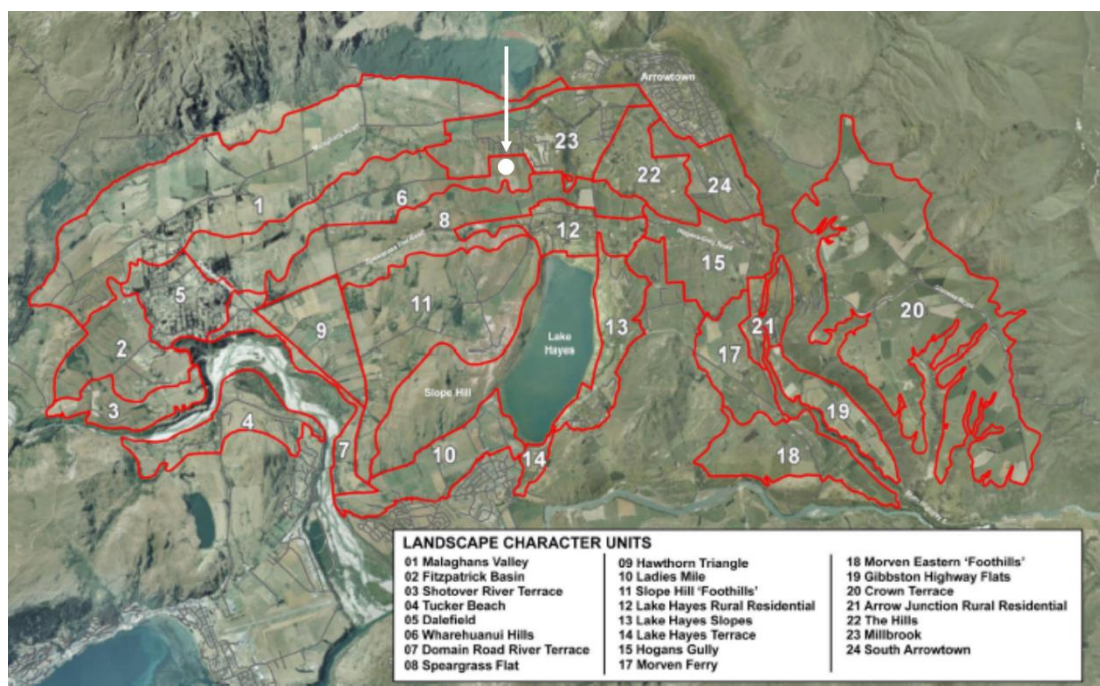
[18] A large part of the Site is nestled against the southern and western flanks of Millbrook Resort. In the relevant vicinity is part of Millbrook's village-type residential area of high-standard dwellings, winding lanes and attractive landscaping. That area is now expanding westwards of the Site in conjunction with a second Millbrook golf course. The Site is accessed through Millbrook via two rights-of-way. One is from the head of Ishii Lane, where there is presently a wooden access gate. The other is unformed and from Dalesman Lane.

[19] Along the eastern flank of the Site and south of the Millbrook residential area is a part of the Queenstown Countryside Trail, an extensive and popular walking and cycling track.

[20] The XRT land to the south-west of the Site is a large and private rural lifestyle property that is accessed up a steep switchback metalled driveway from Speargrass Flat Road. It includes a dwelling and a number of other rural-style buildings. Adjacent to that land is another large rural lifestyle property referred to as the 'Drury' property. It is also accessed from Speargrass Flat Road. The undulating plateau of the Wharehuanui Hills continues across the upper reaches of these properties before a reasonably steep drop towards Speargrass Flat. At the time of our site visit, a large building was under construction on those upper parts of the Drury property reasonably close to the southern boundary of the Site. We are informed that the building under construction was approved by resource consent as a form of meeting or conference facility. Further to the south-east of the Site is the developing Waterfall Park Zone.

[21] Figure 1 below is a reproduction of the map in Sch 24.8 of the various LCUs. The Site is part of LCU 6: Wharehuanui Hills (marked roughly with white arrow and dot). LCU 6 is tucked below part of LCU 23: Millbrook to the north and stretches westwards to Dalefield (LCU 5).

Figure 1: Schedule 24.8 Landscape Character Units Map



WBRAZ intentions

[22] The WBRAZ applies to the Wakatipu Basin land as shown on the planning maps. In essence, those boundaries are the outer perimeter of the various LCUs depicted on Figure 1. The intentions for the WBRAZ are central in our evaluation of the zoning options in the appeal by reference to the PDP's objectives and policies.

Intentions as to landscape character and visual amenity values

[23] The primary focus of the WBRAZ is on landscape character and visual amenity values. The Zone Purpose statement (24.1) explains that the WBRAZ applies to areas of the Wakatipu Basin which have either reached, or are nearing, a threshold where further landscape modification arising from additional residential subdivision, use and development (including buildings) is not likely to maintain the Wakatipu Basin's landscape character and visual amenity values. To further its overarching objective to maintain or enhance landscape character and visual amenity values, the WBRAZ takes a structured approach based on analysis of the Basin's landscapes and LCUs and their landscape capacity. That analysis was largely undertaken as part of the underpinning Wakatipu Basin Land Use Study ('WBLUS').

[24] As we have noted, the WBRAZ includes the Lifestyle Precinct subzone. Those areas enjoy a relatively more permissive regime for rural lifestyle development. That is because they are considered to have a relatively greater capacity to absorb additional development than the remainder of the WBRAZ. As is described in the Zone Purpose statement, these Precinct areas have a variety of existing lot sizes and patterns of development, and varying landscape character. That is described to include existing vegetation, including shelterbelts, hedgerows and exotic amenity plantings. The Zone Purpose statement explains that, within the Precinct:

... sympathetically located and well-designed rural living development which achieves minimum and average lot sizes, is anticipated, while still achieving the overall objectives of the [WBRAZ].

Changes through the court's Topic 30 Decisions

[25] As a result of the court's Topic 30 Decisions, a more nuanced approach is now applied to those parts of the WBRAZ outside the Precinct ("Topic 30 Decisions").⁷ This is according to what Sch 24.8 identifies as the relative landscape capacity of particular LCUs or parts of LCUs to absorb additional development. For instance, for those areas rated as having a Moderate, Moderate-High or High landscape capacity, there is greater opportunity now provided for subdivision and development than for areas identified as having less capacity. In all cases, that is subject to the intention to maintain or enhance landscape character and visual amenity values.

[26] Through the Topic 30 Decisions, the relevant PDP objectives and policies are now substantially determined. We refer to them as modified by those decisions, noting that at the date of writing the PDP has not yet been fully updated by QLDC. They are summarised in Annexure 1.

Objectives and policies on landscape character and capacity and visual amenity values

[27] Strategic objectives for the WBRAZ include maintaining or enhancing the landscape character and visual amenity values of the Basin and its LCUs as identified in Schedule 24.8. That is reinforced by Obj 24.2.1 in Ch 24 concerning the Wakatipu Basin. Those objectives are also to not exceed the landscape capacity of each LCU and the Basin as a whole (SO 3.2.5.8). Those objectives concerning landscape character and visual amenity values are supported by policies:

⁷ *Barnhill Corporate Trustee Ltd & Ors v Queenstown Lakes District Council* [2022] NZEnvC 58, [2023] NZEnvC 41, [2023] NZEnvC 91.

- (a) to ensure subdivision and development maintains or enhances the landscape character and visual amenity values identified in Sch 24.8 LCUs (Pol 24.2.1.3); and
- (b) to maintain or enhance the landscape character and visual amenity values of the WBRAZ including the Precinct and surrounding landscape context by controlling the colour, scale, form, coverage, location (including setbacks) and height of buildings and associated infrastructure, vegetation and landscape elements (Pol 24.2.1.4).

[28] Those provisions have a significant role in our determination of the most appropriate zoning outcome for the Site.

Relationship to landscape character units including LCU 6

[29] An author of the WBLUS, Bridget Gilbert, gave evidence for QLDC in this case. The WBLUS identified and mapped some 24 landscape character units ('LCUs') across the Basin and these underpin PDP Sch 24.8 (in Ch 24).

[30] Sch 24.8 includes the above-reproduced map of LCUs and an associated tabular description of their landscape character, visual amenity values and other attributes and, as we shortly discuss, a rating of their relative "capability to absorb additional development".

[31] The introductory explanatory text to Sch 24.8 describes its purpose in the following terms:

... a tool to assist with the identification of the landscape character and amenity values that are to be maintained or enhanced within each landscape character unit, and across the Wakatipu Basin more generally.

...

... Across each unit there is likely to be variation in landform, development and vegetation patterns, which will require consideration and assessment through consent applications. The descriptions also acknowledge that there will be change, through future development and use, particularly within the Lifestyle Precinct.

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

[32] The following extract from Sch 24.8 concerning LCU 6 is consistent with what the landscape experts described for the Site and environs (and was evident on our site visits):

Elevated moraine landform with plateaus, hummocky hills ... Patches of scrub in gullies. ... Unit does not adjoin ONL or ONF; however, has open, longer-range views to the surrounding ONL mountain context. ... A mix of rural and rural residential land uses evident. ...

The elevated and hummocky character of the central portion of the unit is not particularly prominent in terms of the wider basin landscape. ... The hills and escarpments along the north and south edges of the unit are however highly visible from the surrounding lower lying areas (noting that these areas have been included in the adjacent Landscape Character Units i.e. LCU1 and LCU 8). ... The area is visible from the (ONL) mountain tracks to the north however the diminishing influences of distance/relative elevation in conjunction with the relative unimportance (visually) of the unit within the wider panorama reduces the unit's prominence.

The containment of localised hummocks means that few dwellings within the unit are visible from the surrounding area (excepting the more distant areas at a higher elevation). In views from the mountain tracks to the north, the unit reads as part of a broad swathe of relatively low lying undulating land that extends in a west – east direction across the basin.

[33] The broader landscape context was also helpfully described by Mr Blakely, the landscape expert called by the Millbrook residents, as follows:⁸

While the western extent of the unit is Dalefield Road, in fact it is part of larger, continuous east west trending ridge of moraine that extends from Arthurs Point to Millbrook separating Malaghans Valley and Speargrass Flat.

The rating of “capability to absorb additional development”

[34] As we have noted, Sch 24.8 also includes a qualitative rating of landscape capacity (or “capability to absorb additional development”) for each LCU. The six-point rating scale is from “Very low” to “High”. In several cases, different ratings are assigned to described parts of a LCU (as is presently the case for LCU 6: Wharehuanui Hills, within which the Site is located). That assigned rating has significance, being reflected in how development within LCUs is treated under associated policies and rules.

[35] In the notified variation, LCU 6 was ascribed to have a ‘High’ such rating. That was revised on the recommendation of the IHP to the following:

High except for the eastern end of the LCU where it adjoins LCU 23 Millbrook

Low at the eastern end of the LCU where it adjoins LCU 23 Millbrook

[36] The ‘eastern end’ encompasses the Site as well as the XRT and Drury land (which the IHP referred to as the ‘Avenue Trust’ property and which parties know as the ‘Drury’ land). The IHP’s reasons were as follows:⁹

⁸ Blakely EIC, at [13].

⁹ Hearing of Submissions on Proposed District Plan *Report and recommendations of Independent Commissioners regarding mapping of Wakatipu Basin and Arrowtown (includes Stage 1 submissions not previously heard)* Report 18.5 – Area C Central Basin Commissioners Denis Nugent (Chair), Rachel Dimery, Trevor Robinson, Quentin Smith (‘IHP Report’), at 4.5.

