

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

Decision No. [2023] NZEnvC 41

IN THE MATTER of the Resource Management Act 1991

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

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

(ENV-2019-CHC-086)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

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

Hearing: On the papers

Last case event: 9 August 2022

Date of Decision: 13 March 2023

Date of Issue: 13 March 2023

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



- A: With the exception of certain matters concerning LCU 3 and LCU 11 transferred to Topic 31, all remaining appeal points in Topic 30, including as to drafting, are allowed or disallowed in part as set out herein.
- B: Requested directions for the making of minor or consequential amendments are made.
- C: Directions are made for QLDC to report on its preferred approach to the timing of directions for provisions determined by this decision to be included in the PDP and on updating Topic 30 and 31 parties and others interested in the meantime.
- D: Costs are reserved and a timetable can be set in due course on application.

REASONS

Introduction

[1] On 12 April 2022, the court issued an interim decision¹ ('Interim Decision') in the staged review of the Queenstown District Plan concerning appeal points allocated to Topics 25 and 30, Stage 2, pertaining to the Wakatipu Basin Rural Amenity Zone ('WBRAZ') provisions.

[2] The following provisions were provisional in that the directions allowed opportunity for supplementary submissions on their drafting and any issues as to jurisdictional scope (but not on our related evidential findings):

- (a) SO 3.2.5.8;
- (b) Pol 24.2.1.1X and associated mapping;
- (c) Pol 24.2.1.1;
- (d) Pol 24.2.1.1A;
- (e) Pol 24.2.1.1B;
- (f) Pol 24.2.1.1XX; and

¹ [2022] NZEnvC 58.

- (g) assessment matters 24.7.5, 24.7.7, 24.7.8, 24.7.8B, 24.7.9 and 27.9.3.3.

[3] In addition, supplementary submissions were allowed on matters the court had reserved, in particular as to:

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

Exemplar online GIS and Schedule 24.8 mapping

[4] The parties agreed to map those areas within the Landscape Character Units ('LCUs') where Schedule 24.8 ascribes different capacity ratings.

[5] QLDC prepared an exemplar online GIS and Sch 24 mapping of the different capacity ratings within LCUs, on the basis set out in the Interim Decision.² Further amendments may be required if the court determines that changes are required to the decisions version capacity ratings through its decisions on the Topic 31 rezoning appeals.

Submissions opposing specification of a Basin-wise focus in certain provisions

[6] The Interim Decision, in addition to its findings on the various LCUs, includes findings on the overall character of the Basin as a whole. For instance, it records:

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

² Supplementary legal submissions for QLDC dated 27 May 2022.

on the Crown Range Road and from the Coronet Peak access road.

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

[7] The Interim Decision identified reinstatement of a “Basin-wide focus” as one of the guiding principles informing the court’s provisional drafting.³ We refer for example to our findings at [25] and [33] (concerning the WB Study), [41] (to which we return later), [78] and [79] and [137]. Those findings on the evidence inform the court’s provisional drafting of SO 3.2.5.8, 24.2.1.1, 24.7.5, 24.7.7, 24.7.8, 24.7.8B and 24.7.9.

[8] The Anderson Lloyd parties seek that the court revisit those findings, submitting that this set of changes is not supported by the weight of evidence and providing for a Basin-wide focus through the various provisions would not be practical. Counsel refer to various parts of the transcript,⁴ other Topic 2 decisions made by the court and analysis of the WBRAZ and wider PDP framework. Plainly, those submissions stray well beyond the permissible limits set by the Interim Decision. Those were for supplementary submissions on “drafting and any issues as to jurisdictional scope (but not on our related evidential findings)”.⁵

[9] Nor do we accept the submissions for the Anderson Lloyd parties that this set of changes would be impracticable, ambiguous or give rise to uncertainty as to the policy direction.

[10] As for the matter of practicability, it is readily a matter within the expertise of landscape experts to evaluate landscapes at the appropriate scale according to

³ Interim Decision, at [78].

⁴ Referring for example to the Topic 30 Hearing Transcript for Ben Espie, p 124, Tony Milne pp 140 – 141, Steve Skelton pp 153 – 154, Bridget Gilbert, p 41.

⁵ Interim Decision, at [173].

the relevant plan policy directions.

[11] As for claims of ambiguity or uncertainty, we find assistance in the submissions of Mr Wakefield and Ms Mortiaux for QLDC. They observe that SO 3.2.5.8 is framed so as to not give rise to the difficulties suggested of extending to any land outside of the WBRAZ. They note that the Ch 24 provisions regulate effects on ONF/L areas through specific policies, including Pol 24.2.1.5 and 24.2.1.15, and several methods (e.g., setbacks). They comment that the focus of these provisions is to ensure that views to any ONF/L are not compromised and/or maintained. That should avoid the claimed risks of uncertainty and ambiguity. Furthermore, they point out that ONF/L land within or that would surround the WBRAZ would be zoned Rural, with a “protect” direction applying.

[12] We find that no material issues of drafting ambiguity or uncertainty arise for the relevant provisions (although we discuss why we make some drafting changes for other reasons shortly).

[13] No issues were raised as to jurisdictional scope and we are satisfied that there are no such impediments to providing for a Basin-wide focus in the relevant provisions.

[14] Therefore we do not accept submissions for the Anderson Lloyd parties on these matters.

Should determination of certain policies be withheld pending determination of Topic 31 appeal points?

Submissions

[15] Counsel for the Anderson Lloyd parties submit that the final drafting of some policies be reserved pending final determination of the Topic 31 appeal points. They make particular reference to Policies 24.2.2.1A and 24.2.1.1B which we discuss later in this decision. Specifically, they point out that these policies

include “site specific” limbs to be addressed in detail in Topic 31.

