

## **ANNEXURE B - Copy of the Relevant Part of the Decision**

# QUEENSTOWN LAKES DISTRICT COUNCIL

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

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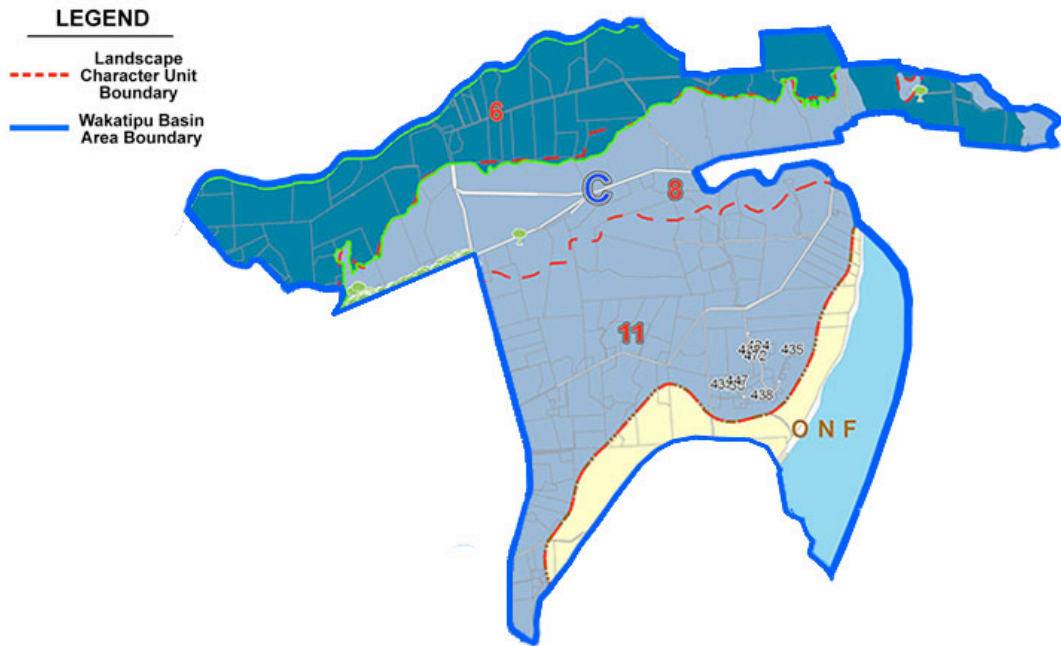
## 1. INTRODUCTION

### 1.1 Preliminary

1. This report needs to be read in conjunction with Reports 18.1 and 18.2. Report 18.1 sets out the overall hearing process for Stream 14 and the approach we have taken to assessing the submissions in terms of the statutory requirements. In addition, it contains the Stream 14 Hearing Panel's recommendations on Chapter 24 Wakatipu Basin and the various variations to the text in Stage 1 of the PDP notified in conjunction with Chapter 24.
2. The abbreviations we use in the report are set out in Report 18.1, as is the list of persons heard.
3. Report 18.2 set out the background to the zoning issues dealt with in Stream 14 and explains how we divided the area subject to our deliberations for the purposes of preparing the recommendation reports.

### 1.2 Overview

4. This area includes LCUs 6 Wharehuanui Hills, 8 Speargrass Flats and 11 Slope Hill 'Foothills' and that part of LCU 23, immediately to the south of the Waterfall Park Zone, which applies to the property referred to as Ayrburn Farm as shown on Figure 1 below. It also includes the northern slopes of Slope Hill and the western half of Lake Hayes, zoned Rural in Stage 1 and identified as ONF.
5. Outside of the Slope Hill/Lake Hayes ONF, this area was zoned a combination of Precinct and Rural Amenity Zone in Stage 2 as notified. The areas of Precinct were generally confined to LCU 6 and the lower land either side of Arrowtown-Lake Hayes Road at the eastern end of LCU 8.
6. When looked at in terms of existing and consented dwellings and building platforms, this area can be divided into four areas correlating with the three constituent LCUs and the open ONL areas of Slope Hill. LCU 6 in the north encompasses the rolling landform of the Wharehuanui Hills which contains a generally low density of dwellings and building platforms, with some concentration of development on Hunter and Dalefield Roads. LCU 11 in the south comprises the northern and western lower slopes of Slope Hill. Much of this area has been subdivided for rural-living purposes, particularly along Slope Hill Road and Lower Shotover Road. Between these two LCUs and running further east, north of the rural-living area of North Lake Hayes and east of Arrowtown-Lake Hayes Road, LCU 8 is rural pasture land almost devoid of dwellings and consented building platforms. It sits in contrast to the existing development either side of it.



## Area C – Central Basin

Figure 1: the Central Basin

7. The notified version of Chapter 24 listed the capability of this area to absorb additional development as follows:

LCU Number	LCU Name	Capability to Absorb Additional Development
6	Wharehuanui Hills	High
8	Speargrass Flat	High: around Lake Hayes Rural Residential LCU 12 edges Low: Elsewhere
11	Slope Hill 'Foothills	Low
23	Millbrook (part)	Moderate

8. A large part of this area also lies within the Lake Hayes catchment, as shown on Figure 2 below. Our conclusions in Report 18.1 (Section 2.8) were that the time to consider up-zoning of land to Precinct (or any other zone with higher development potential) is when it can be demonstrated that such a zoning would not result in further degradation of water quality feeding into Lake Hayes (and not before then), and that such an approach gives effect to both the Partially Operative RPS 2019 and the NPSFM.

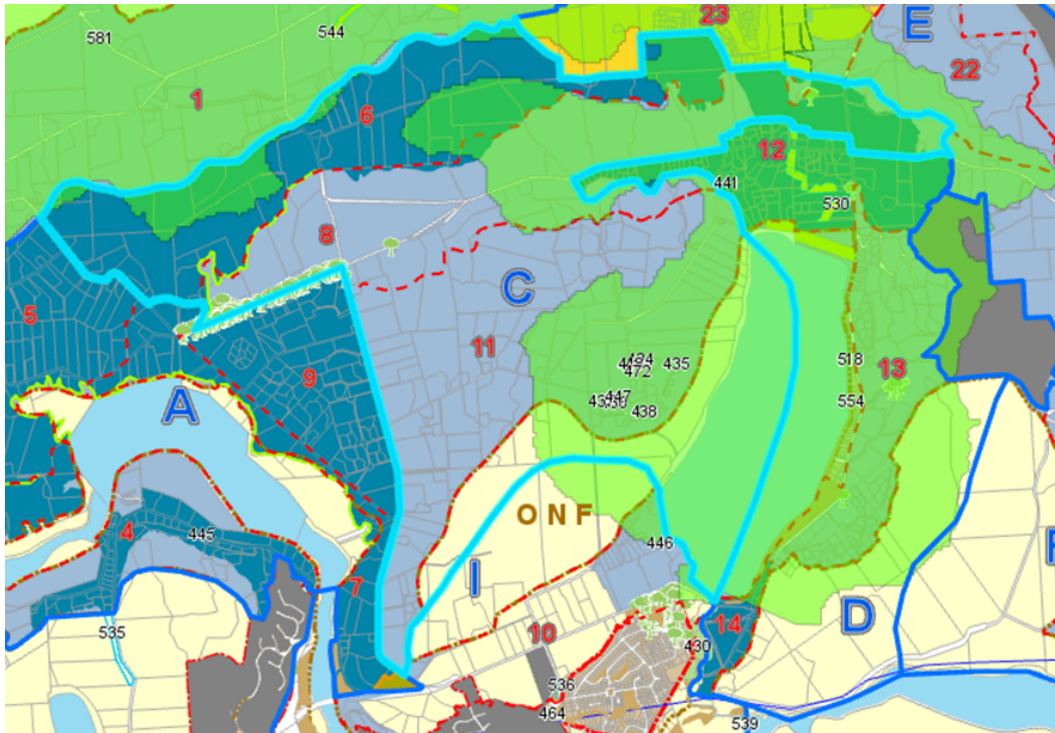


Figure 2: Area C shown outlined light blue, with the Lake Hayes Catchment shown shaded green

### 1.3 Submissions Covered in this Report

9. Mr Langman identified 36 submissions on mapping issues in this area. Of these, we heard from 16. This report also addresses the submission by Hamilton & Hayden<sup>1</sup>, which relates to land that straddles the boundary of this area and Area B – Northern Basin and was reported on by Mr Langman in relation to LCU 1.
10. Section 2 of our report discusses submissions relating to the Slope Hill ONF boundary. Zoning and planning map notations are discussed in Section 3 and subsequent sections.
11. It is convenient to consider the submissions in four groups:
  - a. The eastern end of LCU 8 that lies within the Lake Hayes catchment along with the small portion of LCU 23 south of the Waterfall Park Zone<sup>2</sup>;
  - b. The upper plateau area at the eastern end of LCU 6 adjoining Millbrook Resort Zone<sup>3</sup>;
  - c. The remainder of LCU 6<sup>4</sup>;
  - d. LCU 11<sup>5</sup>.
12. The submission by Wakatipu Equities Limited<sup>6</sup>, while mainly focussed on land in LCU 11 also sought rezoning of some of the lower land in LCU 8 as Precinct. It is convenient to consider this small area along with LCU 11 rather than by itself.