84. In our view the photographs provided by Mr Blakely and Ms Gilbert illustrate the important function the present open nature of this ridgeline area makes in separating the densely developed Millbrook Resort Zone and the rural-residential area at North Lake Hayes. To extend development similar to that in North Lake Hayes onto this plateau, albeit at the slightly lower density, would remove that sense of openness and replace it with a mixture of buildings and garden vegetation. That would not be consistent with Policy 24.2.1.11.
85. Next, considering the Donaldsons' land, we note that the agreement between Millbrook and the Donaldsons would push development over the brow (away from the Millbrook Resort), resulting in new development extending into other visual catchments. The top of the trail is public road and therefore visual impacts from this portion of trail can be considered (in line with the objectives and policies). All sites form part of the mid-range view from popular tourist view points along Lakes Hayes Road. This was clear in visuals presented by [Mr Quinn] in relation to the Williamson property to the west which we discuss below. In this sense, we agree with Mr Blakely that this area is relatively visually prominent, including from public roads and viewing points on the trail system. We agree with his conclusion that the plateau area including 'the X-Ray Trust, Avenue Trust property and the Donaldson Block has significant and important landscape characteristics that need to be safeguarded'. We also note Mr Craig's comments that there was little to distinguish the boundary between the Donaldson land and Millbrook Resort.
86. When those landscape issues are combined with the matter of potential effects on water quality in Lake Hayes, we conclude that all of this upper plateau land should be rezoned as Rural Amenity Zone as shown on Figure 7 below. As a consequential amendment we also recommend, based on the landscape evidence, that Schedule 24.8 be amended by changing the references to LCU 6 to make it clear that the land at the eastern end of LCU 6 adjoining Millbrook has a low capacity to absorb development.

[footnotes omitted]

Water quality particularly in regard to the Lake Hayes catchment

[37] Some aspects of the water quality objective and policies were initially challenged in appeals against QLDC's decisions on the WBRAZ. Those were resolved by consent orders sought following court-facilitated mediation. Notably:

- (a) Obj 24.2.4 is that subdivision and development, and use of land, maintains or enhances water quality, ecological quality, and recreational values while ensuring the efficient provision of infrastructure; and
- (b) Pol 24.2.4.2 is to restrict the subdivision, development and use of land in the Lake Hayes catchment unless it can contribute to water quality improvement in the catchment commensurate with the nature, scale and location of the proposal.

The issues

Landscape character and capacity and amenity values?

[38] The issues for determining the most appropriate zoning outcome in this appeal are primarily as to landscape and planning evaluation, in particular as to what landscape capability the Site has to absorb additional development. Our evaluation is informed by our findings on landscape character and visual amenity values.

Amenity values and quality of the environment especially for neighbours?

[39] Our evaluation of zoning options is also informed by how they bear upon the amenity values and qualities of the environment for the residents at Millbrook or for the XRT or other neighbouring properties. We must have particular regard to the maintenance or enhancement of amenity values and the quality of the environment under s7, RMA.

Water quality and ecology outcomes for Lake Hayes catchment?

[40] In addition, we compare the options for how effectively they would manage risks for and contribute to the improvement of the water quality and ecology of Lake Hayes catchment.

Infrastructure servicing and capacity constraints?

[41] A further relevant consideration in the evaluation of zoning options is whether there would be infrastructure servicing and capacity constraints. However, this was a confined issue in the evidence.

What better achieves PDP objectives and intentions?

[42] Our evaluation of zoning options is according to what is most appropriate for achieving relevant PDP objectives and policies and is in terms of related RMA principles as we discuss in Annexure 1.

The evidence

[43] As the issues would suggest, the evidence was primarily from landscape and planning experts. Four experts in each discipline were called (Stephen Brown, Bridget Gilbert, Philip Blakely, Anne Steven on landscape matters; Jeffrey Brown, Ruth Evans, Jason Jones and John Kyle on planning).¹⁰

[44] We also heard from a hydrologist, Professor Brian McGlynn, and a surveyor Chris Hansen in regard to water quality and ecology and risks for Lake Hayes (including stormwater and earthworks' management).¹¹ In addition, we

¹⁰ Messrs Stephen Brown and Jeffrey Brown were called by the appellant, Messes Bridget Gilbert and Ruth Evans were called by QLDC, Messrs Philip Blakely and Jason Jones were called by Millbrook Residents Group, Ms Anne Steven and John Kyle were called by XRT.

¹¹ Professor McGlynn is a hydrologist with expertise in ecological and biogeochemical processes. He and surveyor Christopher Hansen were called by Mr Donaldson.

heard from Mr Donaldson (by AVL link from Canada) and a Millbrook resident, David Shepherd. We have considered the written statements from other Millbrook residents who were not available to attend the hearing.¹² We have taken cognisance of other s274 party notices, but on the basis those other parties did not offer evidence or attend the hearing.

What capability does the Site have to absorb additional development?

[45] For reasons we now traverse, we find that the ‘Low’ rating that the IHP recommended for the Site is not a reasonable or accurate description of the Site’s true capacity to absorb additional development. We ascribe it as having a **Moderate** such capacity in that it is able to accommodate a structured development approach that soundly responds to its undulating landform and other attributes.

Landscape and planning evidence

[46] The landscape experts differed in their opinions on this matter. Their differences informed the related opinions of the planning experts. In essence, there were two camps of landscape opinion:

- (a) Mr S Brown and Ms Gilbert consider that the Site has capability for residential development according to a structure planning approach that would make effective use of the Site’s undulating landform and other natural attributes; whereas
- (b) Ms Steven and Mr Blakely consider that development of that scale on the Site would not maintain the landscape character of LCU 6 or the wider Basin.

¹² The written statements were of Hamish Edwards and Michael Stenhouse and these were admitted by consent on an understanding that neither of them was available for cross-examination. The appellant called Andy Carr, traffic engineer and transport planner, as an expert witness. His evidence was not contentious and admitted by consent.

[47] The planners agree that the ‘Low’ capability rating ascribed to the Site in the decision version PDP was not appropriate. They differed on what it should be upgraded to. Reflecting on the differences between the landscape experts, their second joint witness statement (filed in response to directions made after the hearing was adjourned after evidence had been tested) (‘JWS-Planning (2)’) offered the following revision of this part of the table for LCU 6 in Sch 24.8:¹³

[Moderate] or **[Moderate-High]** except for the eastern end of the Mooney Road Basin where it adjoins LCU 23 Millbrook and the land at the far eastern end of the unit that adjoins the steep slopes framing the north side of the Speargrass Flat valley.

Low at the eastern end of the Mooney Road Basin where it adjoins LCU 23 Millbrook and the land at the far eastern end of the unit that adjoins the steep slopes framing the north side of the Speargrass Flat valley.

Legal submissions

[48] Opening submissions essentially reflected the contrasting opinions of the experts in these matters and we do not need to further traverse them. We discuss closing submissions later in this decision.

Evaluation

The landscape experts applied sound methodologies and their opinions are reliable

[49] According to the Code under the court’s Practice Note, the landscape experts each applied a generally sound methodology to derive their opinions according to *Te Tangi a te Manu*, the Aotearoa New Zealand Landscape Guidelines.¹⁴ They took account of relevant contributing attributes, primarily but not exclusively focussing on visual amenity values. In their assessment of visual

¹³ Joint witness statement of J Brown, R Evans, J Jones and J Kyle, dated 12 December 2022 (‘JWS-Planning (2)’).

¹⁴ JWS-Landscape (1) at [17].

impacts (as an input to the consideration of effects on those values), they applied a commonly used seven-point scale. Their assessments primarily concerned the modified WBRAZ Precinct option (i.e. what they term the “proposal” in their first joint witness statement dated 19 May 2022 (‘JWS-Landscape (1)’). That is unduly narrow for our purposes in that we must determine the most appropriate zoning option. However, we are also able to draw from the planning and other evidence and our own experience in these matters.

Site visits of the Site and from selected public viewpoints

[50] Our Site visits and inspection of the Site from various public viewpoints were according to an itinerary proposed by the parties. Distant viewpoints allowed for a reading of the eastern part of LCU 6 as a whole, putting the Site in the context of its environs. Our walks across the Site assisted to bring to light its particular topographical and other attributes, bearing in mind the divergent opinions as to whether these would assist to ensure development maintained landscape character and visual amenity values. Our first visit to the Site was somewhat impeded by a lack of height poles to mark the appellant’s proposed building platforms. However, that was rectified by the time of our second visit.

IHP’s Low rating is not supported on the evidence

[51] We find the description of the Site offered by Mr S Brown (and endorsed by Ms Gilbert, the author of the WBLUS) is accurate. Hence, we find inaccurate the ‘Low’ capacity rating accorded to the Site by the IHP. It is only at the very edge of the Site abutting the Countryside Trail that the Site noticeably rolls off and falls towards Lake Hayes. The balance of the Site is “quite ‘self-contained’ and introverted”.¹⁵ We agree with Mr S Brown that the IHP erred in not differentiating between the steep southern slopes of the Drury and XRT properties (which are widely exposed to the Lake Hayes catchment) and the “more internalised terrain”

¹⁵ S Brown EIC, at [12].

of the Site which is “largely separated from that same catchment by those properties”. We also agree with Mr S Brown that terrain and vegetation provide significant screening of the Site from the Countryside Trail and Malaghans Road.¹⁶

Evaluation of distant elevated views

[52] The landscape experts significantly differed in their approaches to the consideration of elevated distant viewpoints of the Site. Ms Steven and Mr Blakely included viewpoints from Feehly Hill Scenic Reserve, Tobins Track and Coronet Forest lookout, whereas Mr S Brown and Ms Gilbert initially did not. Ultimately, they derived materially different ratings of viewpoints that were recommended to the court as representative viewing points for our site visits. However, the significance or otherwise of those viewpoints and the scale of impact that development of the Site would have from them are matters of subjective opinion. Our judgments on this, insofar as they differ from the opinions of particular experts, do not reflect any criticism of those opinions. We find all opinions generally sound, although we have reached some evaluative findings about them.

[53] The same applies to the opinions of the planners about these matters, bearing in mind that each planner draws from the respective landscape experts as well as their own expertise.

[54] The landscape experts ultimately derived the following ratings of the visual effect of a structure plan development of the Site:¹⁷

| <i>Viewpoints</i> | S Brown | Gilbert | Steven | Blakely |
|--------------------------|----------------|----------------|---------------|----------------|
| <i>Malaghans Road</i> | VL-L | VL-L | L-M | L-M |
| <i>Hogans Gully Road</i> | VL | VL-L | L to M-L | L-M |

¹⁶ S Brown EIC, at [32].

¹⁷ This was in the JWS-Landscape (2) and used a seven-point scale of i.e. Very Low (‘VL’), Low (‘L’), Low-Moderate (‘L-M’), Moderate (‘M’), Moderate-High (‘M-H’), High (‘H’), Very High (‘VH’).

| | | | | |
|--------------------------|------|------|---|-----|
| <i>Feehly Hill</i> | L | L-M | H | M-H |
| <i>Tobins Track</i> | L | L | H | M-H |
| <i>Zig Zag</i> | VL-L | VL-L | M | L-M |
| <i>Coronet Peak Road</i> | VL | VL | H | M |

[55] We accept that this selection of viewpoints for analysis is appropriate bearing in mind that we are to consider the landscape character and visual amenity values of both LCUs and the Basin as a whole.