[16] Counsel argues that the court should withhold from finally determining these policies until it is clear, from determinations in Topic 31, which areas of the Basin will be subject to them.

[17] Counsel for QLDC acknowledge that, to the extent that Topic 31 appeals provide scope to do so, there is some potential for bespoke changes to be made through Topic 31, relative to certain sites. However, counsel argue that the Anderson Lloyd parties again appear to go beyond the legitimate scope for supplementary submissions according to the directions in the Interim Decision. They also refer to the court’s comments in the Interim Decision that, by and large, it was neither fair nor necessary to withhold from determining some policies and other provisions until Topic 31 has been heard. They submit that it is preferable to proceed on that basis to determine as many provisions as possible now, to provide certainty.

There is no sound procedural reason to withhold our determinations

[18] As QLDC points out, this matter was the subject of submissions as reported in the Interim Decision and the court then determined the basis upon which it was appropriate to proceed. By way of background, the determination the court made at that stage was against a background of careful case management in discussion with parties. It was according to directions made in that context, largely as proposed by QLDC, for this sequential approach to the WBRAZ appeal points.

[19] The court remains of the same mind, being satisfied that it is fair and efficient to maintain that course. The court has what it needs to make all necessary determinations, without having to leave matters in suspension pending Topic 31 determinations.

[20] Insofar as parties in Topic 31 have scope to revisit aspects of the wording

of certain policies as part of the determination of their relief, that scope is maintained by this decision. In view of that potential, we do not at this stage direct that QLDC include the relevant provisions in the PDP. However, this decision finally determines all matters of substance subject to those qualifications.

Strategic Objective (SO) 3.2.5.8 and the definition of ‘landscape capacity’

[21] It is convenient to deal with both these issues together in light of our findings on the need to make related amendments to both provisions.

Submissions

SO 3.2.5.8

[22] The Anderson Lloyd parties propose the following changes to the provisional drafting in the Interim Decision:

3.2.5.8 Within the Wakatipu Basin Rural Amenity Zone:

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

~~b. the landscape capacity of the Basin and its Landscape Character Units is not exceeded.~~

[23] As for the proposed deletion of SO 3.2.5.8.b, Ms Baker-Galloway and Ms McLaughlan observe that landscape capacity is by definition a rating, rather than being something that can itself be complied with or not exceeded. They further note that the definition of landscape capacity, i.e. how the rating is arrived at, uses the terms “without compromising” identified landscape character, and “maintaining” visual amenity values. They submit that such terms are not completely consistent with the direction in a. Overall, counsel submit that limb b.

could cause confusion due to inconsistent terminology.

[24] Submissions for QLDC and Otago Regional Council (“ORC”) indicate substantive support for the court’s provisional drafting. Counsel for QLDC observe that it would ensure greater integration with Ch 24, and more particularly, the direction in Obj 24.2.1. As noted, QLDC supports the court’s suggestion that SO 3.2.5.8 refer to the Basin as well as LCUs, submitting this would more effectively protect against adverse cumulative effects across both of those geographical scales.

[25] QLDC proposes the following changes to the provisional drafting in the Interim Decision:

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

[26] ORC supports QLDC’s position on that subject to proposing the following further refinement:

...

- b. the landscape capacity of each Landscape Character unit within the Basin, and of the Basin ~~itself~~ as a whole, is not exceeded.

The definition of 'landscape capacity'

[27] The Interim Decision identified that we found QLDC's then-proposed amendment to this definition problematic. QLDC had proposed to amend the definition as follows:

- b. 'Landscape capacity':
 - ii in relation to a landscape character area in a Rural Character Landscape, and landscape character unit in the Wakatipu Basin Rural Amenity Zone, means the capacity of the landscape character area or unit to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values.

[28] We then made the observation:⁶

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

SO 3.2.5.8 and the definition should be amended to clarify when a Basin-wide focus applies

[29] We accept the point made on behalf of the Anderson Lloyd parties that there is a need to differentiate those circumstances when landscape capacity is concerned only with reference to LCUs from those in which it is also concerned with the Basin as a whole. That requires both a clearer policy expression and a refined definition of 'landscape capacity'.

[30] The Interim Decision intended to differentiate between:

⁶ Interim Decision, at [140].

- (a) areas identified as having Very Low, Low or Moderate-Low capacity, where landscape capacity assessment should pertain to both relevant LCUs and the Basin as a whole; and
- (b) areas identified as having Moderate capacity, where landscape capacity assessment should pertain only to the relevant LCUs.

[31] That should be reflected in the definition of landscape capacity as it pertains to relevant provisions, including SO 3.2.5.8.

[32] We do not accept the submission for the Anderson Lloyd parties that limb b. of SO 3.2.5.8 cannot be reconciled with the reference in the ‘landscape capacity’ definition to “without compromising its identified character and while maintaining its identified visual amenity values”. That drafting approach is also used in the definition with regard to ONF/Ls and Rural Character Landscapes.

[33] Subject to those findings, we generally favour QLDC’s drafting approach clarified in the manner proposed by ORC.

[34] Therefore, we find that the most appropriate drafting approach in accordance with the court’s Interim Decision is to amend the court’s provisional drafting of SO 3.2.5.8 and amend the related definition of ‘landscape capacity’ as set out in the Annexure.

[35] Those provisions are to be included in that form in the PDP in due course, as we will later direct.

Policy 24.2.1.1X and associated mapping

[36] The Interim Decision proposed the following provisional drafting of this policy:⁷

⁷ Interim Decision, at [156].

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

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

Submissions

[37] Parties generally support the court's provisional drafting. With the support of the Anderson Lloyd parties, QLDC seeks that the word 'relative' in the first line of the policy be deleted. That is because retaining it could create ambiguity and soften the substantive effect of ratings.