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<sup>1</sup> Submission 2422  
<sup>2</sup> Submissions 2239, 2385, 2388, 2559 and 2619 (part)  
<sup>3</sup> Submissions 2135, 2229, 2295 and 2619 (part)  
<sup>4</sup> Submissions 2123, 2272, 2422, and 2610  
<sup>5</sup> Submissions 2270, 2296, 2475, 2479, 2500, 2535 and 2591  
<sup>6</sup> Submission 2479

## 2. OUTSTANDING NATURAL FEATURE BOUNDARY – SLOPE HILL

13. Several submitters<sup>7</sup> requested amendments to the boundary of the Slope Hill ONF. We have discussed the amendments requested in the vicinity of the Glenpanel Homestead in Report 18.11. The amendments requested are depicted in Figure 3 below.

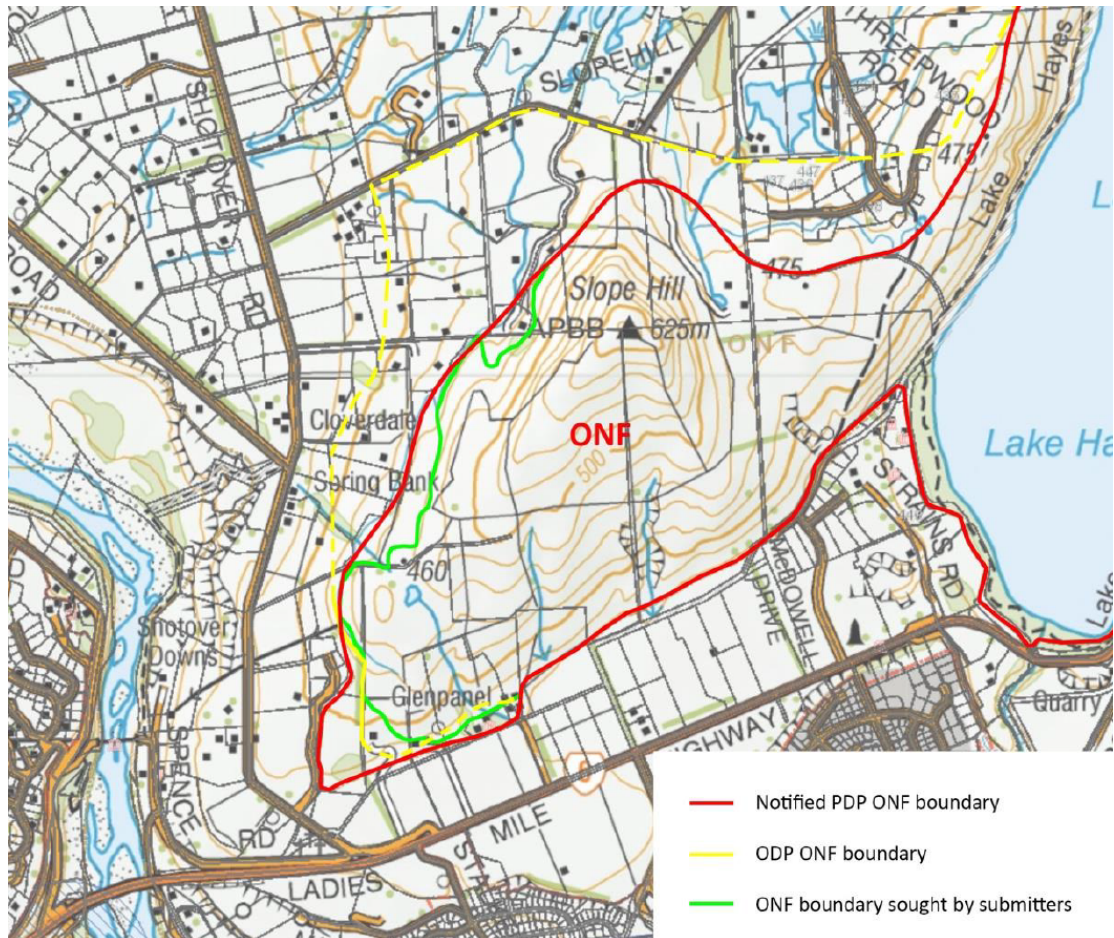


Figure 3: Slope Hill ONF boundaries in the ODP, PDP and as requested by submitters (Source: H. Mellsop, Evidence in Chief, Figure 4, page 18)

14. We did not hear any evidence from the submitters in support of the requested amendments. Ms Mellsop described Slope Hill as having a high level of visibility within the Wakatipu Basin and commented in her evidence in chief that this *'visibility is associated with a high level of shared and recognised scenic value.'*<sup>8</sup> Ms Mellsop concluded that the ONF boundary is appropriately located on the western side of Slope Hill.
15. We accept Ms Mellsop's advice and accordingly, we recommend that the Slope Hill ONF boundary remain as notified, other than the amendments recommended in Report 18.11.

<sup>7</sup> Submissions 534, 353, 535, 813, 2553

<sup>8</sup> At 6.19

### 3. ZONING – EASTERN END OF LCU 6

#### 3.1 Introduction

16. As notified, an area of land on both sides of Arrowtown-Lake Hayes Road north of Speargrass Flat Road and Hogans Gully Road was zoned Precinct. This was generally the valley floor in this area, although the face of Christine’s Hill immediately to the west of Mill Creek was also zoned Precinct. On the west side of Arrowtown-Lake Hayes Road the Precinct zoning was a continuation of the existing rural-residential area along the north side of Speargrass Flat Road (which is within LCU 12 and dealt with in Report 18.6) as far as the Queenstown Trail, which at this point runs from Millbrook down Christine’s Hill to Speargrass Flat Road. The small area of LCU 23 extending south of the Waterfall Park Zone was zoned Rural Amenity. East of the Queenstown Trail a strip of land varying from approximately 200m to 400m in width running parallel to the Trail was zoned Rural Amenity, as was the land in LCU 8 west of the Queenstown Trail.
17. It is convenient to name the three parts of this area as follows:
  - a. East of Arrowtown-Lake Hayes Road – the Boxer Hills Trust land<sup>9</sup>;
  - b. Between Arrowtown-Lake Hayes Road and the Queenstown Trail – Ayrburn Farm;
  - c. The sites subject to submissions west of the Queenstown Trail – the Trusts’ lower land<sup>10</sup>.
18. The issues before us were:
  - a. The zoning of Ayrburn Farm, with submitters variously seeking a bespoke zone, Lifestyle Precinct, or Rural Amenity Zone;
  - b. The zoning of the Trusts’ lower land Precinct subject to a structure plan and bespoke provisions;
  - c. the zoning of the Boxer Hills Trust land.
19. We record that to the extent submissions sought rezoning to urban zones, we discussed the potential application of the NPSUDC in section 1.3 of Report 18.2, and do not address it further in this report.

#### 3.2 Ayrburn Farm

20. Waterfall Park Developments Limited<sup>11</sup> sought the application of an “Ayrburn Zone” over this land subject to a structure plan. Figure 4 below shows the structure plan initially proposed.

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<sup>9</sup> Not all of the area zoned Precinct was in the ownership of Boxer Hills Trust, but the bulk of it was.

<sup>10</sup> This land involved three sites owned by X-Ray Trust and Avenue Trust.

<sup>11</sup> Submission 2388, opposed by FS2710, FS2772



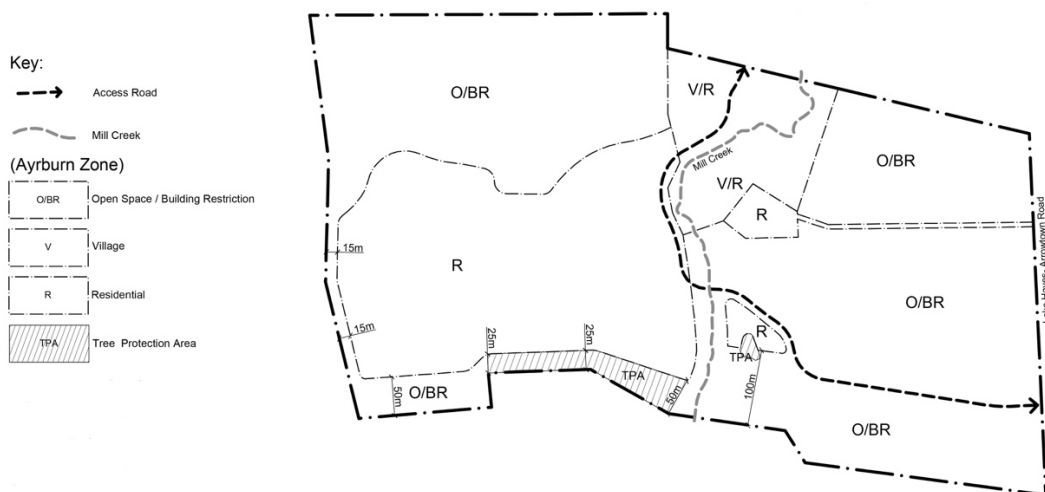


Figure 4: Ayrburn Zone Structure Plan from J Brown's evidence in chief dated 13 June 2018