[56] What is particularly stark is the two camps of opinion concerning the visual impacts from Feehly Hill, Tobins Track and Coronet Peak Road. In the case of Feehly Hill, that would appear to derive in part from an error on the part of Ms Steven and Mr Blakely of considering viewpoints from sections of the track in private ownership. These sections should not have been included in an evaluation of impacts from public viewpoints as they are not within the PDP's definition of public place. We understand those differences also pertain to how the experts respectively evaluate the significance, or otherwise, of the number of house lots that would be visible from those viewpoints. Different perspectives on the consequential pattern of development across the Basin also factor in.

[57] An important ingredient in an analysis of visual impacts of development of the Site from public viewpoints across the Site is the topography and other natural attributes of the Site. As we have noted, our Site visits assisted us significantly in putting the divergent opinions on this in proper context. We prefer Mr S Brown's opinion concerning the way a structure plan approach can assist to maintain visual amenity values and landscape character in that it can make intelligent use of the Site's undulations and contours. We disagree with Mr Blakely's alternative opinion that the natural humps and hollows of the Site would be "masked by the presence of 15 house lots, with associated earthworks, access roads, plantings and other

aspects of domestication”.¹⁸ With respect, that comes back to intelligent responsive design which we find Mr S Brown to have demonstrated in his approach (although we differ on some aspects).

[58] The numbers of house lots and other development features that may be visible and the extent to which this represents a visual change are only part of what informs an evaluative judgment as to whether landscape character and visual amenity values would be maintained (or enhanced). The relative importance or significance of a relevant viewpoint is a further factor.

[59] Furthermore, visual impact analysis is only one ingredient for the evaluation of whether landscape character and visual amenity values would be maintained or enhanced. In the absence of any empirical measure of community preferences, we are left to draw inferences on these things, informed by the evidence and our Site visits.

[60] In those terms, we find as follows in regard to those viewpoints where experts’ differences were significant in regard to the structure plan ultimately proposed as part of the modified relief:

- (a) public views across the Site from Feehly Hill are relatively less significant than others. The planners point out that its western half is in private ownership, subject to an access easement, and not within the PDP definition of “public place”.¹⁹ We did not receive evidence of its usage, but a clear impression we took from our site visits is that it is relatively lightly used and poorly maintained;
- (b) public views across the Site from the more popular Tobins Track also extend across the Basin as a whole, with the portion of view encompassing the Site being at a significant distance that is not likely to enable discernment of significant change once a structure plan

¹⁸ Blakely EIC, at [16.1].

¹⁹ JWS-Planning (2), at [14].

development of the Site is established;

- (c) public views across the Site from Coronet Peak Road are for the most part fleeting and not highly sensitive to the different development outcomes that could arise under the zoning options before us. Our impression was that far more significant for users of this road are the established plateau developments that are just across the valley and much closer. In views towards the Site, Millbrook's growth westwards is far more prominent. Sensitive structured development would effectively avoid any significant impression of incremental creep from Millbrook or towards the established enclave at north Lake Hayes.

[61] There are less significant differences between experts on other viewpoints. From our site visits, we observe that those who view the Site from either Hogans Gully Road or the top of the Zig Zag would at most have a barely discernible impression of change on the Site.²⁰ From Malaghans Road, views would be plainly closer (e.g. from the cricket pavilion area) but much reduced from what we indicated to parties concerning the initial structure plan proposed by Mr S Brown.

[62] Applying the experts' seven point rating scale, our evaluation leads us to find that the visual impacts of development under the modified relief option would be VL for the Zig Zag, Tobins Track and Hogans Gully Road and L for all other viewpoints except for Feehly Hill. We find that the visual impact from Feehly Hill would be M but that this viewpoint has relatively less significance (for the reasons we have discussed).

Containment issues in relation to Millbrook and the southern boundary

[63] In any residential development of the Site, there is a need to carefully manage both the relationship with Millbrook and the southern boundary with the

²⁰ The local name for the switchback section of the Crown Range Road as it traverses down to/up from the flat stretch of the Gibbston-Arrowtown stretch of SH6.

XRT and Drury land. These are limiting factors in terms of landscape capacity.

[64] Taking Millbrook first, Ms Steven and Mr Blakely consider the Resort to have compromised landform integrity. In particular, they referred to the “breaching effect” of the more recent western development. In landscape terms, they consider Millbrook to have “overstepped its bounds”.²¹ That is in the sense of not respecting geomorphology such as to now present an “abrupt interface”²² that invites development creep upwards and over the plateau.²³ In their opinion, the Site serves as an important foil. They consider that the appropriate defensible geomorphological edge to development would be “immediately behind the Millbrook West residential development along the northern and eastern boundary of the Donaldson block and at the edge of the eastern plateau”.²⁴

[65] On the other hand, Mr S Brown pointed out that most of the Site’s northern boundary is separated “from the greater bulk of Millbrook’s residential area” by a shallow ridge edge, pockets of vegetation both sides of Ishii Lane, a pond and the gully corridor that the pond sits in.²⁵

[66] We find it is important to ensure clear visual separation between the Site and Millbrook from distant public viewpoints so as to maintain the landscape character of LCU 6 and the wider Basin and associated visual amenity values. In that sense we agree that it is important to avoid an impression of incremental development creep across from Millbrook down onto the plateau. Impressions of the development from public viewpoints outside the Site must not be of a development that is part of or an extension of the resort. That requires careful design according to the structure plan of all relevant elements, including as to the design and treatment of road network connections with Millbrook.

²¹ Steven EIC, at [4.32].

²² Steven EIC, at [4.20].

²³ Steven EIC, at [4.23].

²⁴ Blakely EIC, at [17].

²⁵ S Brown rebuttal, at [4].

[67] The risk presented of development creep from Millbrook is such that we find that:

- (a) the more appropriate capacity rating for the Site should be Moderate (rather than ‘Moderate-High’ as some planners prefer); and
- (b) there needs to be further refinement of what is expressed in framing policies and intentions in support of a restricted discretionary/non-complying activity regime for subdivision (as we discuss under the heading ‘What is the most appropriate zoning?’).

[68] On the matter of a “defensible southern edge”, Ms Steven appeared to suggest that there should not be any residential development beyond the Millbrook Resort zone.²⁶ If that is what she meant, we do not agree. Freezing development opportunity out to that extent is not warranted in order to achieve the intentions of the PDP’s objectives and policies.

[69] Similarly, we find that a structure plan approach can adequately address the need for a defensible southern boundary that acknowledges the geomorphological feature that is the southern rim of the plateau.²⁷ Whilst we make some adjustments to what Mr S Brown recommended, we do not share Ms Steven’s opinion that such an approach would result in future built form and curtilage unduly impacting open ridgeline areas viewed from the basin floor.²⁸

Conclusion concerning the capability of the Site to absorb additional development

[70] On that basis, we adjudge Sch 24.8 should rate the capability of LCU 6 to absorb additional development:²⁹

²⁶ Steven EIC, at [4.15].

²⁷ Steven EIC, at [4.15].

²⁸ Steven EIC, at [4.32].

²⁹ We leave aside from this decision a separate technical change to Sch 24.8 to ensure proper alignment with other PDP references to landscape capacity.

Moderate except for the eastern end of the Mooney Road Basin where it adjoins LCU 23 Millbrook and the land at the far eastern end of the unit that adjoins the steep slopes framing the north side of the Speargrass Flat valley.

Low at the eastern end of the Mooney Road Basin where it adjoins LCU 23 Millbrook and the land at the far eastern end of the unit that adjoins the steep slopes framing the north side of the Speargrass Flat valley.

What is the most appropriate zoning option?

Introduction

[71] In view of those findings on the evidence, we determine that neither the originally notified Precinct zoning nor the decision-version WBRAZ zoning is appropriate. In light of the court's Topic 30 Decisions, the WBRAZ is now further refined to acknowledge more clearly the different development capabilities of areas that fall outside the Precinct. That bears on our consideration of the continuum of available zoning outcomes between the modified relief and status quo options. As we signal in the section headed 'The issues', factors that inform our evaluation of the most appropriate zoning option pertain to:

- (a) landscape character and capacity and visual amenity values just discussed;
- (b) the relative consequences for the maintenance or enhancement of amenity values particularly of neighbours; and
- (c) potential consequences for water quality and ecology especially in the Lake Hayes catchment.

[72] That is all within the statutory framework we have outlined, including as to the consideration of what is most appropriate for achieving relevant PDP objectives and policies.

Infrastructure servicing and capacity

[73] In their Report, the IHP relevantly commented:³⁰

With regard to the Donaldsons' land, Mr Brown told us that services are available to the boundary of the Donaldson land through Millbrook Country Club. In our minds, the question is whether Council would agree to this arrangement. In the absence of confirmation in the affirmative, we conclude from an infrastructure perspective that it is more appropriate that this land is zoned Rural Amenity, although this is not the key reason for our recommendation regarding that land (if it had been, we would have sought feedback from Council on the subject).

[74] These issues were addressed to a limited extent in evidence and submissions.

[75] The appellant called surveyor Christopher Hansen to explain how future dwellings on the Site could be serviced by existing reticulated water and wastewater networks. He explained there are two feasible alternatives. One would be to provide potable water and gravity sewer (wastewater) connections at the boundary, through to Millbrook's privately owned infrastructure, which in turn connects to QLDC's water and wastewater networks. Another possibility would be to connect direct to QLDC's water and wastewater networks via the legal road to the east of the site to existing mains on Speargrass Flat Road.³¹ Mr J Brown further explained that the intention is for all lots to connect to Millbrook's reticulated infrastructure.³²

[76] Mr Kyle questioned whether the modified WBRAZ Precinct option could achieve relevant water quality objectives. He raised this on the understanding that there is no confirmation in evidence of the capacity for either the Millbrook or QLDC wastewater systems to accommodate the development enabled by this

³⁰ IHP Report, at [75].

³¹ Hansen EIC, at [9]-[11].

³² J Brown EIC, at [5.2].

rezoning option.³³ However, Ms Evans explained that, having sought a peer review of Mr Hansen’s evidence, QLDC accepts his findings and is comfortable there is a feasible servicing solution to accommodate the appellant’s proposed rezoning.

[77] Mr Donaldson’s rebuttal statement included some explanation of agreements he has with Millbrook which go back to 2007. These include agreement to “connect up to 15 houses into their water, sewage, and power infrastructure”.³⁴

Amenity values for neighbours including construction traffic and noise nuisance

[78] David Shepherd explained how he and his wife live at 14 Mica Ridge on the southern boundary of the Site. They chose their home for its rural aspect, tranquillity and privacy and “almost 360° uncluttered views” of the framing mountains and other spectacular features of the Basin.³⁵ His evidence noted his concerns about what would be lost to them if up to 30 houses under a Precinct sub-zoning would be established on the Site.

[79] In his statement, Hamish Edwards explained how his family home is at 1 Ishii Lane, a dead-end cul-de-sac. Likewise, he values its quietness and he addressed how even 15 houses on the Site would mean “a massive increase in traffic moving past our house every day”. He also values the ridgeline that runs through the Site and the semi-rural feeling that the Site currently gives; something being eroded from the Queenstown area generally.³⁶

[80] In his statement, Michael Stenhouse explained that he and his wife Susan live at 1 Ogilvie Lane, at its intersection with Ishii Lane and Dalglish Lane. He

³³ Kyle EIC, at [5.16]-[5.20].

³⁴ Donaldson rebuttal, at [13].

³⁵ Shepherd EIC, at [2].