Pol 24.2.1.1X should be confirmed with the requested amendment

[38] As for the rationale for this new Pol 24.2.1.1X, we agree with QLDC that it add transparency to the method (mapping) used to achieve the policy direction on cumulative effects. We do not understand the Anderson Lloyd parties to disagree with that. We accept that 'relative' should be deleted for the reasons given by counsel. Therefore, we confirm new Pol 24.2.1.1X for inclusion Ch 24 subject to the deletion of the word 'relative', as set out in the Annexure.

Policy 24.2.1.1 and proposed new Pol 24.2.1.1XX

[39] The court’s provisional drafting in the Interim Decision was as follows:⁸

24.2.1.1 To assist to achieve Objective 24.2.1, subdivision or residential development in all areas outside of the Precinct that are identified in Schedule 24.8 to have Very Low, Low or Moderate-Low capacity must be of a scale, nature and design that:

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

24.2.1.1XX To assist to achieve Objective 24.2.1, subdivision or residential development in all areas of the Wakatipu Basin Rural Amenity Zone outside of the Precinct that are identified in Schedule 24.8 to have Moderate capacity must be of a scale, nature and design that maintains or enhances the landscape character and visual amenity values of all relevant LCUs as identified in Schedule 24.8.

Submissions

[40] Parties propose different changes to this drafting.

[41] Starting with the most confined and straightforward, QLDC proposes that the words “To assist to achieve Objective 24.2.1” be removed. Counsel points out that all Ch 24 policies have that statutory purpose in any case, making the words redundant. Furthermore, issues of drafting inconsistency arise in that other policies in Ch 24 are not so prefaced. No party takes a different view on that

⁸ Interim Decision, at [157].

aspect and we agree that the words can and should be deleted.

[42] QLDC supports the court’s finding that Pol 24.2.1.1 should be strengthened to protect the remaining open working rural landscape of the Basin from further progressive degradation. However, counsel ask whether or not the lack of reference to areas identified as having Moderate capacity was intentional.

[43] Counsel point out that the effect would be that Pol 24.2.1.1 would no longer apply to any non-complying applications for subdivision or residential development within Moderate rated LCUs. That would represent a design change from QLDC’s evidence and closing version of the policy. Counsel submit that this would have the consequence that Pol 24.2.1.1 would have less of a Basin-wide focus, by not capturing all of the WBRAZ zoned land comprised in LCUs 15, 22 and 23. Depending on the court’s intention in regard to that matter, QLDC offers two alternative ways in which the court’s provisional drafting could be clarified as follows:

<i>If ‘Moderate’ to be excluded</i>	<i>If ‘Moderate’ to be included</i>
<p>24.2.1.1 To assist the achieve objective 24.2.1, Subdivision or residential development in all areas outside of the Precinct that are identified in Schedule 24.8 to have Very Low, Low or Moderate-Low capacity must be of a scale nature and design that:</p> <p>a. is not inconsistent with any of the policies that serve to assist to achieve <u>Objective 24.2.1</u> that objective; and</p>	<p>24.2.1.1 To assist to achieve Objective 24.2.1, Subdivision or residential development in all areas outside of the Precinct that are identified in Schedule 24.8 to have Very Low, Low, or Moderate-Low <u>or Moderate</u> capacity must be of a scale, nature and design that:</p> <p>a. is not inconsistent with any of the policies that serve to assist to achieve <u>Objective 24.2.1</u> that objective; and</p>

<p>b. ensures that the landscape character and visual amenity values identified for each relevant Landscape Character Unit, <u>as identified in Schedule 24.8, and the Basin itself</u> and the landscape character of the Wakatipu Basin as a whole, are maintained or <u>enhanced by ensuring that landscape capacity is not exceeded.</u></p>	<p>b. ensures that the landscape character and visual amenity values identified for each relevant Landscape Character Unit, <u>as identified in Schedule 24.8, and the Basin itself</u> and the landscape character of the Wakatipu Basin as a whole, are maintained or <u>enhanced by ensuring that landscape capacity is not exceeded.</u></p>
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[44] In the event that the court intended to add reference to Moderate capacity areas in Pol 24.2.1.1, counsel for QLDC submits that new Pol 24.2.1.1XX would be rendered redundant.

[45] In the event that the court intended to not include reference to Moderate capacity areas but to address them in new Policy 24.2.1.1XX, counsel for QLDC recommends that new policy be revised to read:

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 maintains or enhances the landscape character and visual amenity values of each Landscape Character Unit within the Basin, and of the Basin itself, ~~all relevant LCUs~~ as identified in Schedule 24.8.

[46] Counsel for ORC suggests that “... the Basin as a whole” is clearer expression.

[47] The Anderson Lloyd parties support the court’s provisional drafting including in the fact that it does not refer to areas rated Moderate. Counsel submit

that, were the policy to encompass Moderate areas, that would undermine and make uncertain the application of the policies specific to the Moderate and higher rated areas (24.2.1.1XX, 24.2.1.1A and 24.2.1.1B).

[48] The Anderson Lloyd parties do not support QLDCs suggested additional words “by ensuring that landscape capacity is not exceeded” at the end of limb b. Counsel submit the words are not needed and would create inconsistency with an already-clear direction to “maintain” the identified landscape character values, and “maintain or enhance” the identified amenity values. Counsel further submit that having reference to landscape capacity in the context of this policy could create uncertainty given that the definition of landscape capacity only refers to “not compromising” identified landscape character values, and “maintaining” visual amenity values.

The drafting should be clarified on the basis that Moderate rated areas are addressed in 24.2.1.1XX not 24.2.1.1

[49] Submissions helpfully bring to light unsatisfactory drafting in the court’s Interim Decision.

[50] Our findings concerning where provision of a Basin-wide focus is important notably include the following:⁹

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

[51] When the drafting is considered in light of that finding, it can be observed that the intended focus of Pol 24.2.1.1 was on those areas identified to have Very

⁹ Interim Decision, at [41].