21. Mr Brown, planning witness for the submitter, described the Ayrburn Zone as providing for up to 200 residential units, a village area centred on the historic buildings on the site, and open space/building restriction areas. These latter would be largely along Arrowtown-Lake Hayes Road and on the face of Christine's Hill.
  22. Queenstown Lakes District Council<sup>12</sup> sought that the face of Christine's Hill and the area of land notified as Precinct immediately adjoining the Waterfall Park Zone be rezoned Rural Amenity Zone. J and R Hadley<sup>13</sup> sought that the entire property be rezoned Rural Amenity.
  23. The relevant issues to consider are landscape; water quality, traffic, infrastructure, natural hazards and consistency with higher order provisions in the PDP.
- 3.3 The Trusts' Lower Land**
24. X-Ray Trust Limited and Avenue Trust Limited<sup>14</sup> sought that the portion of their sites on the valley floor adjacent to Speargrass Flat Road be rezoned Precinct, subject to a structure plan. Figure 5 below shows the requested Arrowburn Structure Plan<sup>15</sup>.

<sup>12</sup> Submission 2239, opposed by FS2785  
<sup>13</sup> Submission 2559, supported by FS2710, opposed by FS2795  
<sup>14</sup> Submission 2619, opposed by FS2710, FS2797  
<sup>15</sup> P Blakely, EIC, Appendix 2

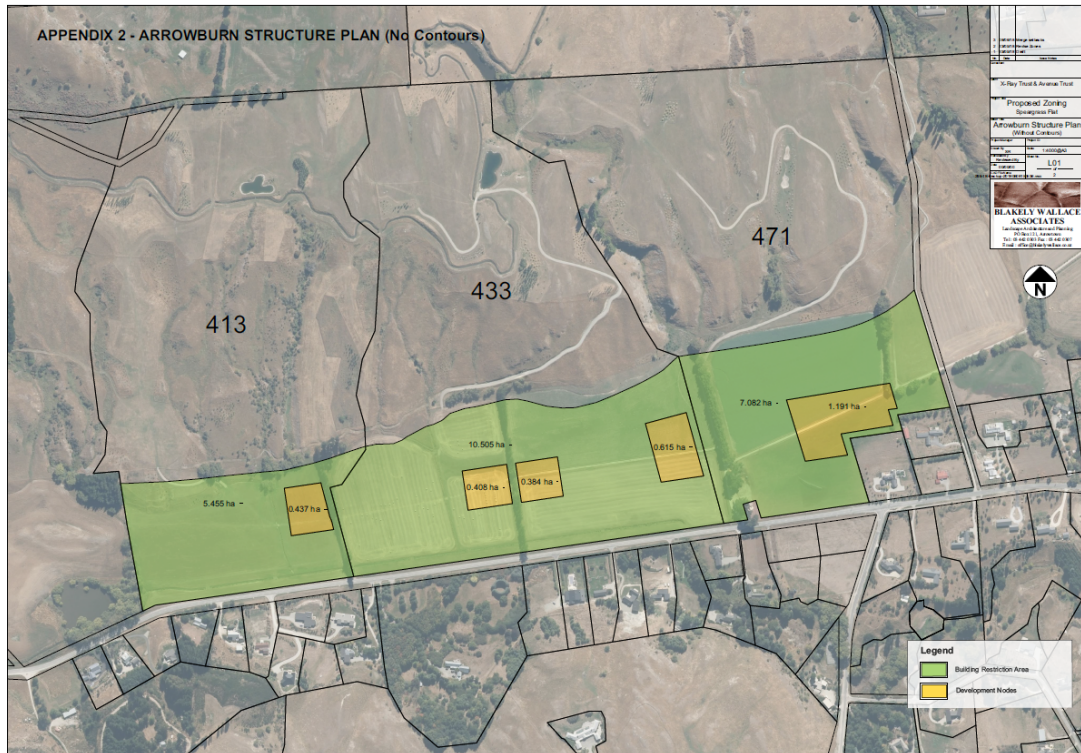


Figure 5: Proposed Arrowburn Structure Plan

25. The main issues to be considered in this instance are landscape, water quality and consistency with the higher order provisions of the PDP.
26. When appearing for Waterfall Park Developments Limited, Mr Goldsmith provided us with copies of the Computer Freehold Registers for the Trusts' land and the consent notices attached to them. These provide that there shall be no further subdivision of the relevant lots and that buildings may only be located within the defined residential building platform on each site. We asked Ms Macdonald, counsel for the Trusts, about these consent notices. Ms McDonald told us that the consent notices were of no relevance to us. In our view, this is not correct. They are an integral part of the consent history, and if we are to consider the 'rights' created by approved building platforms, as we were often urged to do by counsel for various parties; then we must also consider the presence of any restrictions on those rights, such as those imposed in these consent notices.

### 3.4 Boxer Hills Trust Land

27. Boxer Hills Trust<sup>16</sup> supported the Precinct zoning on this land but sought that provisions in the PDP be amended to enable more intense development of the land. In particular, the submitter sought that the minimum site size be reduced to 4,000m<sup>2</sup> together with a relaxation of coverage and height standards.
28. J and R Hadley<sup>17</sup> sought that the entire area in LCU 6 east of Arrowtown-Lake Hayes Road be rezoned Rural Amenity.

<sup>16</sup> Submission 2385, supported by FS2784

<sup>17</sup> Submission 2559, supported by FS2710, opposed by FS2795

29. We note that although the submission by P Blakely and M Wallace<sup>18</sup> was drafted in a very general way, when Mr Blakely appeared in support of their submission, he specifically identified this land as being, in his view, inappropriately zoned Precinct.
30. The main issues to be considered are landscape and water quality.

### 3.5 Water Quality

31. All of this area lies within the catchment of Lake Hayes. We discussed the issue of water quality with various witnesses, including Ms Jarvis and Mr Davis for the Council, and Dr Goldsmith, an ecologist who gave evidence for Waterfall Park Developments Limited. We have discussed the evidence we heard on Lake Hayes water quality issues in Section 2.8 of Report 18.1. In brief, we heard evidence that agricultural activities and rural residential land uses would contribute nitrates to the catchment. As discussed in greater detail in Report 18.1, Dr Schallenberg supported a requirement for new development to be connected to existing reticulated wastewater systems.
32. Dr Goldsmith gave evidence for Waterfall Developments Ltd of OVERSEER<sup>19</sup> modelling suggesting that conversion of the existing working sheep farm to the proposed residential uses would reduce nitrogen loss to water by approximately 15% (from 27kgN/ha/yr to 23kgN/ha/yr)<sup>20</sup>. Two members of the Hearing Panel had had some previous experience with the use of OVERSEER and found both modelled predictions somewhat surprising; the first because it was so high (for a sheep farm) and the second, because we were unaware that OVERSEER could generate predictions for residential activities. We note that Dr Goldsmith acknowledged that OVERSEER was not designed for assessing nitrogen loss from residential activities, but told us that nitrogen loss had been conservatively calculated based on wastewater being dealt with by connection to the Council reticulated treatment system and an assumed proportion of each residential site being in cultivated garden.
33. Dr Goldsmith also made it clear that these predictions were the result of the work of a third party. Accordingly, when we sought to understand better how they had been arrived at, she was unable to assist us further. This meant that we could put little weight on her evidence in this regard. Among other things, we had no information as to what the comparison of nitrogen loss would be if the development were unable to connect to the Council wastewater network. Dr Goldsmith's evidence did not therefore provide us with a basis to depart from our general approach to Lake Hayes water quality issues.
34. In summary, after considering the relevant policy framework of the NPSFM and Partially Operative RPS 2019, we have concluded that unless land within the catchment is served by a reticulated wastewater treatment scheme, we should recommend that land be zoned Rural Amenity. At the time of preparing this report, none of the land in this area was served by a reticulated wastewater scheme.

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<sup>18</sup> Submission 2499

<sup>19</sup> OVERSEER is a proprietary model that is used to model nitrogen loss from a number of agricultural systems. While there are issues with its accuracy in absolute terms, and its use predicting losses from non-dairy systems, both the Environment Court (*Carter Holt Harvey Ltd et al v Waikato Regional Council* A123/08; *Day et al v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182) and a Board of Inquiry (Re Tukituki Catchment Proposal BoI Report 18 June 2014 and 19 June 2015) have found it useful in formulating nutrient limits and targets in the context of Regional Water Plans in other parts of New Zealand.