³⁶ Edwards EIC, at [2].

was not made aware, when they purchased some six years ago, that there was any likelihood the Site would be developed there. Indeed, they purchased for the “high level of amenity value and the protection and security afforded by living within the Millbrook precinct”. He has similar concerns about Ishii Lane becoming a through lane taking significant extra traffic.³⁷

[81] On behalf of the Millbrook Residents Group, concerns were also raised about how construction of a development under the modified relief option could impact them in nuisance terms. The issues raised included construction noise and dust and traffic movements. Part of the context, as noted, is that Site access will be via Millbrook Resort. Mr Quinn made something of these matters in his opening submissions, although accepting the point made by Mr J Brown in evidence that the noise limits in the PDP, in combination with local conditions, should protect existing residents from significant adverse effects of noise over time.

[82] The only technical witness called on these matters was Mr Carr and his evidence was entered by consent and in summary was as follows:³⁸

On the basis of my analysis ... I consider that the roading network within Millbrook will remain fit for purpose even when allowing for the slight increase in traffic volumes associated with the proposed rezoning.

In my view there are no factors within the roading network that would contribute to either a reduction in road safety or efficiency, and the provision made is aligned with the principles of the Council’s Code of Practice for Subdivision in respect of road design. The expected increase in traffic (one extra vehicle every 4.3 minutes at the busiest times) will not in my view lead to any perceptible change in the operation of the roadways within the site.

³⁷ Stenhouse EIC, at [3], [4], [10].

³⁸ Carr EIC, at [47]-[49].

I also consider that the intersection of Streamside Lane with Malaghans Road remains appropriate for the marginally increased traffic loadings.

[83] Mr J Brown summarised the position concerning what can be realistically anticipated by way of land use change under the status quo option. In particular, he comments:³⁹

Under the WBRAZ, ... the Site would have an entitlement to a single dwelling, if constructed within the approved building platform, as a controlled activity, and no further dwellings, or subdivision, is anticipated.

[84] He is not precisely correct in his conclusion that the status quo option would result in “no effects” in that “these elements are part of the existing environment”.⁴⁰ The position is more precisely that what is presently in paddocks could realistically change to a minor extent when considering the dynamics of neighbourhood amenity values and the qualities neighbours enjoy in their environment. However, his essential point is that the status quo option would effectively maintain the amenity values and quality of the environment for neighbours.

[85] In regard to the modified relief option, differences about residential amenity values between the planners were relatively confined. Mr Brown considers there would be “no or very little and acceptable adverse effects” on these matters. He reaches that conclusion having evaluated the dimensions of privacy, rural outlook and spaciousness, quietness and ease of access.⁴¹ Ms Evans substantially agrees.⁴² Mr Kyle does not have any issue with Mr J Brown’s conclusions on these matters.⁴³ Mr Jones agrees there are no “meaningful adverse effects” on privacy and that the PDP’s noise limits and local conditions will

³⁹ J Brown EIC, at [3.7].

⁴⁰ J Brown EIC, at [5.6]-[5.18].

⁴¹ J Brown EIC, at [5.6]-[5.18].

⁴² Evans EIC, at [4.31]-[4.33].

⁴³ Kyle EIC, at [3.7].

provide sufficient protection for neighbours.⁴⁴ The differences essentially arise from the planners' different conclusions on visual amenity values, drawing from the different opinions of the landscape architects. As Mr Jones put this, the “amenity values for neighbouring properties associated with the pleasantness and aesthetic coherence of the local environment is comprised in the preceding discussion of landscape and visual amenity matters”.⁴⁵

Water quality improvement in the Lake Hayes catchment

[86] Water quality and risks for Lake Hayes is given policy emphasis in PDP Obj 24.2.4 and 24.2.4.2. As noted, the Site is within Lake Hayes catchment. As such, it is relevant to evaluate the risks from earthworks and stormwater management.

[87] One of the experts called on behalf of Mr Donaldson was Professor McGlynn. His expertise is in “watershed and stream hydrological, ecological, and biogeochemical processes”.⁴⁶ He is plainly well qualified, including in both applied science in his consultancy, e3Scientific, and in his university teaching capacities within New Zealand and overseas. He helpfully summarised the present water quality health of Lake Hayes as follows:⁴⁷

Lake Hayes is a well-known community, national, and international natural resource that has experienced significant water quality degradation due to human alteration of the catchment landscape. Lake Hayes water quality is well documented, and it is accepted that Lake Hayes is significantly impaired. The lake has suffered from elevated fluxes of sediment, phosphorus, Escherichia coli (E. coli), and nitrogen due to historic and ongoing land, wetland, and stream disturbance in its catchment. The rapid growth and development surrounding Lake Hayes is well chronicled and has resulted in a eutrophic lake that experiences noxious algal blooms, dangerous E. coli contamination events, and ecological and

⁴⁴ Jones EIC, at [159]-[160].

⁴⁵ Jones EIC, at [161].

⁴⁶ McGlynn EIC, at [3].

⁴⁷ McGlynn EIC, at [10].

recreational use impairment.

[88] Through a commission to e3Scientific, Professor McGlynn was involved in the assessment of water quality and improvement opportunities available with development of the Site. As such, his evidence was primarily directed to consideration of the modified relief option. He attached a copy of his report to his evidence. As he explained the methodology applied in this analysis was as follows:⁴⁸

e3Scientific completed site visits, water quality sampling, and terrain analysis and flow accumulation mapping to determine the key site features and appropriate conservation buffers for water quality improvement to ensure alignment with Policy 24.2.4.2.

[89] As he explained it:⁴⁹

We determined that existing wetlands, streams, ponds, and Critical Source Areas can be protected and their water quality functions enhanced with native species and ecological restoration with significant benefits to the Lake Hayes catchment and the local landscape. Protecting and planting Critical Source Areas can enhance the natural water quality benefits that these important areas of the landscape provide, as much of the upland overland and subsurface flow moves through these portions of the property. The mapping and boundaries for each conservation zone included in this report provide a blueprint for where and how land management can protect and promote water quality enhancement beyond the services they provide today that could be commensurate with rezoning.

[90] Chris Hansen has significant experience in subdivision development in the Queenstown-Lakes district. In his opinion, stormwater can be managed and treated on Site in a manner that will help improve water quality in Lake Hayes.⁵⁰

[91] We also heard opinions from planning witnesses. Ms Evans explained that

⁴⁸ McGlynn EIC, at [16].

⁴⁹ McGlynn EIC, at [16].

⁵⁰ Hansen EIC, at [9].

QLDC had arranged a peer review of the e3 Scientific report that underpins Professor McGlynn's evidence. The peer review agreed with its conclusions including that the appellant's proposal would be consistent with the intentions of PDP Pol 24.2.4.2. That is Ms Evans' opinion, subject to some recommendations she makes for tightening and clarifying various proposed PDP provisions (with which Mr J Brown concurs).⁵¹

[92] The planner called on behalf of XRT, John Kyle, expressed some reservations (although acknowledging the work undertaken by Professor McGlynn would very likely yield positive results that are aligned with the PDP's policy:⁵²

Given the sensitivity of the Lake Hayes water quality issue and its prominence in terms of the NPS-FM it is my opinion that development within the catchment needs to be coupled with sufficient safeguards to avoid any risk of further degradation. Policy 24.2.4.2 is quite strongly worded and seeks to restrict the subdivision and use of land in the catchment unless it can contribute to water quality improvement in the catchment commensurate with the nature, scale and location of the proposal.

... from my reading of the proposed Structure Plan rules these measures must be initiated at the time of subdivision. Riparian planting needs to occur before the erection of dwellings and completed before the issuance of s224(c) certification. Conceivably the development of the subdivision will include earthworks. Some of these works will also need to be completed before the issuance of s224(c) certification, meaning that there is potential for the effects of sediment runoff from earthworks to occur before riparian planting initiatives are sufficiently established to be effective. The situation with water quality within Lakes Hayes and its' catchment is a serious one and, in my view, it would be desirable for a cautious approach to be adopted to the management of sediment runoff from development of the Site. In my view the optimal means of applying suitable caution in this regard would be for the stabilisation of waterway margins and restoration of waterways and wetlands to have occurred before significant earthworks were undertaken anywhere on the Site. In addition, I hold some

⁵¹ Evans EIC, at [4.22]-[4.29], J Brown rebuttal at [6.1].

⁵² Kyle EIC, at [3.8]-[3.10].

concerns about how the proposed rules will result in riparian planting and the like enduring in perpetuity.

[93] Mr Kyle recommended that the stabilisation of waterway margins and restoration of waterways and wetlands should occur before significant earthworks are undertaken elsewhere on the Site.⁵³

Refinement of the modified relief option in response to our preliminary observations

[94] After all evidence was tested, the court made preliminary observations as to what that revealed concerning the most appropriate zoning outcome. We made directions for further conferencing by the landscape and planning experts before adjourning on the basis that parties would then propose a timetable for written closing submissions.

[95] Annexure 2 reproduces those observations.⁵⁴ They signalled that we had reached a provisional view in favour of what we specified as a “Precinct sub-zone treatment on this modified general basis, notably including the structure plan”. That is, we indicated that the modified relief option was the more appropriate but required further refinement.

[96] As to how that refinement needed to be approached, we identified certain design principles, particularly as to the importance of maintaining a predominant rural character of the Site when viewed from important distant public viewpoints. On this same theme, we noted the importance of not “feathering or tidying up the edge of Millbrook” and not causing “incremental peri-urban or rural lifestyle spread from Millbrook across the valley including X-Ray Trust and Drury and on to North Lake Hayes”.

⁵³ Kyle EIC, at [5.16]-[5.20].

⁵⁴ Transcript, p 283.

[97] We made several observations on matters of detail requiring attention before the court could reach its findings, and directed that experts undertake further conferencing for those purposes. In particular, we identified as problematic the positioning of three house lots on the structure plan offered in evidence by Mr S Brown (Lots 5, 11 and 12). We also noted that Lot 1 was problematic in terms of ensuring “a material separation from” Millbrook. We also identified a need to adjust some roading to reduce visual exposure from external views across the Site (although noting that glimpses of the roading network were not offensive). We invited consideration of fencing and hedging prohibitions and a need to secure effective long-term stewardship of common areas (wetlands, watercourse margins, open or grassed areas, vegetation and the roading network).

[98] We reserved determination of the appropriate activity classification for subdivision and flagged for attention some issues we saw in the proposed PDP provisions presented in the evidence of Mr S Brown.

[99] As directed, the landscape and planning experts undertook further conferencing, producing two further joint witness statements.

[100] In the JWS-Landscape (2), the landscape experts record agreement that, regardless of the number of lots that may be permitted under a modified relief option, there should be the amendments to rules for consenting purposes so as to allow for control of the effects of accessways and driveway paving in elevated views (requiring all such surfaces to be finished in dark visually recessive materials) and location of pools located within house sites. With the exception of S Brown, the landscape experts agree there is benefit in including a PDP requirement to avoid hedgerows.

[101] In the JWS-Planning (2), the planners agree as to the benefit of some structure plan refinements. One is that some accessways and driveways be realigned to reduce their visual prominence in elevated views. They refer in particular to those that would otherwise cross the highest ridgeline running

through the western part of the Site (uphill of the water race). They also note the benefit of realignments so as to wind around slopes and along the low-lying parts of the central and western (upper) plateaus. Furthermore, they see value in requiring that visible non-rural fencing is avoided. Helpfully, they point out that Millbrook's existing stone wall and rural style fencing are invisible from Feehly Hill (the closest elevated vantage point) and do not detract from landscape character and visual amenity values in lower lying views of the area.

[102] Figure 2 below is a reproduction of the revised structure plan proposed in the JWS-Planning (2).

[103] The associated plan provisions that the planners recommended for the modified relief option are summarised in Annexure 3. Our further evaluation of them is given later in this decision.