Low, Low or Moderate-Low development capacity. Ms Gilbert's Fig 6 was attached to the Interim Decision and illustrates those relevant areas. In essence, Pol 24.2.1.1 was to be concerned with the other noted capacity areas that we found "character defining" for the Basin as a whole. The Moderate capacity areas were instead to be the focus of new Pol 24.2.1.1XX. However, we agree that our drafting of that new policy is unhelpfully inconsistent with Pol 24.2.1.1 in some respects. We address how that is to be remediated shortly.

[52] We do not agree with QLDC's proposed amendments to Pol 24.2.1.1XX. It would be inconsistent with our noted findings to provide in that policy for a Basin-wide assessment in Moderate areas. Deliberately, for those areas, the focus is confined to LCUs only. We emphasise that is by reason that we find that the character-defining areas, in terms of the Basin as a whole, do not include the Moderate capacity areas. We acknowledge that SO 3.2.5.8 does not itself make any distinction between Moderate and other capacity areas. However, its more general drafting is in keeping with its strategic purpose. More specific direction is appropriate within Ch 24 as we intend.

[53] We agree with QLDC that the addition of the words "by ensuring that landscape capacity is not exceeded" bring helpful focus to the directions to maintain or enhance landscape character and visual amenity values. We find that clarity properly consistent with SO 3.2.5.8.

[54] Therefore, we find the best drafting approach in response to the findings in the Interim Decision is to amend Pol 24.2.1.1 and the new Pol 24.2.1.1XX as set out in the Annexure.

Policy 24.2.1.1A

[55] The Interim Decision included the following provisional revision of this

policy:¹⁰

- 24.2.1.1A Subject to Policy 24.2.1.1, within those areas identified as having a landscape capacity rating of Moderate, do not allow any new residential development and subdivision for residential activity that is not located and designed so as to:
- a. avoid sprawl along roads;
 - b. maintain a defensible edge to and not encroach into to any area identified as having Moderate-Low, Low or Very Low landscape capacity rating;
 - c. minimise incremental changes to landform and vegetation patterns associated with mitigation such as screen planting and earthworks which adversely affect important views of the landform and vegetation character of relevant Landscape Character Units; and
 - d. not degrade openness if that is an important part of the landscape character of the relevant area, including as a result of any planting or screening along roads or boundaries

Submissions

[56] On behalf of Anderson Lloyd, counsel recommend use of the directive “ensure...” (rather than “do not allow”). That is to clearly encapsulate enablement as well as control of the adverse effects. QLDC opposes the suggestion to replace the words “do not allow” with “ensure”. Counsel submits that this would be a substantive change rather than mere drafting. That is in the sense that “do not allow” is a far stronger directive than “ensure”. We agree with QLDC that “do not allow” conveys intentionally more restriction than “ensure”. As this would be a substantive, rather than mere drafting clarity change, we decline to make the

¹⁰ Interim Decision, at [158].

amendment sought to this aspect of the policy.

[57] Counsel for the Anderson Lloyd parties also propose changes to limbs c. and d. as follows to maintain a more consistent reference to values identified in Sch 24.8:

- c. minimise incremental changes to landform and vegetation patterns associated with mitigation such as screen planting and earthworks which adversely affect important views of the landform and vegetation character ~~of 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.

Recommended wording refinements are appropriate

[58] For the reasons already traversed, we agree with QLDC and the Anderson Lloyd parties that we should delete the words “Subject to Policy 24.2.1.1” as unnecessary clutter.

[59] We find other changes recommended for the Anderson Lloyd parties and were not opposed by others are also helpful clarifications.

[60] As we have noted, this decision maintains any scope parties in Topic 31 have scope to revisit aspects of the wording of this policy. Subject to that, we confirm Pol 24.2.1.1A for inclusion in Ch 24 as set out in the Annexure.

Policy 24.2.1.1B

[61] The Interim Decision included the following provisional revision of this

policy:¹¹

24.2.1.1B

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

- a. in the part of LCU 3 described in Schedule 24.8 as ‘Fitzpatrick Road South’:
 - i avoid all development on the elevated knoll landform near Fitzpatrick Road and on the south facing elevated slopes along the southern margins of the area (above the Shotover River cliffs); and
 - ii minimise the visibility of development in views from Tucker Beach, the Queenstown Trail and Fitzpatrick Road.
- b. in the part of LCU 11 described in Schedule 24.8 as ‘East of Lower Shotover Road’ minimise the visibility of development in views from Lower Shotover Road, the Queenstown Trail and Slopehill Road;
- c. in the part of LCU 15 described in Schedule 24.8 as ‘Hogans Gully’ minimise the visibility of development from McDonnell Road, Centennial Avenue, Hogans Gully Road and the Queenstown Trail, and from elevated public places outside the Zone including from the Crown Range Road and Zig Zag lookout;
- d. in the part of LCU 22 described in Schedule 24.8 as ‘Hills’:
 - i minimise the visibility of development from McDonnell Road, Centennial Avenue, Hogans Gully Road and the Queenstown Trail; and
 - ii ensure development is visually recessive from elevated public places outside the Zone including from the Crown Range Road and Zig

¹¹ Interim Decision, at [159].

Zag lookout.

- e. in the part of LCU 23 described in Schedule 24.8 as ‘Millbrook Malaghans Road South’:
 - i ensure no development is visible from Malaghans Road;
 - ii confine development to the flat land on the south side of the roche moutonnée near Malaghans Road;
 - iii ensure all access is only from the Millbrook Resort Zone; and
 - iv. visually integrate any development with the Millbrook Resort Zone.