<sup>20</sup> Dr R Goldsmith, EIC at paragraph 3.4.1

### 3.6 Transport and Infrastructure

35. As we have discussed in Report 18.1, Mr Smith opposed all requests for rezoning that would increase the density of development.
36. Council's Infrastructure evidence did not oppose the majority of rezoning requests in this area. Ms Jarvis' overall view was that she was satisfied that the minimum site sizes (as notified) would be sufficient for sites to be serviced privately with on-site three waters infrastructure. Where submissions requested variations to the densities or could not demonstrate that there was sufficient capacity in Council's network, this was opposed by Ms Jarvis and Mr Crowther<sup>21</sup>. However, this issue is moot given our conclusions on the impacts on water quality in the Lake Hayes Catchment.
37. We do record that Mr Goldsmith told us that the Aryburn Farm proposal could be linked to reticulated services. 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).

### 3.7 Landscape

38. We turn now to the opinions offered by the landscape architects that gave evidence in relation to the submissions in this area; these were Ms Gilbert, Mr Blakely, Ms Hadley and Mr Skelton. We record that Ms Hadley clarified that she lives on the northern side of Speargrass Flat Road, to the west of the Queenstown Trail running down the hill from Millbrook to Speargrass Flat Road. While we have accorded some weight to the evidence of Ms Hadley, we have accorded it less weight than that of the other landscape experts, as she cannot be entirely independent, a position we understood she accepted.
39. Ms Hadley and Mr Blakely were both in agreement with the need for breathing space between nodes to support the wider landscape character value of the Wakatipu Basin. However, they had different views on how this could be achieved.
40. Mr Blakely, giving evidence for the Trusts, advised us that he had carefully selected and sized the nodes of development proposed by that submitter on the valley floor north of Speargrass Flat Road. He saw merit in the proposal, as it would reduce the one-sided, linear development creep on the south side of Speargrass Flat. In contrast, Ms Hadley placed considerable importance on the rural character of Speargrass Flat/Hogans Gully. She described it as having the '*highest continuous rural character of any other landscape*<sup>22</sup> after Malaghans Valley and Crown Terrace. In her words, this rural character is '*fundamental to supporting the wider landscape character value of the Wakatipu Basin*<sup>23</sup>.
41. As we noted above, when Mr Blakely appeared in support of his own submission, he commented on the Boxer Hills Trust land, stating:
- We consider this is an important piece of open, rural land on the road between the increasingly built up Lake Hayes and Arrowtown. Rural Lifestyle Precinct zoning will destroy the important ruralness and amenity values of the significant location on the tourist route between lake Hayes and Arrowtown. The proposed 75m setback strip will do little to protect these values.*

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<sup>21</sup> For example, in relation to submissions 2385 and 2388

<sup>22</sup> Ibid

<sup>23</sup> Ibid

42. Mr Skelton's evidence focused on the Ayrburn Farm land. It was his view that with the placement of the residential development on the western and central parts of the site, it would be screened from the surrounding roads by the existing rural residential development. Buffer areas along the southern boundary would also reduce the visibility of the residential development from the existing development. While the western side would be open, his understanding was that the consent notices restricting buildings on the adjacent sites to the west (the Trusts' land) would mean that any views of the residential development from that direction would be very distant<sup>24</sup>.
43. Mr Skelton considered the place where the interior and western extents of the site would be visible to the public would be from the Christine's Hill portion of the Queenstown Trail<sup>25</sup>. Mr Goldsmith provided us with copies of the easements showing that parts of the Queenstown Trail on Christine's Hill were on easements on the submitter's land. He acknowledged when we discussed it with him that the adjacent trail zigzags onto and off the unformed road and insofar as it is on unformed road, it is public land, so that views from it are relevant to our consideration of development on the Ayrburn site. We note also that where the Queenstown Trail crosses the flat land on the western boundary of the Ayrburn Farm site, it is on unformed road.
44. Mr Skelton agreed in part with Ms Gilbert that the Ayrburn Zone development would be more urban than rural residential, but did not consider that out of place given the urban forms of development allowed in the Millbrook Resort Zone and the Waterfall Park Zone<sup>26</sup>.
45. Mr Skelton considered that the Precinct, if preferred over the Ayrburn Zone, would alter the character of the landscape such that it would appear as a moderately more spacious extension of the existing North Lake Hayes rural residential area. He considered the 75m set back would provide some semblance of openness and breathing space<sup>27</sup>.
46. As a result of our questioning, after the hearing, Mr Skelton proposed additional Tree Protection Areas to mitigate views of the development from Arrowtown-Lake Hayes Road<sup>28</sup>.
47. We heard no landscape evidence in support of the Precinct zoning of the Boxer Hills Trust land other than that of Ms Gilbert. She considered that 75m set back from Arrowtown-Lake Hayes Road would retain the sense of openness on that land<sup>29</sup>. Discussing it with us, she suggested that this area was effectively a "lost cause" as a result of development that has been approved on the south side of Hogans Gully Road.

### 3.8 Natural Hazards

48. Mr Dent provided a report prepared on flood and stormwater management. We asked Mr Dent to provide copies of the plans showing flood effects and management proposals superimposed on the structure plan for the Ayrburn Zone. This was provided under cover of a memorandum of counsel on 26 July 2018.
49. These plans show that the access road shown on the structure plan is in part a flood mitigation measure in respect of the small area of residential land proposed south of that road. They also show that that area would need to be filled or surrounded by a bund to ensure freeboard of

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<sup>24</sup> S Skelton, EiC paragraph 24ff

<sup>25</sup> Ibid, paragraph 23

<sup>26</sup> Ibid at paragraph 31

<sup>27</sup> Ibid, paragraphs 42-43

<sup>28</sup> Memorandum of Counsel for Waterfall Park Developments Limited, dated 27 July 2018

<sup>29</sup> B Gilbert, Rebuttal Evidence at paragraph 11.17

0.5m above the 100yr ARI maximum water level. Additionally, an area of retention ponds would need to be located north of the access road and south of the residential area to mitigate discharge rates to pre-development levels.

### 3.9 Planning

50. Mr Brown gave planning evidence in relation to the proposed Ayrburn Zone. He provided extensive evidence evaluating the three options<sup>30</sup> before us in terms of the rezoning principles, relevant plans, the former operative RPS and Section 32. Mr Brown did not consider the proposal to constitute sprawl or sporadic development, as it would be integrated with the Waterfall Park Special Zone through shared road access and servicing. He described it as a smaller rural settlement, while acknowledging the significant change that is occurring in adjacent areas. He considered that the requested zone would have the benefit of improved public access and better protection of the natural values of Mill Creek through riparian planting and protection. He concluded that Ayrburn Zone would better achieve the strategic objectives of the plan and the RPS.
51. Mr Brown provided a complete set of provisions for the Ayrburn Zone, including amendments to Chapter 27. A final version was provided after the hearing to take account of comments and questions at the hearing<sup>31</sup>.
52. Mr Langman was critical of Mr Brown's evaluation of the rezoning principles and the strategic direction of the plan. In his rebuttal evidence, he described the Ayrburn Zone as '*an urban tack on to the Waterfall Park Zone, which is a resort zone*'<sup>32</sup>. Mr Langman considered that a new urban development in this location would promote sporadic and sprawling development. He reiterated this in his reply evidence and said he still considered the proposal to be inappropriate from both a landscape and transport perspective<sup>33</sup>.
53. Ms Taylor gave expert planning evidence for the Trusts<sup>34</sup>. She supported the rezoning of the flat land adjacent to Speargrass Flats Road as Precinct. She proposed that development be provided for in that flat area through inclusion of a structure plan called the 'Arrowburn Structure Plan'. She also provided amendments to the provisions in Chapters 24 and 27 to provide for the proposal.
54. As discussed in Section 2.1 of Report 18.1, Ms Taylor agreed that the purpose of the proposal should be tested against the strategic chapters. We agree and consider the objectives we recommend for Chapter 24 are also relevant. Relying on Mr Blakely's evidence, she considered that nodes of development with a balance area was preferable to development at an average of 1ha. She concluded that the suite of provisions to be the most appropriate method to achieve the relevant district plan objectives.
55. Mr Langman disagreed with Ms Taylor. Relying on Ms Gilbert's evidence, he advised that the clustering of development would appear incongruous. He was also concerned that the proposed zoning would '*significantly weaken the edge of the Precinct land with little or no defensible boundary*'<sup>35</sup>. He supplied copies of the relevant consent notices that apply to the Trusts' land at Appendix C to his reply evidence.

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<sup>30</sup> The options being: the zoning as notified, the proposed Ayrburn Zone and the Rural Amenity Zone

<sup>31</sup> Memorandum of Counsel for Waterfall Park Developments Limited, dated 27 July 2018

<sup>32</sup> At 13.10

<sup>33</sup> At 13.10

<sup>34</sup> Submission 2619

<sup>35</sup> At 12.5

56. Mr Brown's evidence in relation to the Boxer Hills Trust land was directed at how he considered the Precinct provisions should be amended to enable more varied allotment sizes.