Submissions

[104] Submissions from all parties carefully traversed the evidence and how associated legal principles should bear on our related findings. Our discussion, in the order in which submissions were filed according to our timetabling directions, focuses in particular on preferences for zoning outcome.

Millbrook Residents Group

[105] For the Millbrook Residents Group, Mr Quinn submitted in closing that amendments made by the appellant to the proposed structure plan for the Site were not sufficient to achieve the outcomes sought by the court. In particular, he submitted that the revised structure plan does not achieve a predominantly rural outlook from important viewing points.⁵⁵

[106] Mr Quinn submitted that the appellant's final approach reflected a commercial mindset to secure the number of dwellings he would be able to develop under arrangements with Millbrook. Noting the importance of distant public viewpoints, he submitted that a measure of the unsatisfactory outcome offered by Mr Donaldson is in the number of house lots that would be visible from the identified key viewpoints. Specifically, he identified that significantly more houses would be visible from Feehly Hill (as well as noting issues with visibility from Hogans Valley Road and Malaghans Road).⁵⁶ In his submission, the more dwellings and their domestic landscape features would be visible from those viewpoints, the less the Site would demonstrate rural character. As such, he submitted that a material reduction in the number of house lots would be needed

⁵⁵ Closing submissions for Millbrook Residents Group, dated 31 January 2023, at [3].

⁵⁶ Closing submissions for Millbrook Residents Group, dated 31 January 2023, at [21]-[31].

rather than simply shifting their positions.⁵⁷

[107] In addition, Mr Quinn submitted that the final structure plan proposed as the modified relief option was deficient in regard to roading, fencing, hedging and maintenance of common areas such that rural character would not be maintained.⁵⁸

XRT

[108] On behalf of XRT, Ms Macdonald raised similar concerns as to the number of houses that would be visible from Feehly Hill. She similarly submitted that 15 houses were too many for the Site, giving rise to what Mr Kyle referred to as “pepper potting”. She submitted that the appellant’s preferred controlled activity status would not be appropriate in that it would not maintain a predominantly rural character when viewed from important public viewing points. Similarly, she submitted that a “further redesign” is required to achieve the appropriate outcome.⁵⁹ In the alternative, she submitted the most appropriate zoning outcome may be:⁶⁰

... of modified discretionary WBRAZ, noting the Court’s provisional finding is that the sites capability to absorb development is moderate (or perhaps moderate-high).

[109] As for the activity classification for subdivision, Mr Quinn submitted that a restricted discretionary activity status may be most appropriate. That is particularly to ensure that QLDC has the ability to decline a consent to an application that fails to achieve the structure plan requirements.⁶¹

⁵⁷ Closing submissions for Millbrook Residents Group, dated 31 January 2023, at [18]-[21], [32].

⁵⁸ Closing submissions for Millbrook Residents Group, dated 31 January 2023, at [33]-[37].

⁵⁹ Closing submissions for XRT, dated 31 January 2023, at [8]-[9], [11] and [13].

⁶⁰ Closing submissions for XRT, dated 31 January 2023, at [13].

⁶¹ Closing submissions for Millbrook Residents Group, dated 31 January 2023, at [39].

QLDC

[110] QLDC’s closing submissions remained in support of the modified relief option in accordance with what is set out in the JWS-Planning (2). Ms Scott and Mr Hart observed that this would achieve important outcomes, namely the reconfiguration of building platforms into three loose groupings away from more “prominent and/or steeply sloping land”, a shared open space strategy to maintain rural character, and further restrictions on accessways, driveways, fencing, hedgerows and boundary treatment.⁶²

[111] Counsel emphasised that QLDC takes the “opposite position” to XRT in that they submit that the modified relief option would maintain a predominantly rural character when viewed from important public viewing points. On the basis of the evidence of Mr S Brown and Ms Gilbert, QLDC is satisfied that 15 houses “is not too many” and that “pepper potting” would not result given their loose groupings under the proposed structure plan. As for visibility of house sites from Feehly Hill, counsel submit that visibility is one, but not a critical, factor. Nor does QLDC agree with XRT that there is any need for further design.⁶³

[112] Ms Scott and Mr Hart caution that XRT’s “modified WBRAZ” framework “presumably with some combination of the structure plan albeit with fully discretionary activity status” outcome has not been tested nor been the subject of any s32AA evaluation nor submissions as to whether it would “give effect to” the Ch 24 objectives and policies.⁶⁴

Mr Donaldson

[113] Mr Donaldson confirmed his support for the modified relief in the form set out in the JWS-Planning (2). Counsel, Mr Todd, adopted the closing

⁶² Closing submissions for QLDC, dated 8 February 2023, at [2.1]-[2.3].

⁶³ Closing submissions for QLDC, dated 8 February 2023, at [4.8]-[4.10].

⁶⁴ Closing submissions for QLDC, dated 8 February 2023, at [4.12].

submissions for QLDC.⁶⁵

[114] Similar to counsel for QLDC, Mr Todd submitted that modified WBRAZ proposed by XRT has not been sufficiently tested to allow for determination as to its appropriateness for the Site. Counsel compares that to the modified relief option, including its associated structure plan and bespoke provisions which has been the subject of thorough testing in evidence.⁶⁶

Evaluation

Infrastructure capacity and servicing does not constrain up-zoning

[115] We accept the appellant's evidence in view of the clear assurances on behalf of QLDC. In any case, being satisfied there are sufficient controls under the PDP, we can safely leave these matters aside as issues pertaining to consenting, and not to the choice of zoning outcome. Therefore, we find these matters as to infrastructure availability and capacity do not count against consideration of either zoning option.

The modified relief option will mean some loss of amenity values for neighbours of the Site

[116] There will undoubtedly be some loss of amenity values currently enjoyed by some residents of Millbrook Resort. Those who value the quiet cul-de-sac nature of Ishii Lane will lose that to some extent in that this would become a through lane serving the Site. Those who value the semi-rural vista across the Site will find that interrupted by views of some dwellings and their curtilages and access lanes, and the associated activities of new neighbours. On a plain reading of s7(c) RMA, the modified option would not maintain amenity values in those terms.

[117] However, nor is it the case that a zoning option is rendered inappropriate

⁶⁵ Closing submissions for the appellant, dated 17 February 2023, at [5].

⁶⁶ Closing submissions for the appellant, dated 17 February 2023, at [38].

if it fails to maintain all amenity values. Rather, it is a more strategic level focus that is to be applied, in particular by reference to what is the most appropriate zoning outcome for achieving the PDP's relevant objectives and intentions. For the reasons we have set out, we find that the modified relief option, including its structure plan, would assist to maintain both landscape character and visual amenity values. The latter is for the benefit of the wider community and nearby residents. For the latter, we find their initial understandings of how much they would see of new dwellings over the Site were somewhat exaggerated. They did not properly account for the natural attributes of the Site that will assist to soften these changes.

[118] Furthermore, we find that the changes that would occur under the modified relief option are not out of keeping with what a resident of Millbrook resort could realistically expect. It is not realistic to bank on the Site remaining unchanged as a semi-rural vista. It is valuable land that Mr Donaldson is entitled to reasonably use and enjoy.

[119] Regarding construction traffic and noise issues, the issues raised by residents as to these matters were more about development of the Site than the most appropriate zoning choice *per se*. However, we understand their concerns to be that up-zoning would give rise to a relatively worse outcome than development of a more minor scale as can be anticipated under the status quo option. We accept the opinions of Messrs Carr and J Brown on these matters. The PDP's standards and other controls on construction matters are not in issue in the appeal. Moreover, the appeal concerns the most appropriate zoning outcome. Matters as to how subdivision and development of the Site may in due course be pursued are for another day, in the context of any consent application.

[120] We acknowledge that some residents would rather see the Site remain as it is or only developed to a much smaller extent. We accept they will find the change that would occur under re-zoning undesirable. However, we find that overall it will maintain amenity values. Moreover, the modified zoning option is appropriate

with respect to relevant PDP objectives and policies. We observe that change is anticipated in the WBRAZ, bearing in mind the Zone Purpose statement acknowledges this in its statement “while providing for rural living and other activities”.

The modified relief option is superior in regard to construction and stormwater management and Lake Hayes’ catchment water quality and ecology

[121] On the basis of the evidence of Professor McGlynn and Mr Hansen, we are satisfied that the framework of recommended plan provisions as we have outlined would sufficiently ensure effective management of construction and stormwater for the protection and enhancement of water quality in Lake Hayes and its associated ecology. We find that a structure plan approach is suitable in those terms. From that perspective, we find that the modified relief option is more appropriate than the status quo option.

[122] In a relative sense, the modified relief option offers more assurance that the water quality outcomes envisaged by relevant PDP objectives and policies would be achieved. That is not to say the status quo option would fail in those terms. We accept it is also capable of delivering water quality outcomes that are appropriate. That is somewhat dependent, however, on what may in due course be done to the Site under such a zoning outcome. We have minimal evidence on that. Hence, we find this issue is not ultimately determinative.

The revised structure plan including 15 house lots is appropriate in regard to landscape and visual amenity matters

[123] The evidence generally satisfies us that the proposed structure plan is sufficiently informed by an understanding the Site in its landscape character context, including the attributes of the Site that can inform sound Site development for the intended purposes. We can, therefore, proceed on the basis of a structured development approach.

[124] However, as we later discuss, we have determined that the activity classifications for subdivision should be restricted discretionary (rather than controlled) and non-complying, given the sensitivities associated with ensuring sound design outcomes. In essence, the proposed structure plan gives us confidence that sensitive design can allow for up to 15 house sites, but QLDC as consent authority must maintain sufficient capacity to ensure those outcomes are delivered through consenting processes.

[125] The revised structure plan as recommended in the JWS-Planning (2) duly responds to the court's preliminary observations in Annexure 2. Those observations are consistent with our findings under 'What capability does the Site have to absorb additional development?'. The modified relief option duly accords with those findings.

[126] Whilst the updated structure plan would mean more house lots would be visible from Feehly Hill, we refer to our findings as to the lesser relative significance of that viewpoint. The modified structure plan, including in its positioning of house sites, effectively avoids pepper potting. Associated height controls and commons areas, along with refinements to the access road layout, also assist in ensuring that this aspect of development will maintain the dominant rural character of LCU 6 in the locality and, therefore, of the Basin as a whole. Commons areas achieve effective separation from Millbrook Resort and the XRT and Drury properties.

[127] Subject to some observations and findings we make later in this decision on some of the proposed PDP provisions, we find that the modified relief would assist to maintain the landscape character and visual amenity values of both LCU 6 and the Basin as a whole. Its structure plan approach makes it more appropriate than the status quo option for achieving relevant PDP objectives and policies as to those matters.

The modified relief option is the most appropriate but requires refinement***The status quo option is not appropriate***

[128] For the reasons we have traversed, we find that the status quo option would be less appropriate than the modified relief option for the achievement of the PDP's relevant objectives, policies and related intentions. While this option would maintain some amenity values for some neighbouring residents to a greater extent, that is only a factor, not a dominant one, in our evaluation. In the consideration of zoning options, we also encompass community scale amenity values, notably including visual amenity values. On the basis of our evidential findings, we find the status quo option is not more appropriate in these terms than the modified relief option.

The modified WBRAZ framework option proposed by XRT is not appropriate

[129] The modified WBRAZ framework option which counsel for XRT invited the court to consider in closing was not tested in evidence, notwithstanding that XRT called planning evidence. It was not fleshed out to any sufficient degree in terms of its componentry. Even assuming that it is intended to sit with a structure plan approach, we have no sound basis to determine whether or not it would assist to achieve relevant PDP objectives. That is in contrast to the status quo option and the modified relief option (whether with a controlled activity or restricted discretionary activity classification for subdivision).