- f. in the part of LCU 23 described in Schedule 24.8 as ‘Millbrook Arrowtown Lake Hayes East’:
 - i avoid built development on the low-lying land adjacent to Butel Road and Arrowtown Lake Hayes Road;
 - ii confine development to locations where existing landform or vegetation features serve to limit visibility and provide for visual integration with the Millbrook Resort Zone.

Submissions

[62] Ms Baker-Galloway and Ms McLaughlan reserve the position of the Anderson Lloyd parties on the drafting of Pol 24.2.1.1B on the basis that it is site specific and squarely within the realm of Topic 31.

[63] Subject to that, counsel raise concerns about the various references to the Queenstown Trail. Their concern is that the court’s provisional redrafting would enable an interpretation that any view from any part of the Queenstown Trail must be taken into account. They submit that would undermine the purpose of Plan Change 28 (‘PC28’), which removed many parts of the Queenstown Trails network from the definition of “public place”. Counsel remind the court that the purpose

of PC28 was to remove barriers to the establishment of new trails over private land throughout the district. That was by removing the basis for any concern that private landowners might have that having a trail over their private land could eventually backfire, disadvantaging them in their ability to change their land use.

[64] Counsel points out that earlier iterations of this policy properly made explicit the fact that views from public places excluded any trail as defined in the District Plan. That explicitly qualified and restricted the various references in the limbs of Pol 24.2.1.1B to views from the Queenstown Trail. Without prejudice to the individual positions various of the Anderson Lloyd parties intend to advance in the hearing of Topic 31 provisions, counsel emphasise that this matter is significant.

[65] The Anderson Lloyd parties submit that there may be a jurisdictional issue if the drafting of any provisions materially change the effect of the PC28 definitions, and the weight that is given to views from the trails network generally.

[66] In relation to the Queenstown Trail issue, counsel for QLDC submit that this is relevant to certain sites only and can be addressed through any relevant Topic 31 appeals. They point out that limbs c. and d. of this policy should apply to the entire LCU in each case and, hence, that the words “the part of” should be deleted. They do not raise further matters of drafting with this provision.

Refinements concerning the Queenstown Trail and other aspects are appropriate

[67] As for references to the Queenstown Trail, we agree in principle with counsel for the Anderson Lloyd parties that the court intends not to in any way substantially alter the exclusions intended by PC28. An appropriate refinement to the expression of this policy will be determined prior to directions being made for this policy to be included in the PDP. As we have noted, this decision maintains any scope parties in Topic 31 have to revisit aspects of the wording of this policy.

[68] We agree also that we should delete the unnecessary prefacing words (“Subject to Policy 24.2.1.1 and Policy 24.2.1.1A”).

[69] Subject to those qualifications, we confirm Pol 24.2.1.1B for inclusion in Ch 24 subject to the changes in the Annexure, namely:

- (a) in the introductory words, deletion of the words “Subject to Policy 24.2.1.1 and Policy 24.2.1.1A”;
- (b) in limbs c. and d., deletion of the words “the part of”.

Assessment matters 24.7.5, 24.7.7, 24.7.8, 24.7.8B, 24.7.9 and 27.9.3.3

Submissions

[70] Counsel for the Anderson Lloyd parties submits that allowing for Basin-wide assessments would open up scope for very broad and undirected discretionary assessment. That is particularly in the absence of any schedule or identification of the values of the Basin (as distinct from each of the LCUs). Counsel observe that the experts generally agree that an assessment of effects of the identified values in each of the LCUs will ensure cumulative effects are properly addressed. They seek, therefore, that new references to the Basin included in the provisional drafting for the assessment matters be deleted.

[71] QLDC disagrees about those matters as we have noted. It supports the court’s revised drafting of these assessment matters.

The provisional drafting including as to Basin-wide assessment is appropriate

[72] We refer to our earlier explanation in this decision for why we do not revisit our findings in the Interim Decision as to why we have included reference to Basin-wide assessments. Whilst these are matters about which the Anderson Lloyd parties plainly disagree, they do not offer a legitimate basis for these matters to

now be revisited.

[73] Therefore, we confirm the various noted assessment matters as drafted in the Interim Decision for inclusion in the PDP.

Zone purpose statement and associated proposed directions

[74] In the Interim Decision, the court asked QLDC to reflect on and update the drafting of the Zone Purpose.

Submissions

[75] QLDC agrees with the court's approach to better align the Zone Purpose with the landscape outcome sought by Obj 24.2.1, and it supports the court's revised drafting. In addition, QLDC recommends the following further amendments:

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.

...

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 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. Controls on the location, scale and visual effects of buildings are used to provide a design led response to the identified character and values.

[76] QLDC's suggested changes to the final paragraph of the Zone Purpose are offered in light of counsels' understanding of the court's related findings concerning the different scales at which landscape assessment must be undertaken. These changes are proposed also to reflect and align with the text confirmed by the consent order dated 27 July 2021, confirming Sch 24.8 is as follows:

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.

[77] The Anderson Lloyd parties seek the following changes (tracked against QLDCs drafting):

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

The Rural Amenity Zone is applied to areas of the Wakatipu Basin which have either reached, or are nearing their landscape capacity for 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.

...

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 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. Controls on the location, scale and visual effects of buildings are used to provide a design led response to the identified character and values.

[78] QLDC does not support the Anderson Lloyd parties changes to the Zone Purpose. Counsel refer to the court's finding in its Interim Decision that the "... concept of 'landscape capacity' is relatively less precise than QLDC's concept of a 'threshold' based on LCU ratings".¹² They submit the drafting argument they advance was made with the intention of making it clear, in one place, what the Ch 24 framework is designed to achieve. Counsel submit that if "landscape capacity" is incorporated as proposed by the Anderson Lloyd parties, plan users will be required to cross refer to the definitions in other chapters, which is considered less efficient than the approach preferred by Council.