### 3.10 Discussion and Conclusions

57. Although we heard landscape evidence from Ms Gilbert and some landscape experts for submitters that supported the extent of Precinct as notified and/or requested by submitters, we are required to consider this alongside other effects of the development potential that would be conferred by the zoning of land. These effects include those on water quality in the Lake Hayes catchment and our duty to give effect to both the NPSFM and the Partially Operative RPS 2019. As discussed in Section 2.8 of Report 18.1, it is our conclusion that to give effect to those documents, the Rural Amenity Zone is the most appropriate zone for all land within the Lake Hayes catchment that is not within an area served by a reticulated sewage scheme.
58. However, that is not the sole reason for our recommendations. Turning first to the Trusts' land and the Arrowburn Structure Plan, we were not persuaded that the proposed setback from Speargrass Flat Road of the nodes of development was appropriate. We agree with Ms Hadley and Ms Gilbert that development nodes in the Basin generally should be broken up by open space, and we note that Mr Blakely took the same position with the land further to the east. In our view, the extent of existing development in the Lake Hayes Rural Residential area and ribbon development on the southern side of Speargrass Flat Road makes the openness of the northern side of Speargrass Flat Road even more important. Further, the function of areas as a 'breathing space' or buffer between more developed areas was one of the key methodologies in the WB Landscape Study. We also have reservations about the effectiveness of cluster style development with no defensible boundary in an area that has high demand for rural residential development. We think it would be subject to development creep over time.
59. We therefore recommend this lower portion of the Trusts' land retain the Rural Amenity Zone as notified, as shown on Figure 7 below.
60. Turning to the Ayrburn Farm land, there appeared to be no dispute that the Council's submission was correct, and that mapping of Christine's Hill as Precinct was an error. Waterfall Park Developments Limited, for instance, identified the area as Open Space/Building Restriction on its proposed Structure Plan.
61. Having considered the development proposed in the submitter's Ayrburn Zone, including by walking/rolling down the Queenstown Trail from Millbrook to Speargrass Flat Road, we conclude that the proposal would read as an urban area juxtaposed on to the less dense rural residential development of Lake Hayes North. It would be highly visible from those parts of the adjacent trail that are public road. The extent to which the development areas needs to be "hidden" from roads and the existing rural-residential area by setbacks and tree planting suggests that the proposed zone is incongruous in this location, rather than a natural extension of existing development.
62. We consider that Mr Langman is correct and that it would be contrary to the strategic directions of the plan and the Partially Operative RPS 2019. The definition of urban development in the PDP (now beyond appeal) draws a distinction between urban development and resorts, as defined. The rationale for Waterfall Park continuing to be identified in the PDP is because it is identified as a resort zone. It would be inconsistent with the strategic chapters to leverage off the Waterfall Park Zone to identify a new island of urban development on the adjacent land.

63. Mr Goldsmith sought to rely on the evidence for Millbrook Country Club that indicated Millbrook does not principally provide temporary visitor accommodation and therefore is not a resort, as defined. While there is merit in his argument, we understand that Millbrook was originally conceived as a resort and the balance between visitor accommodation and permanent residents has shifted over time. We note also that the Visitor Accommodation Variation recommended by Hearing Stream 15 provides a more liberal regulatory regime for visitor accommodation in the Millbrook Resort Zone (and the Waterfall Park Zone) than any other zone in the district. More importantly, we do not regard the proposed Ayrburn Zone as being a natural extension of the Millbrook Resort Zone in any relevant sense. In particular, while relatively close in distance, the change in elevation and the topography of the intervening hillside (and the removal of the Precinct zoning of Christine’s Hill we recommend), means that they are in different visual catchments.
64. Mr Brown and Mr Skelton both accepted that the Ayrburn Zone would constitute urban development. Mr Brown suggested that an Urban Growth Boundary encompass the Waterfall Park Zone and the Ayrburn Zone<sup>36</sup>. Mr Skelton suggested such an UGB also include the Millbrook Resort Zone<sup>37</sup>. The Strategic Objectives and Policies related to new urban areas are focused on them being integrated into existing urban areas, not located in a rural area attached to rural-residential development<sup>38</sup>. Even accepting that the continued categorization of Millbrook as a resort is problematic, we do not consider the proposed urban area as being integrated with Millbrook, for the reasons discussed above. As regards Waterfall Park, there is nothing in the Strategic Objectives and Policies which promotes the attachment of new urban areas to areas identified as resorts.
65. We also note that the Ayrburn Zone provisions provided by Mr Brown suggest that rather more development could occur in the proposed zone than was put to us. We note that the provisions proposed no minimum site size in the zone<sup>39</sup> and that development of more than 200 residential units would only be limited by the capacity of Council reticulated water supply and wastewater services<sup>40</sup>. The provisions also effectively required a discretionary activity consent to erect buildings in the Open Space/Building Restriction Areas<sup>41</sup> and there were no policies proposed to clearly enunciate the extent to which buildings should be allowed in those areas or otherwise. The provisions also included some confusion between activities and standards that would require redrafting if we were minded to recommend their acceptance<sup>42</sup>.
66. Added to those factors, we are not satisfied that sufficient information was provided regarding the extent of fill required to avoid flooding on the part of the site, and the potential effects the building up of that land could have in terms of visibility. Ms Gilbert advised, for instance, that she had not taken account of the flood prone nature of that area of the site, or the mitigation works necessary to address that risk, in her assessment. We also consider that if a ‘breathing space’ is to be provided between the rural residential development in North Lake Hayes and the development adjoining Millbrook and Arrowtown, as promoted by Ms Hadley and Mr Blakely, merely retaining a visual setback from Arrowtown-Lake Hayes Road would be insufficient. Users of the public areas of the Queenstown Trail equally need to experience such a space. We do not

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<sup>36</sup> J Brown, EIC at paragraph 3.1  
<sup>37</sup> S Skelton, EIC at paragraph 40  
<sup>38</sup> See Objective 3.2.2.1, Policies 4.2.1.2, 4.2.1.4 and 4.2.2.14  
<sup>39</sup> Proposed amendment to Rule 27.5.1  
<sup>40</sup> Proposed Rule 47.4.2  
<sup>41</sup> Proposed Rule 47.4.1  
<sup>42</sup> Proposed Rules 47.4.10 and 47.4.11 are one example.



consider the 15m set back proposed by the submitter, nor the 75m set back proposed by Ms Gilbert, adequate to retain that experience.

67. It is our conclusion that the Ayrburn Zone or Precinct zoning on Ayrburn Farm would remove that 'breathing space', and as a consequence, along with the reasons discussed above relating to water quality, natural hazards and consistency with the PDP Strategic Objectives and Policies, it should be zoned Rural Amenity Zone as shown on Figure 7 below.
68. We also agree with Ms Hadley and Mr Blakely concerning the zoning of the Boxer Hills Trust land. We do not agree with Ms Gilbert that a 75m set back would be adequate or that this area is a lost cause. On that point we consider Ms Gilbert's evidence to be inconsistent with her opinion with respect to other areas in the Basin on the opposite side of the road to approved development, such as the area of LCU 8 north of the Hawthorn Triangle, or the area in LCU 11 along Lower Shotover Road opposite the Hawthorn Triangle. We conclude that there are landscape reasons in addition to the water quality reasons for zoning this land Rural Amenity Zone as shown on Figure 7 below.
69. As a consequential amendment, relying on the landscape evidence we heard, we also recommend that the table in Schedule 24.8 for LCU 8 be amended so that the "Capability to absorb additional development" reads "Low". We also recommend consequential amendments to the sections entitled "Settlement patterns" and "Environmental characteristics and visual amenity values to be maintained and enhanced" to delete references to Precinct zoning, which, as a result of our recommendations, is no longer applied in LCU 8.

#### 4. ZONING - EASTERN UPPER PLATEAU OF LCU 6

##### 4.1 Introduction

70. This area comprises the elevated parts of three sites (the Trusts' upper land) and an adjoining site of some 21.6 ha (the Donaldsons' land). This area is to the south of Millbrook Resort Zone (which three of the sites adjoin) and the area in question was zoned Precinct when Stage 2 was notified. A Landscape Feature line was applied along the southern border of the Precinct Zone.
71. Four submissions related to this land. The Trusts' submission<sup>43</sup> sought that the entire upper plateau be zoned Rural Amenity. That of Millbrook Country Club Limited ('Millbrook')<sup>44</sup> sought that all of the Trusts' upper land be rezoned Rural Amenity and the Donaldsons' land be partially rezoned Rural Amenity. The Donaldsons' submission<sup>45</sup> supported the Precinct zoning on their own land. The submission lodged by David Shepherd<sup>46</sup> was expressed as general opposition to the Precinct throughout the Wakatipu Basin. However, Mr Shepherd's evidence presented at the hearing was directed to seeking replacement of the Precinct on the Donaldsons' land with Rural Amenity.
72. Each of the four sites have a residential building platform approved within the area zoned Precinct as notified. The building platform on 413 Speargrass Flat Road was the only one built at the time of the hearing. As noted above, the Trusts' sites have consent notices applied

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<sup>43</sup> Submission 2619, opposed by FS2710, FS2797

<sup>44</sup> Submission 2295, supported by FS2710, FS2773, FS2821, opposed by FS2745, FS2785, FS2797, FS2720, FS2723, FS2724

<sup>45</sup> Submission 2229

<sup>46</sup> Submission 2135, opposed by FS2797

restraining the owners from erecting buildings outside of the building platforms or subdividing the properties.