Modified Precinct sub-zoning is generally appropriate

[130] The Site's position on a central elevated plateau of the Basin and its undulating topography and other attributes must all be considered in determining the most appropriate zoning option. A pepper-potted approach, even were it of less than 15 house lots, would risk degradation of the landscape character of LCU 6 and the Basin as a whole. A smart structured approach can effectively avoid that,

even if of 15 house sites (although we do not consider there would be any greater capacity). A structured development of up to 15 house sites would be generally in keeping with the Precinct sub-zone's intentions.

Greater policy direction is required for the modified relief option

[131] The planners properly identify that the PDP should include additional bespoke policy direction given the sensitivities needing management in developing the Site. We agree with the planners that this direction is important in regard to:

- (a) maintenance or enhancement of the predominantly rural landscape character of LCU 6 and the Basin as a whole as well as maintenance and enhancement of the landscape character and visual amenity values both from neighbouring locations (including Millbrook);
- (b) contribution to improvement of the water quality in the Lake Hayes catchment.

[132] We go further in finding that this policy direction is important also for the priority of ensuring effective containment in relation to both Millbrook and the southern boundary. In the former case, that must extend to both the positioning of dwellings and the design of access, given the latter would be via the Resort. In the latter case, it is to avoid any impression of incremental residential development or sprawl in the direction of Lake Hayes. Containment needs to be in the sense of maintaining visual and design separation.

[133] Those findings lead to our further findings as to the policy framework and activity classifications for subdivision.

Explanatory text in the Zone Purpose statement required

[134] Under the design of the WBRAZ, the Zone Purpose statement serves to reinforce intentions as expressed in relevant objectives and policies. Given our findings as to why we derive a Moderate rating for the Site's capability to absorb

additional development, we consider there should be an appropriate acknowledgement in that part of the Zone Purpose statement that pertains to the Site. That is, the following statement concerning the Precinct needs some embellishment:

... sympathetically located and well-designed rural living development which achieves minimum and average lot sizes, is anticipated, while still achieving the overall objectives of the [WBRAZ].

[135] Subject to our directions, we consider this should be along the following lines:

... sympathetically located and well-designed rural living development which achieves minimum and average lot sizes (and accords with any structure plan included in the WBRAZ), is anticipated, while still achieving the overall objectives of the WBRAZ.

Viewpoints to be prescribed for 'XXXX'

[136] The relevant viewpoints where planners have denoted XXXX should be on public roads or public places as follows:

- (a) Malaghans Road and cricket pavilion carpark;
- (b) Feehly Hill excluding parts that are not public places;
- (c) Coronet Peak Road at Coronet Base Station;
- (d) Hogans Gully Road; and
- (e) Tobins Track excluding any parts that are not public places.

[137] Those viewpoints are to be specified in relevant provisions.

New proposed Pol 24.2.5.X

[138] This new policy needs refinement by way of the addition of a further outcome (d) to the following general effect (subject to directions later in this

decision):

ensuring effective visual containment and visual separation from Millbrook Resort and properties beyond the southern boundary of the site, including for Millbrook in the design of accesses from that resort.

New proposed Obj 27.3.XX

[139] Similarly, this new proposed Obj needs refinement to the effect that the following further third outcome (or to similar effect) would be added (perhaps as a (c) with the other two being (a) and (b) after the word “while”) (subject to directions later in this decision):

- (c) ensuring effective visual containment and visual separation from Millbrook Resort and properties beyond the southern boundary of the site.

An additional policy to the same effect is required as new Pol 27.3.XX 1 – 7

[140] This group of seven new proposed policies is appropriate but an additional Pol 27.3.XX.8 to the same above-noted effect is required.

Activity classifications for subdivision are to be restricted discretionary and non-complying

[141] We find that the activity classifications for subdivision should be restricted discretionary (rather than controlled) and non-complying, given the sensitivities associated with ensuring sound design outcomes. While we are confident that sensitive design can allow for up to 15 house sites under the proposed structure plan, QLDC must maintain sufficient capacity to ensure that intended outcomes are delivered through consenting processes. That is an exercise both at a broad structural level and in proper scrutiny of design elements, including as to access design from Millbrook.

[142] That will require revisions to proposed specified rules. In particular:

- (a) the matters for ‘control’ in proposed r 27.7.XX, whilst generally identifying appropriate matters, will need to be reframed as matters in respect of which discretion is restricted;
- (b) the associated information requirements in paragraphs 1 and 2 of this proposed rule may need to be revised somewhat to better fit a restricted discretionary rule (see below re paragraph 3). Our directions leave to the parties the opportunity to consider this and recommend an approach for the court to consider in its final decision;
- (c) the matter of discretion proposed for r 27.7.XX.2 as to roads should be included in those matters for discretion (or similar) and refined to also encompass what we have noted concerning containment and Millbrook;
- (d) the balance of r 27.7.XX.2 under such a revised approach may need to be reconfigured in light of the fact that there will be only restricted discretionary and non-complying activity classes;
- (e) proposed paragraph 3 to proposed r 27.7.XX should be revised to be a further matter to which discretion is restricted; and
- (f) non-complying r 27.7.XX.3 would need consequential amendment (although we find it is otherwise appropriate).

Conclusion and directions

[143] That leads us to this interim decision that the modified relief option is the most appropriate, on the basis of the modified structure plan but subject to the refinements to related Ch 24 and Ch 27 provisions as we have described. A final decision will issue in due course.

[144] Given our findings on all evidential matters are final and the expertise of the planners assisting parties, it is not anticipated that there will be a need for a resumed hearing of anything, but we reserve our capacity for that (with any hearing likely to be by AVL). Nor do we consider there would be much, if any, need for supplementary closing submissions prior to our final decision, but we do not

exclude that potential at this stage.

[145] It is directed that subject to any further timetabling directions issued by Minute:

- (a) QLDC will confer with other parties and file a memorandum proposing for the court's endorsement a complete and final set of updated proposed provisions to give effect to our findings herein;
- (b) leave is reserved to any party to seek further (or amended) directions by memorandum filed following consultation with other parties; and
- (c) costs are reserved, although parties should take cognisance of the mix of win and lose outcomes in this decision and of our observations concerning how parties and their witnesses have performed. All contribute in different ways in this outcome. Anyone pursuing costs must file a timetable memorandum for those purposes, following consultation with other parties, within 15 working days of issuance of our final decision.

For the court



J J M Hassan
Environment Judge

Annexure 1

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

Introduction

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

Statutory framework and principles

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

[3] Counsel for QLDC has helpfully summarised these matters in their opening submissions for this and other Topic 31 appeals.⁶⁷ Those submissions draw from earlier decisions of this court in determining other PDP Topics, notably *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* (another rezoning appeal).⁶⁸ It is convenient to refer to those submissions in quoting the same extracts (maintaining some of the emphasis given by counsel for QLDC):⁶⁹

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

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

⁶⁷ Opening submissions for QLDC, at [4].

⁶⁸ *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* [2021] NZEnvC 189.

⁶⁹ At [27]-[30].

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

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

[emphasis added]

[4] In summary, for each of the relevant Topic 31 appeals:

- (a) there is a range of **options** for evaluation as advanced by parties and generally falling between:
 - (i) the 'status quo' of the zoning regime (and its associated provisions) as applied by the 'decision version' of the PDP that is subject to appeal; and
 - (ii) the zoning outcome (including associated provisions) pursued by way of relief on appeal.
- (b) we evaluate those options to determine **what is the most appropriate for achieving the relevant PDP objectives**. Most of the relevant objectives are now determined by the Court's decisions in other related Stages (particularly as pertain to PDP Chapters 3 (Strategic Directions), 24 (Wakatipu Basin) and 27 (Subdivision and Development)). However, we also consider provisions determined by our Topic 30 Decisions as appropriate for inclusion in the PDP even if QLDC has not yet incorporated them into the updated PDP; and

- (c) our evaluation encompasses what the evidence reveals as the actual and potential effect on the environment of the activities they would enable, including any adverse effect (s 76(3), RMA).

Relevant PDP framework of objectives and policies

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

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

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

Ch 3: Strategic Direction

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

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

[8] These are then listed to include:

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

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

Within the Wakatipu Basin Rural Amenity Zone:

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

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

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

- (a) as updated by the court’s Topic 30 Decisions, ‘landscape capacity’ is defined to mean as follows:
 - b. Landscape capacity’:
 - i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means the capacity of a landscape or feature to accommodate subdivision and development without compromising its identified landscape values;
 - ii. in relation to a landscape character area in a Rural Character Landscape, means the capacity of the landscape character area to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values;
 - iii. in relation to those parts of the Wakatipu Basin Rural Amenity Zone that are identified in Schedule 24.8 to have Moderate capacity, means the capacity of the landscape character unit to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values;
 - iv. in relation to those parts of the Wakatipu Basin Rural Amenity Zone that are identified in Schedule 24.8 to have Very Low, Low or Moderate-Low capacity, means the capacity of the landscape character unit and that of the Basin as a whole to accommodate subdivision and development without

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

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

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

Chapter 24 – Wakatipu Basin

24.1 Zone Purpose

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

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

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

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

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

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

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

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

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

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

[13] When considering our findings on the various Topic 31 appeals in the Wakatipu Basin, we must keep in mind the settled positions expressed in our Topic 30 Decisions.⁷⁰ In this context, it is relevant to point out that the Proposed Plan does not simply promote a rigid preservation of the status quo in terms of land uses and patterns of development. Rather, the Proposed Plan envisages the potential for changes in land use so long as they do not compromise identified landscape values.

Obj 24.2.1

[14] This overarching objective is:

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

Policies to achieve and implement Obj 24.2.1

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

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

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

⁷⁰ *Barnhill Corporate Trustee Ltd & Ors v Queenstown Lakes District Council* [2022] NZEnvC 58, [2023] NZEnvC 41, [2023] NZEnvC 91.

- 24.2.1.1 Subdivision or residential development in all areas outside of the Precinct that are identified in Schedule 24.8 to have Very Low, Low or Moderate-Low capacity must be of a scale, nature and design that:
- a. is not inconsistent with any of the policies that serve to assist to achieve objective 24.2.1; and
 - b. ensures that the landscape character and visual amenity values identified for each relevant Landscape Character Unit in Schedule 24.8 and the landscape character of the Wakatipu Basin as a whole are maintained or enhanced by ensuring that landscape capacity is not exceeded.
- 24.2.1.1XX Subdivision or residential development in all areas of the Wakatipu Basin Rural Amenity Zone outside of the Precinct that are identified in Schedule 24.8 to have Moderate capacity must be of a scale, nature and design that:
- a. is not inconsistent with any of the policies that serve to assist to achieve objective 24.2.1; and
 - b. ensures that the landscape character and visual amenity values of each relevant LCUs as identified in Schedule 24.8 is maintained or enhanced by ensuring that landscape capacity is not exceeded.
- 24.2.1.1A Within those areas identified as having a landscape capacity rating of Moderate, do not allow any new residential development and subdivision for residential activity that is not located and designed so as to:
- a. avoid sprawl along roads;
 - b. maintain a defensible edge to and not encroach into any area identified as having Moderate-Low, Low or Very Low landscape capacity rating;
 - c. minimise incremental changes to landform and vegetation patterns associated with mitigation such as screen planting and earthworks which adversely affect important views of the landform and vegetation character identified for the relevant Landscape Character Units in Schedule 24.8; and

- d. not degrade openness when viewed from public places if that is identified in Schedule 24.8 as an important part of the landscape character of the relevant area, including as a result of any planting or screening along roads or boundaries.