QLDC's proposed changes are generally appropriate subject to clarification concerning Basin-wide assessments

[79] We find the amendments proposed by QLDC to the Zone Purpose statement generally properly reflect the findings in the Interim Decision and are

¹² Interim Decision, at [133].

an appropriate improvement on the earlier expression of this statement. A qualification to that concerns the proposed additional sentence in the last above-quoted paragraphs concerning landscape assessment. That does not accurately reflect the court's findings that Basin-wide assessment applies only for the Very Low, Low and Moderate-Low rated areas. The sentence is to be replaced with the sentences we note shortly.

[80] We are not persuaded to make the modifications proposed on behalf of the Anderson Lloyd parties, finding these do not align with our findings for the reasons noted by counsel for QLDC.

[81] Therefore, we confirm as appropriate for inclusion in the PDP the amended Zone Purpose statement proposed by QLDC subject to the deletion of the penultimate sentence in the above-quoted paragraph and replacement with the following two paragraphs:

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.

[82] The updated Purpose statement is in the Annexure.

Other matters

Anomalies concerning LCU capacity ratings

[83] QLDC identifies two anomalies in relation to the capacity ratings for LCU 2 Fitzpatrick Bason and LCU 4 Tucker Beach. These areas are considered anomalies because they do not reflect the general approach across the Basin to the

rating of WBRAZ areas. QLDC's view is that if the recommended amendments are not made a policy misalignment will arise. QLDC filed supplementary evidence from Ms Gilbert explaining the anomalies and recommending amendments to rectify them.

[84] In the case of LCU 2 Fitzpatrick Basin, Ms Gilbert considers this should have a split rating. She recommends that the Schedule 24.8 LCU 2 Fitzpatrick Basin capacity rating be amended as follows:

Capacity to absorb additional development	<p>High: <u>land below the 440m contour</u></p> <p>Very low: <u>land above the 440m contour</u></p>
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[85] In the case of LCU 4 Tucker Beach, Ms Gilbert again considers this should have a split rating. She recommends that the Schedule 24.8 LCU 4 Tucker Beach capacity rating be amended as follows (the *italicised* text was approved in the Consent Order dated 4 May 2021):

Capacity to absorb additional development	<p>Very low:</p> <p><u>Precinct zoned land at the eastern end of the unit where a Building Restriction Area applies.</u></p> <p>Low:</p> <p>(At the western end).</p> <p><u>In the central portion of the unit:</u></p> <ul style="list-style-type: none"> • <u>above the 400m contour;</u> • <u>that corresponds to the undeveloped low lying river terraces and scarps along the northern side of the unit and adjacent the river.</u> <p>Moderate-High:</p> <p>(Throughout the <u>balance of</u> the central and eastern end of the unit, <i>other than within the building restriction area which is Very Low</i>).</p>
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[86] Ms Gilbert explains that her recommended changes do not impact the Middleton Family Trust appeal allocated to Topic 31. That land is located at the western end of the unit and is currently rated 'low' – her evidence does not recommend any changes to the rating of this part of LCU.

[87] Counsel for the Anderson Lloyd parties initially raised the potential for these recommended amendments to the description in Sch 24.8 to affect the Crown Investment Trust ('CIT') Topic 31 appeal on LCU 2 and 3. Insofar as it could do so, counsel proposed that any changes to the LCU description as it relates to the CIT land be reserved to be resolved in Topic 31.

[88] In reply, counsel for QLDC maintained that there would not be any impact on the CIT land. Counsel clarified that the only amendments sought are to the Schedule 24.8 description for the north-western area of LCU 2, above the 440-metre contour line. This does not impact the CIT land, which is located in the south-eastern area of LCU 2, and is, and will continue to be rated 'high'. Consequently, counsel assure the court that the LCU rating anomaly can be corrected now. We accept that assurance.

[89] QLDC proposes these changes be made using the power conferred by cl 16(2) Sch 1 RMA, on the basis the amendments are 'of minor effect'. Counsel for QLDC submit that whether an amendment has a minor effect will turn on whether the effects of the amendment are neutral or not. Because a 80ha minimum lot size standard (and companion non-complying activity status) will apply in both cases, QLDCs position is that the regulatory effect of the proposed amendments to LCU 2 and 4 will be neutral in nature for any affected landowners, should they decide to seek consent to develop or subdivide their land for residential purposes. QLDC state the amendments would not change the regulatory framework for the two areas in question.

[90] On the basis of counsels' assurance and the explanations given by Ms Gilbert, we find these changes address an anomaly and can be made under the auspice of cl 16(2) Sch 1 RMA as amendments of minor effect. We make directions that these amendments be made (as set out in Part B of the Annexure) at the time QLDC incorporates all provisions into the PDP in due course.

Minimum / minimum average lot sizes for certain LCUs not subject to Topic 31 appeals

[91] QLDC seek that we direct that certain minimum and minimum average lot size standards be included in Ch 24 as consequential changes. They explain the need for these minimum / minimum average lot size standards arises from the four-tier framework that the Interim Decision determined for Ch 24. In essence, without these standards there would be a lacuna in that there would be no trigger for non-complying activity status. No party has raised any issues of jurisdiction concerning the inclusion of that framework within Ch 24 (as a modification to the notified variation).

[92] The changes sought on Ms Gilbert’s recommendations are as follows:

<i>LCU descriptions</i>	<i>Minimum lot size (‘MLS’) /minimum average lot size (‘MALS’) standards</i>
<i>High capacity rated areas</i>	
LCU 6 Hunter Road West:	6,000m ² MLS 1 Lot/5ha MALS
LCU 12 – Hogans Gully Road South	6,000m ² MLS 1 Lot/2ha MALS
<i>Moderate capacity rated areas</i>	
LCU 15– Hogans Gully ¹³ :	4ha 1 Lot/6ha MALS
LCU 22 The Hills:	3ha 1 Lot/4ha MALS

[93] Counsel for QLDC advise the above areas are not subject to any Topic 31 rezoning appeal(s). They consider that there is jurisdiction for the inclusion of these standards, for the following reasons:

¹³ Outside of the Hogans Gully Resort Zone.