73. As can be seen in Figure 2 above, most of this land is defined by the ORC as being within the Lake Hayes catchment. The exception is that portion of the X-Ray Trust's sites above the Arrow Irrigation water race. The issues to be considered are water quality in relation to Lake Hayes and landscape.

#### 4.2 Water Quality Issues

74. We have discussed this issue above and in Section 2.8 of Report 18.1. We do note that the X-Ray Trust land raises a query with us as to the accuracy of the ORC definition of the catchment. While we do not rely on this point, we do note that wastewater effluent discharged to ground is unlikely to flow as groundwater to anywhere other than Lake Hayes. In respect of the Trusts' land defined as being within the catchment, giving effect to the NPSFWM and the Partially Operative RPS 2019 makes it more appropriate to zone this land Rural Amenity.
75. 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).

#### 4.3 Landscape

76. At the hearing, Ms Gilbert explained to us that the reason she found the 'band' of Precinct on the Wharehuanui Hills acceptable was because of its topography, which is elevated and hummocky. She addressed this in her reply evidence, where she recommended retaining the Precinct on the plateau, but adjusting the southern boundary by moving it to the north, to exclude the 'roll-over' portions of the hill landforms (refer Figure 6 below) and moving the Landscape Feature line north to correlate with the revised Precinct boundary.

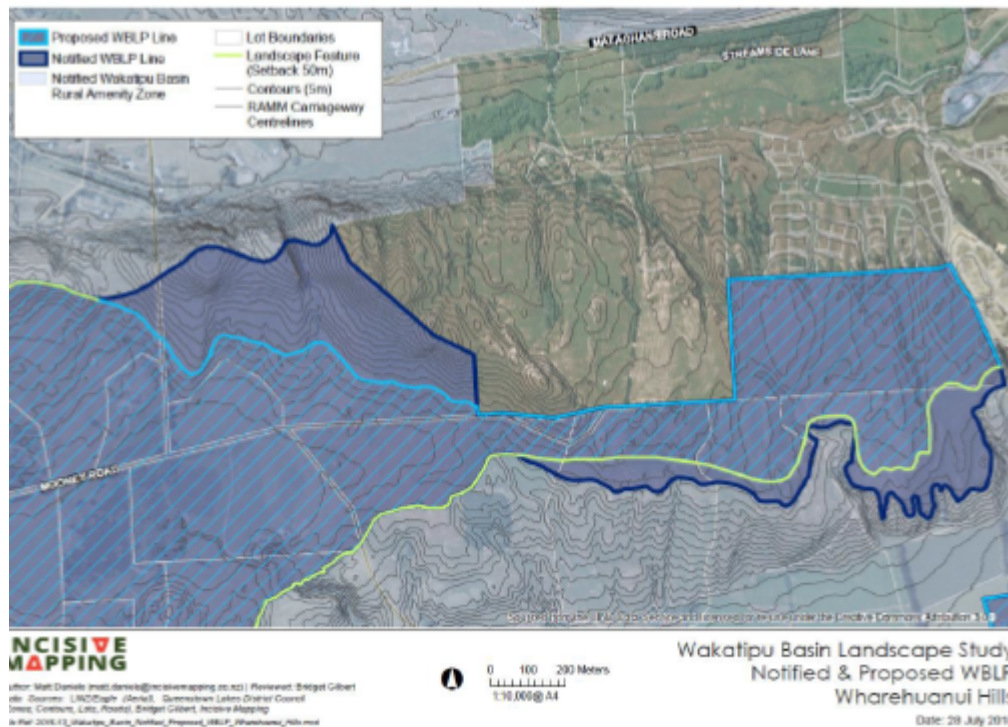


Figure 6: Amended extent of Precinct as proposed in Ms Gilbert’s reply evidence at her Figure 6, where the dark blue line depicts notified Precinct boundary and the light blue cross-hatched area depicts the proposed Precinct extent.

77. We also discussed the Precinct land on Wharehuanui Hills with Mr Craig, who gave evidence on behalf of Millbrook Country Club Limited. He advised that he was inclined to agree that there is not a clear distinction between the Donaldson land and the boundary of the Millbrook LCU. He suggested that if the boundary were to be moved, it should follow something that distinguishes it; in other words, to the edge of the plateau on the Speargrass Flat side. In contrast, Ms Gilbert told us that because the landscape values of Millbrook were so different from those of the adjacent (currently) open rural land, she was comfortable with it being a separate LCU. She reminded us that a LCU is not a landscape in its own right.
78. Mr Blakely also told us that both the Donaldsons’ land and the upper part of the Trusts’ land are part of a plateau. He went on to express his opinion that applying Precinct to the plateau would ‘erode the legibility of the landscape’, in that it would mask the formative processes as more buildings, roads and planting occurred.
79. In relation to the Donaldsons’ land, Mr Todd, counsel for the Donaldsons, outlined the history of development around the Donaldson property. Notably it is surrounded on three sides by the Millbrook Resort Zone. He cautioned us about relying on the photos taken by Mr Shepherd, who lives at Millbrook. In Mr Todd’s submission, the photos could not have been taken where from where they are said to be taken.
80. Mr Blakely provided photographs from public viewpoints on Feehlys Hill and Upper Tobins Track<sup>47</sup> in support of his opinion that the present form of the largely undeveloped ridge provides visual relief to the Millbrook Resort development.

<sup>47</sup> P Blakely, Eic, Appendix 1, photographs 6 and 7 respectively.

81. At our request, Ms Gilbert provided a photograph illustrating this area as viewed from within the Bendemeer Special Zone<sup>48</sup> (admittedly a private viewpoint).

#### 4.4 Planning

82. We discussed the use of site-specific provisions for the Donaldson<sup>49</sup> land with Mr Brown. We queried the necessity for the provisions, given that a private agreement has been reached between the parties. Mr Brown told us that he saw it as a way of making certain what has already been agreed. In contrast, Mr Langman held the view that the site-specific rule should be rejected and added an unnecessary layer of complexity to the plan. We agree with Mr Langman and do not think a 'belt-and-braces' approach is warranted.

83. Following the hearing, we received a joint memorandum of counsel from Millbrook Country Club Limited and the Donaldsons, dated 7 August 2018. The memorandum advised that the parties had reached agreement on site-specific provisions that would resolve both parties' submissions.

#### 4.5 Discussion and Conclusions

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<sup>50</sup>). 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 Quin in relation to the Williamson property to the west which we discuss below<sup>51</sup>. 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<sup>52</sup>. 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'<sup>53</sup>. 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.

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<sup>48</sup> B Gilbert, Reply Evidence, Appendix 2

<sup>49</sup> Submission 2229

<sup>50</sup> Policy 24.2.1.3

<sup>51</sup> S Quin, EiC, Appendix 3 – Viewpoint at entrance to Lake Hayes Reserve