24.2.1.1B Ensure the following outcomes in the consideration of any proposal for subdivision or residential development:

- a. in the part of LCU 3 described in Schedule 24.8 as 'Fitzpatrick Road South':
 - i avoid all development on the elevated knoll landform near Fitzpatrick Road and on the south facing elevated slopes along the southern margins of the area (above the Shotover River cliffs); and
 - ii minimise the visibility of development in views from Tucker Beach, the Queenstown Trail and Fitzpatrick Road.
- b. in the part of LCU 11 described in Schedule 24.8 as 'East of Lower Shotover Road' minimise the visibility of development in views from Lower Shotover Road, the Queenstown Trail and Slopehill Road;
- c. in LCU 15 described in Schedule 24.8 as 'Hogans Gully' minimise the visibility of development from McDonnell Road, Centennial Avenue, Hogans Gully Road and the Queenstown Trail, and from elevated public places outside the Zone including from the Crown Range Road and Zig Zag lookout;
- d. in LCU 22 described in Schedule 24.8 as 'Hills':
 - i minimise the visibility of development from McDonnell Road, Centennial Avenue, Hogans Gully Road and the Queenstown Trail; and
 - ii ensure development is visually recessive from elevated public places outside the Zone including from the Crown Range Road and Zig Zag lookout.
- e. in the part of LCU 23 described in Schedule 24.8 as 'Millbrook Malaghans Road South':
 - i ensure no development is visible from Malaghans Road;

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

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

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

[16] Obj 24.2.5 is:

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

Policies to achieve and implement Obj 24.2.5

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

- 24.2.5.1 Provide for rural living, subdivision, development and use of land in a way that maintains or enhances the landscape character and visual amenity values identified in Schedule 24.8- Landscape Character Units.
- 24.2.5.2 Ensure that any development or landscape modification occurs in a sympathetic manner in both developed and undeveloped areas, by promoting design-led and innovative patterns of subdivision and development that maintain or enhance the landscape character and visual amenity values of the Wakatipu Basin overall.
- 24.2.5.4 Implement lot size and development standards that provide for subdivision and development while ensuring the landscape character and visual amenity values of the Precinct, as identified in Schedule 24.8 – Landscape Character Units, are not compromised by the cumulative adverse effects of development.
- 24.2.5.5 Encourage the retention and planting of vegetation that contributes to landscape character and visual amenity values of the Precinct, particularly where vegetation is identified as an important element in Schedule 24.8, provided it does not present a high risk of wilding spread.
- 24.2.5.6 Require buildings, or building platforms identified through subdivision, or any vehicle access located within a prescribed Escarpment. Ridgeline and River Cliff Features setback as identified on the District Plan web mapping application, to maintain the values of those features, including by:
- a. ensuring that any buildings, earthworks and landform modification are located and designed so that the values of the feature are maintained; while
 - b. recognising that for some sites compliance with the prescribed setback is not practicable due to the site size and dimensions, presence of existing buildings, or the application of other setback requirements

Schedule 24.8

[18] Schedule 24.8 sets out some twenty-four related landscape character units.

It is prefaced by the following commentary:

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

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

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

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

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

Ch 27 Subdivision and Development

[20] The Ch 27 objectives and policies are primarily directed towards the more specific intentions of subdivision design and control. These provisions effectively apply subject to the strategic directions in Ch 3 and the directions given in regard to landscape and visual and other amenity values concerning the Wakatipu Basin

in Ch 24. Nevertheless:

(a) Obj 27.2.1 is:

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

(b) Obj 27.2.2 is:

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

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

Annexure 2

Recorded preliminary observations and directions prior to closing submissions

So further to what indicated before the lunch adjournment, in light of all of the evidence tested, following the Court's further site visit after marker poles were put in place, we are now in a position to signal a path of travel on the basis of our evaluation of the evidence to date. As to the choice of zoning option, as the Court signalled, the options need to be considered in a more refined way than was presented in the planning evidence. At a broad scale, it is a choice between WBRAZ and the lifestyle precinct sub-zone. However, in view of the attributes of this site, there are several options in terms of detail that are important to be considered in order to most appropriately achieve the key PDP objectives. These include, I have listed four matters here:

- (i) The appropriateness or otherwise of a structure plan.
- (ii) The appropriate intensity of available development if precinct sub-zoning is the more appropriate.
- (iii) What performance standards for activity classifications should be, particularly in terms of the important matter of maintaining rural amenity; and
- (iv) Whether the more appropriate zoning classification of subdivision according to any structure plan and performance standards should be restricted discretionary or controlled, in each case defaulting to non-complying.

I just add a correction. I referred to the important matter of rural amenity and I include rural character in there as well.

The evidence so far, particularly landscape and planning evidence, is not sufficient to allow the Court to make the appropriate call on all such matters. As an appropriate guiding intention, reflecting the PDP's relevant objectives and the purposes of the [WBRAZ] and its [Precinct] sub-zone, the Court considers any development outcome must maintain a predominant rural character of this land

when viewed from important public viewing points. That is not the same as Arcadian landscapes, nor indeed the aspirations of authors of the [WBLUS] *per se*. Rather, it reflects the intentions of the revised PDP for the Basin, including as reflected in the Court's Topic 30 decision.

More distant views are important. From those viewpoints, the Court expects dominant rural character to be maintained. That does not mean no change. Rural character is dynamic. It must not mean feathering or tidying up the edge of Millbrook. It is a Resort and has that anomalous role in the Plan design but it is an island in that regard. It must not mean incremental peri-urban or rural lifestyle spread from Millbrook across the valley including X-Ray Trust and Drury and on to North Lake Hayes. Rather, it must mean that when people view this important central part of the Basin from Malaghans Road, Feehly Hill, Coronet Peak Road, Hogan's Gully, the Zig Zag and Tobins Track, they continue to perceive dominant rural character including across this site.

That does not mean that there can't be some dwellings visible or partly visible from distant views. From Feehly Hill, Hogans Gully Road and Malaghans Road, the appearance should be of only a few buildings, some in partial view, akin to what one can be expected in a rural setting. From Coronet Peak, it can be expected that a greater number of dwellings will be seen but from a far more distant perspective. The key there is to ensure no thread of lifestyle-type development from Millbrook through the site across Drury property and down to Lake Hayes North. Nor are glimpses of an associated road network necessarily inappropriate. For instance, the access to X-Ray Trust is plainly in site of those travelling along Speargrass Flat Road. From elevated viewing points though, it is desirable that any access is only visible in glimpses, rather than as a marker of colonisation of a rural area. That viewing experience is quite different from the one that should be appropriate in terms of amenity values for those living nearby at Millbrook. A sensitive fit there should be one that is in keeping with more of a rural residential density in which a number of dwellings and their accesses and associated sensitive landscaping can be present in the view.

From experiencing the three dimensional attributes of the site on our site visits, we are able to put in better context the evidence we received from the planners and landscape architects and we make these associated observations. There are going to be from (a) through to (k) with several subs so I'll take my time.

- (a) The present structure plan does not maintain the dominance of rural character from public viewing points.
- (b) The offending house lots from a visibility perspective are:
 - (i) Five;
 - (ii) Eleven;
 - (iii) Twelve.
- (c) In addition, from Malaghans Road, House Lot 1 reads as part of Millbrook whereas the Court considers it important to show a material separation from Millbrook for the appeal Site.
- (d) We observe that the Site would appear generous enough to attend to those design concerns, although it may ultimately be at the expense of a house lot or two, but not necessarily.
- (e) Whilst the Court has reached a reasonably assured preliminary view using its mind's eye and the pegs on site as reference for this, it would be desirable for all landscape experts to visit the site again once poles are erected to appropriate built form heights. That is particularly given the undulating shape of the site. I make an observation there that from the Court's perspective, humps and hollows are an advantage rather than a disadvantage.
- (f) There would seem capacity to ameliorate this without necessarily deleting all the lots noted, although that may be the outcome as I noted for one or two but not necessarily. For others there would seem capacity for lots to be provided that are in slightly different or materially different locations so that a lower elevation is achieved for the particular lots.
- (g) Roading in some localities would seem capable of being adjusted so as to reduce exposure to external views, overall with an outcome where the network is just seen in glimpses. We refer in particular to:

- (i) Accessways to house lots 1 and 3.
 - (ii) The east side alignment of the accessway beside house lot 6, and its driveway. This section of the alignment would seem better positioned to the west of house lot 6.
 - (iii) The driveway to house lot 12, not the access road itself, which may be better aligned to the west of that lot.
- (h) Fencing and hedging prohibitions should be considered.
- (i) Effective long-term stewardship of the commons areas, including the wetlands, watercourse margins and open or grassed areas and vegetation and the roading network is important to maintain rural amenity and character. We do not have a sound basis at this stage to be satisfied on this. Unless we are, that would at least need to be addressed through rules that give direction for restricted discretionary consenting.
- (j) The activity classification or classifications of subdivision under the rural precinct subzone is only able to be determined once the Court is in a position to make confident determinations on environmental outcomes. I have noted that central there is the importance of direction to maintain dominant rural character across the site when viewed from public viewpoints as I have noted. I have also noted the matter of stewardship in regard to the matters in the commons.
- (k) In addition, the PDP provisions package presented in Mr J Brown's rebuttal needs to be amended in related and other respects. In particular:
- (i) Proposed new Policy 24.2.5.x needs to reflect the different outcome expectations I have noted for more distant public views, as well as for the character and amenity for closer Millbrook and other neighbourhood level views.
 - (ii) Provision 24.5.8.2A as to heights may need revision, depending on the further work done.

- (iii) The capability to absorb development we provisionally conclude is moderate or perhaps moderate-high, this needing to be determined in due course.
- (iv) Objective 27.3.xx needs revision to reflect the importance of maintaining predominant rural character from noted specified distant viewpoints. Perhaps it would be split into more than one objective as an objective should not be multi-faceted in terms of giving direction as to outcomes.
- (v) 27.3.x.x.1 may need tightening as the word consistent is vague, whereas words in accordance with are not.
- (vi) That is also the case for 27.7.x.x.1 but the Court has not yet determined whether the most appropriate activity classification for subdivision that accords with the structure plan should be restricted discretionary or controlled. That will ultimately depend on what the Court can safely find in regard to landscape character matters.
- (vii) Desirably controls should preclude visible non-rural fencing or hedgerows to assist to maintain rural character from distant views.

Now just to depart from my notes there, the Court has not necessarily reached a view that fences have to be banned but consideration should be given to those as markers of colonisation or markers of rural activity and consider it in a nuanced way.

So wrapping up on all of that, before we come to the steps, the Court's provisional view favours Precinct sub-zone treatment on this modified general basis, notably including the structure plan so that the investment that has been put into understanding and responding to this site is realised and it does not need to be the subject of further consent level revision or reconsideration. However, the Court considers supplementary evidence is needed to complete our consideration of the most appropriate planning outcome. Subject to what we shortly discuss with you, the sequence should be, at this stage, probably five steps:

- Step 1: The Court would envisage that the appellants would revise their rules package including the structure plan, on a premise that a modified precinct sub-zoning is needing to be tested by the Court and would arrange for the poling up of the site for the purposes of the landscape experts to have a look.
- Step 2: The landscape experts and planners together would conference on that precinct package to produce a further joint witness statement or statements.
- Step 3: It could be that supplementary briefs of all the experts in conferencing could be filed, addressing only material points of disagreement in the JWS.
- Step 4: We could resume the hearing on those matters.
- Step 5: We could then allow for staged closing submissions to conclude hearing.