- (a) in relation to Moderate rated LCUs (specifically LCUs 15 and 22), certain Stage 2 appeals sought relief (either primary or alternative) that would create a new framework that applied to these areas only;¹⁴
- (b) a significant amount of the Topic 30 appeal relief sought to either delete the Ch 24 regime entirely,¹⁵ replace it with the former PDP (discretionary / no minimum lot size) regime, or generally modify the framework to make it more enabling of development.¹⁶ QLDC submit this relief provides broad scope to amend the Decisions Version framework; and
- (c) the need for the minimum and minimum average lot size standards for the above areas is a direct consequence of the new framework confirmed by the court's Interim Decision. Without these standards there is nothing to trigger the default non-complying activity status, and so they are needed to ensure that the framework operates as intended.

[94] We accept QLDC's explanation for why there is a need for the standards. We accept the recommended standards as the most appropriate for achieving related objectives and policies in light of Ms Gilbert's supplementary evidence. We accept that there is jurisdiction to direct that the standards be included, by way of consequential changes, in Ch 24. Therefore, we find we should make that direction. We will do so as part of final approval of the provisions for inclusion in the PDP. Directions are made for QLDC to incorporate relevant provisions in the set that it would in due course submit to the court for those purposes.

The term "rural living"

[95] The Interim Decision reserved to QLDC leave to report on whether there

¹⁴ Trojan Helmet and Boxer Hill Trust.

¹⁵ Crown Investment Trust, for example, sought that the Stage 2 Variation be withdrawn in its entirety (ENV-2019-CHC-066).

¹⁶ Wakatipu Equities Limited; Crown Investment Trust; Skipp Williamson; Barnhill Corporate Trustee Limited and DE, ME Bunn and LA Green; Morven Ferry Limited.

is any “value in tidying up and clarifying any uncertainties” with the use of the term “rural living”. QLDC has provided a detailed explanation of why it does not consider this necessary, in view of how various terms are defined and applied in the PDP. We accept that explanation.

LCU 3 and LCU 11

[96] By memorandum of 9 August 2022, QLDC makes requests concerning procedures for the final determination of appeal points concerning:

- (a) LCU 3 (Fitzpatrick Road South); and
- (b) LCU 11 (East of Lower Shotover Road).

[97] After liaising with relevant parties, CIT and Burgess Duke Trust (“BDT”), QLDC seeks that the court leave aside from Topic 30 any determinations concerning both the spatial dimensions of the LCUs (as per the mapping in Sch 24.8) and the associated application of provisions in Chs 24 and 2. Instead of these continuing as part of Topic 30, QLDC seeks that the court reallocate them to Topic 31. That is so as to allow for a proper holistic consideration of the appropriate zoning frameworks (including the merits concerning the proposed identification of these areas as having Moderate capacity) as part of consideration of the appellants’ appeal relief. That would see their addition as follows to the Topic 31 sub-topic groupings:

- (a) Subtopic 1, group 3: CIT (ENV-2019-CHC-066): Moderate rated areas proposed by Council within LCU 3 (Fitzpatrick Road South), Pol 24.2.1.1Ba, rr 24.5.1.6.1, 27.5.18Ca. and corresponding rule in 27.6.1;
- (b) Subtopic 2, group 3: BDT (ENV-2019-CHC-036): Moderate rated areas proposed by Council within LCU 11 (East of Lower Shotover Road), Pol 24.2.1.1Bb, rr 24.5.1.6.2, 27.5.18Cd and corresponding rule in 27.6.1.

[98] Counsel explain that this is in view of some provisional findings and matters reserved by the Interim Decision (as to the above-noted policies and rules) and further analysis being undertaken by appellants of the appropriate zoning framework in the context of their preparation for the Topic 31 hearings. CIT is doing so in relation to 'Fitzpatrick Road South' (within LCU 3), seeking rezoning from WBRAZ to Lifestyle Precinct. BDT is doing so in relation to East of Lower Shotover Road (within LCU 11).

[99] All parties being agreed that this reallocation is appropriate, we are satisfied that it is consistent with fairness and efficiency principles to do so. We make provision accordingly in our directions below.

Conclusion and directions

[100] This decision is in final determination of all remaining appeal points in Topic 30, including as to drafting, subject to the following exceptions in relation to LCU 3 (Fitzpatrick Road South) and LCU 11 (East of Lower Shotover Road):

- (a) no determinations concerning either the spatial dimensions of the LCUs (as per the mapping in Sch 24.8) or the associated application of provisions in Chs 24 and 2 are made by this decision;
- (b) consideration of the merits and all determinations concerning those provisions are transferred to Topic 31 in the following sub-topic groupings:
 - (i) Subtopic 1, group 3: CIT (ENV-2019-CHC-066): Moderate rated areas proposed by Council within LCU 3 (Fitzpatrick Road South), Pol 24.2.1.1Ba, rr 24.5.1.6.1, 27.5.18Ca. and corresponding rule in 27.6.1;
 - (ii) Subtopic 2, group 3: BDT (ENV-2019-CHC-036): Moderate rated areas proposed by Council within LCU 11 (East of Lower Shotover Road), Pol 24.2.1.1Bb, rr 24.5.1.6.2, 27.5.18Cd and corresponding rule in 27.6.1.

[101] Insofar as appeal points in Topic 31 allow scope for the final wording of some specified provisions to be revisited, this decision leaves that for determination in Topic 31. That is part of why we do not make directions at this stage for QLDC to provide a final set of provisions for approval for inclusion in the PDP. The better approach is to leave QLDC to report on whether provisions are better included incrementally in the PDP or all at once.