<sup>52</sup> P. Blakely, EiC (X-Ray Trust and Avenue Trust) at 5.3.1

<sup>53</sup> Ibid, at 11.2

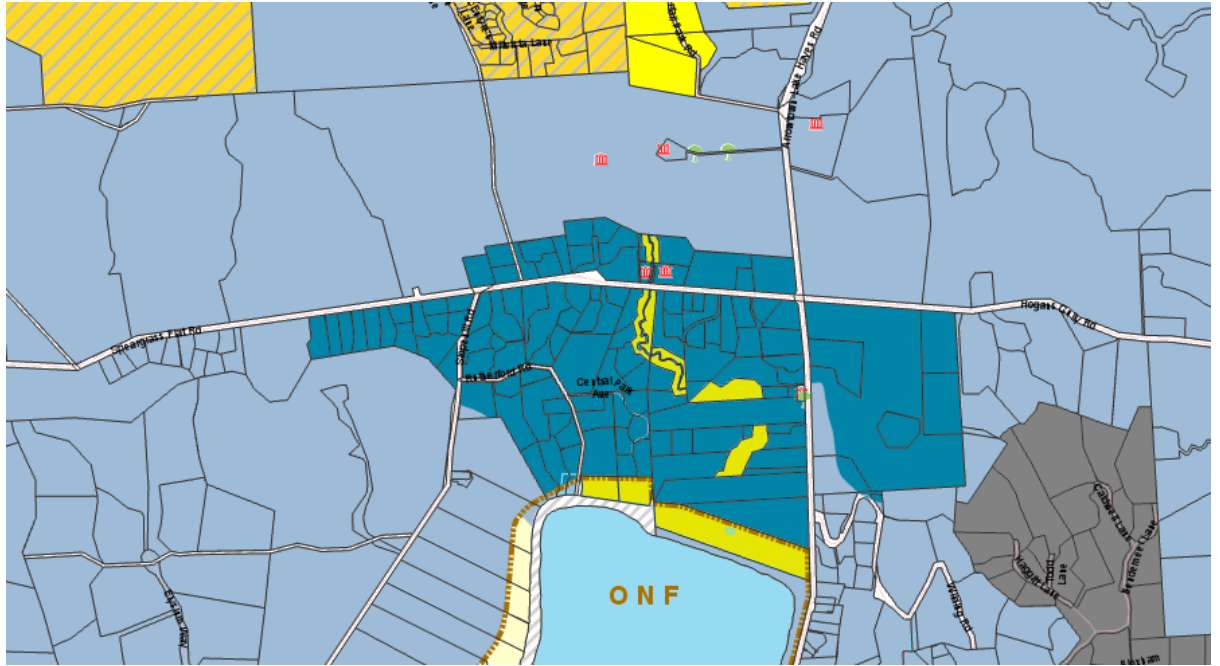


Figure 7: Recommended Zoning north of North Lake Hayes Rural Residential

## 5. ZONING - REMAINDER OF LCU 6

### 5.1 Introduction

87. All the submitters we heard from in respect of this area, bar one, had properties and zoning concerns related to land in Mooney Road<sup>54</sup>. The exception was the submission by D Hamilton and L Hayden at 76 Hunter Road<sup>55</sup>.
88. As can be seen in Figure 2, part of the land off Mooney Road is in the Lake Hayes catchment, as is some of the land accessed off Hunter Road. The main issues in this area were rural amenity and infrastructure.

### 5.2 Mooney Road Area

89. During the course of the hearing we heard planning, infrastructure, transport and landscape evidence in relation to the zoning of the Mooney Road basin. Mr Langham's Section 42A Report and the evidence in chief of Ms Gilbert, Ms Jarvis and Mr Smith supported the Precinct as notified at this location. Ms Gilbert recommended one change in her reply evidence, which we will come to shortly.
90. Mr Vivian presented evidence at the hearing on 18 July 2018 and advised that his client, Ms Williamson<sup>56</sup>, was happy with the recommendation in Mr Langman's report and that he had been instructed not to present any further evidence. This later changed, when he had the

<sup>54</sup> Submissions 2123 (supported by FS2710, opposed by FS2762), 2272 (opposed by FS2762), 2295 (opposed by FS2822), 2403 and 2610

<sup>55</sup> Submission 2422

<sup>56</sup> Submission 2822

opportunity to present supplementary evidence in support of a further submission<sup>57</sup> at the reconvened hearing on 25 October 2018.<sup>58</sup> We will return to this below.

91. The landscape architects and planners that gave evidence were content that Mooney Road was appropriately zoned Precinct. As Ms Gilbert put it to us, it is a discrete area from a landscape perspective, which makes it suited to absorbing development. She went on to acknowledge that while it can be seen from Coronet Peak, it is a reasonably distant view. In Ms Gilbert's reply evidence, she did, however, make amendments to the Precinct boundary as it relates to the Williamson land at the eastern end of Mooney Road. Using a combination of contour patterning and slope analysis, she arrived at an amendment to rezone the steep rising land between the Mooney Road basin and Millbrook as Rural Amenity<sup>59</sup>.
92. Mr Quin gave landscape evidence for Ms Williamson<sup>60</sup> at the reconvened hearing. He put forward an alternative extent of the Precinct on the Williamson land that included additional land above the water race. He considered that his line corresponded better to the topography and included *'gullies that are sunken between elevated spurs'*<sup>61</sup>.
93. Mr Vivian outlined the reasons he had arrived at a different conclusion to the opinion he expressed previously in response to our questions<sup>62</sup>. At that hearing he had not been aware of the submission by Millbrook and he also, at that stage, had not had the benefit of assistance from a landscape expert. Mr Vivian advised us that he agreed with Mr Quin's findings. We asked Mr Vivian whether he knew the difference in the area of the Precinct as proposed in Mr Quin's evidence, compared to that proposed in Ms Gilbert's reply evidence. He advised us that the approximate area of Precinct proposed was 97ha, compared to 94ha as proposed by Ms Gilbert<sup>63</sup>.
94. Mr Edmonds, the planner for Millbrook Country Club appeared briefly and advised us that it agreed with the position described by Ms Robb, counsel for Ms Williamson (i.e. the amended Precinct).
95. Mr Hill, who resides on Mooney Road gave evidence in relation to his submission<sup>64</sup> opposing Precinct on Mooney Road. He considered too great a weight had been placed on the ability of Wharehuanui Hills to absorb development. In his words, the access to Hunter Road is 'tortuous' and he was concerned about the increase in traffic that would result from an additional 150 dwellings, plus 'granny flats'. He also expressed concerns regarding potential impacts on water quality.
96. Mr Smith's evidence in chief specifically addressed traffic safety and network efficiency issues in respect of Mooney Road<sup>65</sup>. He assumed 200 additional units as a worst case and considered while this would not have significant effects in its own right on the capacity of the Shotover

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<sup>57</sup> FS2822. We note that Mr Vivian was not aware of a submission by Millbrook affecting his client's land the first time we heard from him as the Council had omitted the Millbrook submission from the primary summary of submissions. The council notified this submission for further submissions after we had heard from Mr Vivian.

<sup>58</sup> Report 18.1 discusses the procedural issues that led to this reconvened hearing

<sup>59</sup> Reply evidence of Ms B. Gilbert, at 7.4 – 7.10

<sup>60</sup> Submission 2822

<sup>61</sup> Mr S. Quin, Evidence in Chief at 5.2

<sup>62</sup> At the hearing on 18 July 2018

<sup>63</sup> At the hearing on 24 October 2018

<sup>64</sup> 2123

<sup>65</sup> At 14.1 to 14.12

Bridge, it would contribute to congestion. He noted that the Mooney Road and Hunter Road intersection was not an optimal design from a safety perspective. He further considered that the likely level of development would require improvements to Mooney Road. He suggested that it may be a better approach for the road to be upgraded prior to rezoning, given the difficulties that Council would face in assessing road improvements incrementally at each resource consent application. He stated that in the alternate the land not be zoned Precinct.

97. We discussed Mr Smith's evidence with Ms Robb, Mr Vivian and Mr Langman at the reconvened hearing. Ms Robb, noted that Mr Langman's Section 42A Report had not raised any site-specific infrastructure concerns in relation to the submission. Mr Vivian offered the view that as property and roading are matters of discretion, it would be open to Council to decline a resource consent on that basis. Mr Langman similarly advised us that the matters of discretion over roads and access could be relied on to decline a resource consent if safety was at issue. He further noted that not all development would occur at once.
98. At the conclusion of the reconvened hearing, we requested that the Council confirm the legal width of Mooney Road and what width would be required under the Code of Practice if more than 150 dwellings were to use Mooney Road for access. In a memorandum dated 26 October 2018, we were advised that the legal width varies between 11.2m to 11.9m and that 15m was the minimum road reserve width required under Council's Land Development and Subdivision Code of Practice for a road serving between 1 and 200 dwellings. The Code of Practice requirement for roads serving more than 200 dwellings is 20m.
99. We note that Mr Todd appeared for Mr and Ms Nelson<sup>66</sup> who supported the zoning of their land in Mooney Road as Precinct. No evidence was provided in support of their submission.
100. Mr Botherway<sup>67</sup> appeared on his own behalf. He was concerned with the division of his site between the Precinct and the Rural Amenity Zone. Although his land obtained access off Mooney Road, the bulk of the site was lower land facing Hunter Road.
101. It is our conclusion that Mr Hill has a valid concern with the proposed Precinct zoning in Mooney Road. While Ms Gilbert may have good landscape reasons for recommending it be available for rural residential development, landscape is not the sole criterion in considering appropriate zoning. The narrow width of the road reserve of Mooney Road is a constraint which it appears the Council has not considered. Taking Mr Vivian's figures, if 97 sites were proposed on the Williamson property at the farthest end of Mooney Road, the Council would be faced with choosing between taking adequate land the full length of Mooney Road to bring it up to standard, refusing consent to the proposal, or enabling some alternative access to the site with potential landscape effects that have not been considered.
102. Based on the number of existing dwellings and the 'worst case' scenario of 200 additional dwellings, as assumed in Mr Smith's evidence, Mooney Road may potentially serve over 200 dwellings if the Precinct is retained as notified, allowing for existing dwellings<sup>68</sup>. The amended extent of Precinct as supported by Mr Vivian's planning evidence would reduce this slightly. However, we think it is safe to conclude that over 200 dwellings could potentially be served by Mooney Road if the Precinct is as proposed in either Mr Vivian's or Mr Langman's evidence.