Annexure 3

Summary of PDP provisions of the modified relief option as recommended in the JWS-Planning (2)

[1] Appendix A to the JWS-Planning (2) recommends a package of Ch 24 provisions for the modified relief option as we now summarise. That is in conjunction with:

- (a) the revised notation of capability to absorb development in Sch 24. 8 as we have discussed; and
- (b) the structure plan (which would be included as the “Wharehuanui Hills East Structure Plan” Part 27.13.X of Ch 27).

Ch 24 – Wakatipu Basin

[2] The following provisions would be included in Ch 24.

New Pol 24.2.5.X

[3] This would be to the following effect:

24.2.5.X Implement a structure plan within the Wharehuanui Hills East area to provide for Precinct development that ensures:

- (a) landscape character and visual amenity values are maintained or enhanced, including when viewed from Millbrook and other neighbourhood-level locations; and
- (b) predominant rural landscape character is maintained when viewed from XXXX; and
- (c) water quality in the Lake Hayes catchment is improved.

[4] The planners record that XXXX is in anticipation of the court inserting relevant distant viewpoints, adding:

Agreed relevant distant viewpoints from public places to be inserted by the Court, noting that there is disagreement from the landscape architects as to the extent of effect from these viewpoints. Viewpoints include: Malaghans Road, Feehly Hill, Coronet Peak Road (Coronet Base Station, as the lumpy hills screen from lower points of the road), Hogan's Gully, The Zig Zag and Tobins Track.

New exemption to r 24.5.25 to enable earthworks for driveways and infrastructure

[5] This exemption is proposed to this non-complying activity rule relevantly as follows (our emphasis):

Buildings, associated infrastructure and earthworks within any Building Restriction Area.

Except that this rule does not apply to accessways or underground infrastructure, and associated earthworks required for servicing development in the Wharehuanui East Structure Plan area.

New matter of control for controlled activities in r 24.4.5

[6] This new matter is proposed to focus on the visual prominence when viewed from elevated viewpoints and is relevantly as follows (our emphasis):

The construction of buildings for residential activity, including residential flats, that are located within a building platform approved by a resource consent and registered on the applicable record of title.

Control is reserved over:

- a. Effects on landscape character associated with the bulk and external appearance of buildings;
- b. Access;
- c. Infrastructure;

- d. Landform modification, exterior lighting, landscaping and planting (existing and proposed).
- e. Where the site is located within the Lake Hayes Catchment as identified in Schedule 24.9, the contribution of, and methods adopted by, the proposal to improving water quality within the Lake Hayes Catchment.
- f. **Where the site is located with the Wharehuanui Hills East Structure Plan, the visual prominence of the building and associated landscaping, fencing, driveways and ancillary structures when viewed from XXXX (elevated viewpoints).**

[7] The planners explain that proposed subclause (f) “has been added to provide a clear link back to the policy's inclusion of views from the relevant elevated / distant viewpoints”. Again, their reference to XXXX is in anticipation that the court will insert relevant viewpoints.

New r 24.5.8.2A as to non-complying status for height exceedance

[8] In light of the court’s preliminary observations, the planners propose the inclusion of this new rule for inclusion in Table 24.2 on standards and which would assign non-complying activity status of this standard is breached:

The maximum height of buildings on House Sites in the Wharehuanui Hills East Structure Plan area shall be as follows:

House Sites 1, 4, 11, 12, 15: 5m

House Site 13: 4.5m

All other House Sites: Rules 24.5.8.1 and 24.5.8.2 apply.

Ch 27 Subdivision

New objective 27.3.XX as to Wharehuanui Hills East

[9] The planners propose the following new Obj 27.3.XX ‘Wharehuanui Hills East’:

Subdivision and development within the Wharehuanui Hills East Structure Plan area that provides for rural living while maintaining or enhancing landscape character and visual amenity values and improving water quality in the Lake Hayes catchment.

[10] That is in response to the court’s preliminary observations that the earlier proposed iteration of this objective needed revision “to reflect the importance of maintaining predominant rural character from noted specified distant viewpoints”.

New Policies 27.3.XX.1 – 7

[11] The planners propose the following set of new Ch 27 policies:

27.3.XX.1 Require that subdivision and development is in accordance with the Wharehuanui Hills East Structure Plan, to:

- (a) maintain or enhance the landscape character and visual amenity values of the Precinct and neighbouring areas; and
- (b) maintain the predominant rural landscape character when viewed from XXXX.

27.3.XX.2 Require that landscape planting and water quality improvement planting and restoration required within the Structure Plan area is established prior to construction of residential units and is maintained to ensure their long-term effectiveness in contributing to the landscape and visual amenity values and water quality improvements of the Structure Plan area and surrounding areas.

27.3.XX.3 Require that vehicle access is through the existing Millbrook street network (via Ishii Lane and Dalesman Lane) and that all water supply and wastewater disposal connects to established reticulated systems.

27.3.XX.4 Require a Water Quality Management Plan be prepared and implemented that ensures development contributes to the improvement of water quality in the Lake Hayes catchment by:

- (a) revegetating, rehabilitating, and protecting Water Quality Conservation Areas mapped within the Structure Plan area, and their margins, and
- (b) preventing any stock access to the water bodies and mapped Water Quality Conservation Areas.

27.3.XX.5 Require that the Shared Open Spaces identified on the Structure Plan are managed in a consistent and integrated manner in perpetuity to maintain rural amenity and character.

27.3.XX.6 Ensure that accessway lighting shall be low in height from the ground, of reduced lux spill and directed downwards to avoid adverse effects on views of the night sky.

27.3.XX.7 Ensure that accessways, landscaping, fencing and boundary treatments maintain rural landscape character and amenity.

[12] The reference to XXXX in 27.3.XX.1(b) is for the above noted reasons. In response to the court's preliminary observations, this includes Pol 27.3.XX.5 for management of shared open spaces and new Pol 27.3.XX.7 on ensuring accessways, landscaping, fencing and boundary treatments maintain rural landscape character and amenity.

New controlled or restricted discretionary activity r 27.7.XX as to subdivision

[13] The planners note the court's preliminary observations were that we had

not then determined whether activity status should be controlled (as preferred by Mr Donaldson) or restricted discretionary activity. They propose an extensive new r 27.7.XX for inclusion in the “Zone and Location Specific Rules” table. It would, assign either controlled or restricted discretionary activity status to the following:

Subdivision in the Wharehuanui Hills East area provided that:

- (a) the subdivision is in accordance with Structure Plan 27.13.X for the Wharehuanui Hills East area provided that any building platform is not located more than 5m from the position shown on the structure plan; and
- (b) a Structural Planting Areas Plan has been prepared in accordance with clause (1) below; and
- (c) a Water Quality Management Plan has been prepared in accordance with clause (2) below.

[14] We discuss the planners’ proposed specifications for the Structure Planting Areas and Water Quality Management Plans shortly.

[15] The proposed new rule then goes on to list eleven “matters for control” as follows:

Control is reserved to:

- (a) The matters listed under Rule 27.7.1.
- (b) The content of the Structural Planting Areas Plan for the Structural Planting Areas shown on the Structure Plan.
- (c) The methods to ensure that the planting required by the Structural Planting Areas Plan will be established prior to construction of residential units in the Structure Plan area, along with any required ground preparation, irrigation and pest management.

- (d) The content of the Water Quality Management Plan for the Water Quality Conservation Areas (including their margins and water quality improvement conservation areas), as shown on the Structure Plan, including the contributions of, and methods adopted by, the proposal to improving water quality within the Lake Hayes Catchment.
- (e) The methods to ensure that works required by the Water Quality Management Plan will be implemented prior to construction of any residential units in the Structure Plan area, or where necessary any specific methods required to be implemented prior to subdivision construction.
- (f) The methods to ensure that the planting required by the Structural Planting Areas Plan and the works required by the Water Quality Management Plan will be maintained in perpetuity, including by way of legal instruments on the title/s of the lots within the Structure Plan area.
- (g) The effects of lighting and mitigating the potential prominence of development when viewed from public places at night.
- (h) Fencing and gates, recognising that visible nonrural fencing, hedgerows or avenue planting should be avoided.
- (i) The effects of cut and fill earthworks and the need to minimise significant landform modification.
- (j) The visual effects of accessways, driveway surfaces and any associated retaining structures when viewed from elevated views XXXX (to be decided) recognising that these should be finished in dark, visually recessive materials.
- (k) The methods to ensure that the Shared Open Spaces identified on the Wharehuanui Hills East Structure Plan are managed in a consistent, effective and integrated manner in perpetuity.

[16] The references to XXXX are for the above-noted reasons. The planners explain that:

- (a) is to address the court’s preliminary observations as to the desirability of “controls that preclude visible non-rural fencing or hedgerows to assist to maintain rural character from distant views”. The planners further record their agreement that a standard could achieve the same outcome if that is what the court determines as appropriate;
- (b) responds to the opinion of the landscape architects in the JWS-Landscape (2) on these aspects (with the planners’ recommended addition of retaining structures); and
- (c) responds to the court’s preliminary observations that effective long-term stewardship of the commons areas is important to maintain rural character.

[17] Finally in this proposed new r 27.7.XX, the planners recommend the inclusion of some detailed information requirements. Paragraphs 1 and 2 of these requirements prescribe what should be shown in plans to be submitted with an application in accordance with this rule for “Structural Planting Areas” and Water Quality Management”. We do not need to traverse these non-controversial matters of detail other than to record that we are satisfied that they are fit for purpose.

[18] Paragraph 3 is added in response to the court’s preliminary observations as to the importance of effective long-term stewardship of the commons areas and is as follows:

- 3. Any application for subdivision shall include the intended mechanisms for ensuring that the Shared Open Spaces identified on the Wharehuanui Hills Structure Plan are managed in a consistent and integrated manner in perpetuity to:
 - (a) maintain or enhance landscape character and visual amenity values; and
 - (b) maintain predominant rural landscape character when viewed from

XXXX.⁷¹

New restricted discretionary activity r 27.7.XX.2 and non-complying activity r 27.2.XX.3

[19] As was initially proposed by Mr J Brown, the planners propose that the rules package includes these companion rules, relevantly as follows.

[20] Rule 27.7.XX.2 would assign the following restricted discretionary activity status

Any subdivision that does not comply with 27.7.XX.1(a) and:

- (a) creates roading that is located greater than 5m but less than 15m from the position shown on the structure plan; or
- (b) creates a Water Quality Conservation Area that is located greater than 5m but less than 15m from the position shown on the structure plan.

[21] The rule would specify the following related matters in respect of which discretion is restricted:

For roads, discretion is restricted to:

- (a) the effects of cut and fill earthworks and the need to minimise significant landform modification;
- (b) whether the roading location maintains or improves landscape and visual values relative to the position on the Structure Plan;
- (c) effects on other features identified on the Structure Plan.

For Water Quality Conservation Areas, discretion is restricted to:

⁷¹ Included for the above-noted reasons.

- (a) consistency with the purpose of the Water Quality Management Plan;
- (b) the methods to ensure that works required by the Water Quality Management Plan will be implemented prior to construction of any residential units in the Structure Plan area, including any specific methods required to be implemented prior to subdivision construction.

[22] Rule 27.7.XX.3 would assign the following non-complying activity status:

Any subdivision that:

- (a) is not a controlled activity in accordance with Rule 27.7.XX.1 above; or
- (b) is not a restricted discretionary activity in accordance with Rule 27.7.XX.2 above; or
- (c) creates new titles that are not required to connect to reticulated water supply and wastewater disposal systems; or
- (d) Creates any building platform closer than 15m from any boundary with Millbrook.