[102] For the drafting in the Annexure, we give leave to QLDC to bring to our attention any minor technical errors and omissions in drafting to give effect to this decision. That is to be by memorandum of counsel served on all parties and provided to the court as part of its reporting memorandum below.

[103] Furthermore, in the case of the consequential changes to add minimum and minimum average lot size standards for specified LCUs, we **direct** that QLDC include appropriate drafting in due course in the comprehensive set of provisions it will submit for final approval for inclusion in the PDP.

[104] In the meantime, it would be helpful for QLDC to provide to all parties to Topics 30 and 31, and make available through its website, a revision of QLDC's closing submission provisions that is updated with tracking to reflect the changes that this decision determines be made to specified PDP provisions. If that is not practicable, it would be helpful at least for this decision to be noted on QLDC's website so those interested remain fully apprised of it.

[105] Therefore, it is **directed that within 15 working days of the date of this decision**, QLDC is to consult with all parties and file a reporting memorandum:

- (a) identifying in relation to the drafting in the Annexure, any minor technical errors and omissions needing correction to give effect to this decision;
- (b) offering for the purposes of further directions its preferred approach to:
 - (i) ensuring all parties to Topics 30 and 31 and others with relevant

interests are duly appraised of changes to the PDP provisions determined herein; and

- (ii) the timing of directions for approval of Topic 30 provisions for inclusion in the PDP.

[106] Any other party who wishes to do so may by memorandum filed **within 15 working days of the date of this decision** identify in relation to the drafting in the Annexure, any minor technical errors and omissions needing correction to give effect to this decision.

[107] Leave is reserved for further (or amended) directions. Costs are reserved.

For the court



J J M Hassan
Environment Judge

Annexure

A Changes to the provisional drafting of specified provisions in the Interim Decision

Definition of 'landscape capacity'

3.1B.5 In this Chapter:

- b. Landscape capacity':
 - i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means the capacity of a landscape or feature to accommodate subdivision and development without compromising its identified landscape values;
 - ii. in relation to a landscape character area in a Rural Character Landscape, 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.

SO 3.2.5.8

- 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 Unit and of the Basin as a whole is not exceeded.

24.1 Zone Purpose**24.1 Zone Purpose**

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.

Policy 24.2.1.1X

- 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.

Policies 24.2.1.1 and 24.2.1.1XX

- 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 LCU^s as identified in Schedule 24.8 is maintained or enhanced by ensuring that landscape capacity is not exceeded.

Policy 24.2.1.1A

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

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

Policy 24.2.1.1B

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

- a. in the part of LCU 3 described in Schedule 24.8 as 'Fitzpatrick Road South':
 - i avoid all development on the elevated knoll landform near Fitzpatrick Road and on the south facing elevated slopes along the southern margins of the area (above the Shotover River cliffs); and
 - ii minimise the visibility of development in views from Tucker Beach, the Queenstown Trail and Fitzpatrick Road.

- b. in the part of LCU 11 described in Schedule 24.8 as 'East of Lower Shotover Road' minimise the visibility of development in views from Lower Shotover Road, the Queenstown Trail and Slopehill Road;

- c. in LCU 15 described in Schedule 24.8 as 'Hogans Gully' minimise the visibility of development from McDonnell Road, Centennial Avenue, Hogans Gully Road and the Queenstown Trail, and from elevated public places outside the Zone including from the Crown Range Road and Zig Zag lookout;

- d. in LCU 22 described in Schedule 24.8 as 'Hills':
 - i minimise the visibility of development from McDonnell Road, Centennial Avenue, Hogans Gully Road and the Queenstown Trail; and
 - ii ensure development is visually recessive from elevated public places outside the Zone including from the Crown Range Road and Zig Zag lookout.

- e. in the part of LCU 23 described in Schedule 24.8 as 'Millbrook Malaghans Road South':
 - i ensure no development is visible from Malaghans

- Road;
- ii confine development to the flat land on the south side of the roche moutonnée near Malaghans Road;
 - iii ensure all access is only from the Millbrook Resort Zone; and
 - iv. visually integrate any development with the Millbrook Resort Zone.
- f. in the part of LCU 23 described in Schedule 24.8 as ‘Millbrook Arrowtown Lake Hayes East’:
- i avoid built development on the low-lying land adjacent to Butel Road and Arrowtown Lake Hayes Road;
 - ii confine development to locations where existing landform or vegetation features serve to limit visibility and provide for visual integration with the Millbrook Resort Zone.

Assessment matters 24.7.5, 24.7.7, 24.7.8, 24.7.8B, 24.7.9 and 27.9.3.3

[1] The drafting in the Interim Decision is confirmed without change.

B Other changes as requested and directed either under cl 16 Sch 1 or as consequential changes

Changes to Schedule 24.8

[2] The LCU 2 Fitzpatrick Basin capacity rating is directed to be amended as follows:

Capacity to absorb additional development	High: land below the 440m contour Very low: land above the 440m contour
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[3] The LCU 4 Tucker Beach capacity rating is directed to be amended as follows:

<p>Capacity to absorb additional development</p>	<p>Very low: Precinct zoned land at the eastern end of the unit where a Building Restriction Area applies.</p> <p>Low: At the western end. In the central portion of the unit:</p> <ul style="list-style-type: none"> • above the 400m contour; • that corresponds to the undeveloped low lying river terraces and scarps along the northern side of the unit and adjacent the river. <p>Moderate-High: Throughout the balance of the central and eastern end of the unit.</p>
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Minimum/minimum average lot size standards for specified LCUs

[4] The final approved drafting of these provisions to give effect to this decision will be given as part of approval in due course of the provisions for inclusion in the PDP.