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<sup>66</sup> Submission 2403 and FS2762

<sup>67</sup> Submission 2610

<sup>68</sup> There appears to be around 20 existing dwellings obtaining access off Mooney Road at present – see WB Landscape Study Appendix I, Map 17

103. As the minimum width required for the roads serving more than 200 dwellings is 20m in the Council's Code of Practice, an additional 8.1m to 8.8m of land would need to be acquired to meet this. While Council's Code of Practice can be considered a best practice guide, we do not have any other transport evidence to satisfy ourselves that a significantly reduced width of road is appropriate for the potential level of development that would be enabled. Nor do we have any transport evidence on the minimum road width necessary to serve the level of development proposed.
104. As discussed in section 2.9 of Report 18.1, this is an unsatisfactory basis for a large scale up-zoning of Mooney Road
105. We have also considered whether Precinct or Rural Amenity would be the most appropriate zoning in terms of our recommended objectives in Chapter 24. We find it difficult to conclude that zoning this area Precinct would satisfy Objective 24.2.4 which reads as follows:
- "Subdivision and development, and use of land, maintains or enhances water quality, ecological quality, and recreation values while ensuring the efficient provision of infrastructure."*
106. We do not think that it will be satisfactory for upgrades to Mooney Road to be addressed incrementally through successive resource consents. Mr Smith acknowledged as much in his evidence in chief<sup>69</sup>. The level of subdivision and development that would result would inevitably place pressure on Council to acquire land to widen Mooney Road or to agree to a significant departure from its standards for road formation.
107. We consider it would be remiss of the Council to zone land for development where that development potential may not be achievable due to infrastructure constraints such as this. We note that infrastructure constraints such as this were not considered in the WB Landscape Study<sup>70</sup>.
108. Additionally, at least part of the land accessed off Mooney Road is within the catchment of Lake Hayes and should be rezoned Rural Amenity Zone in the absence of any reticulated sewage scheme.
109. Mr Hill raised concerns with the potential for groundwater presently used for potable water to be contaminated by additional development relying on septic tanks. Without expert evidence on those issues we are not prepared to make a finding on that issue.
110. In our view, the contained valley-like nature of the land accessed off Mooney Road means that further subdivision at the densities allowed by the Precinct provisions would inevitably push the newer development closer to the road, reducing the rural character of the area to an extent contrary to Policy 3.3.24.
111. For those reasons, we recommend the land accessed off Mooney Road be rezoned Rural Amenity as shown on Figure 8 below.

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<sup>69</sup> At paragraph 14.9

<sup>70</sup> See Appendix C for methodology



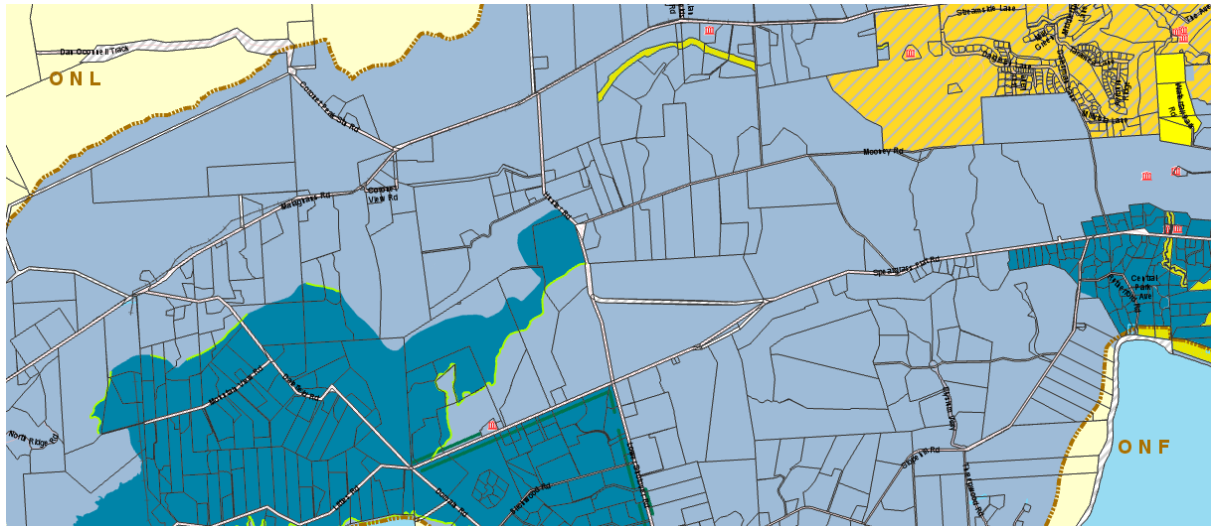


Figure 8: Recommended Zoning Mooney Road-Hunter Road

### 5.3 76 Hunter Road

112. Mr Milne gave evidence in relation to the submission relating to 76 Hunter Road. He considered the Precinct boundary was arbitrary and that the entire site should be Precinct. Ms Gilbert considered this in Section 3 of her rebuttal evidence and recommended the changes as shown in Figure 9 below.

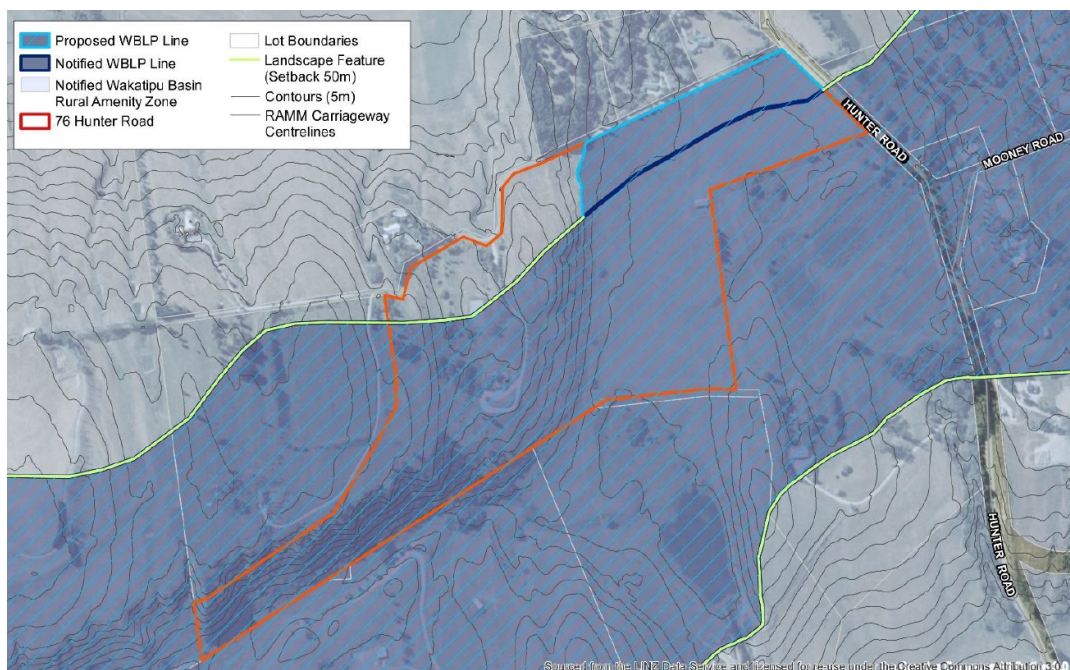


Figure 9: Amended extent of Precinct as proposed in Ms Gilbert's Reply Evidence (Figure 2), where the dark blue line depicts notified Precinct boundary and the light blue cross-hatched area depicts the proposed Precinct extent.

113. Mr Langman's reply evidence adopted the amendments proposed by Ms Gilbert in respect of the at 76 Hunter Road.
114. Much of this site lies within the Lake Hayes catchment. Our recommendation that land within the catchment that is not within an area with a reticulated sewage system be zoned Rural

Amenity means that the near agreement reached between the landscape architects is moot. We recommend the site be zoned as shown in Figure 7 above.

## 6. ZONING – LCU 11

### 6.1 Introduction

115. The bulk of the submissions we heard in this area were from owners of property on the east side of Lower Shotover Road that had been zoned Rural Lifestyle in Stage 1, but this was replaced with Rural Amenity in Stage 2<sup>71</sup>. These submitters sought in total that all the land on the east side of Lower Shotover Road south of Speargrass Flat Road that was zoned Rural Lifestyle in Stage 1 be rezoned Precinct. The remaining submitter we heard from, Wakatipu Equities Limited<sup>72</sup>, sought that its land at 258 Speargrass Flat Road be rezoned to a bespoke version of the Precinct.

116. The issues before us were essentially landscape and planning issues. There was no opposition by the Council to the zoning requests from an infrastructure (three waters) point of view, and Mr Smith's opposition on transport grounds was as discussed in Section 2.9 of Report 18.1. While we have not disregarded his opinion, we do not consider it determinative in this area.

### 6.2 Landscape

#### 6.2.1 258 Speargrass Flat Road

117. Mr Skelton's evidence for Wakatipu Equities Limited focused on the appropriateness of permitting subdivision with a minimum lot size of 4ha and the opportunities for significant ecological enhancement that this would afford. He was satisfied that the visibility of additional dwellings would not adversely affect views across the landscape of ONLs and ONFs. There was a small area on Speargrass Flat Road (within LCU 8) where he considered an opportunity existed to locate an additional dwelling.

118. After the hearing, we received a plan (reproduced in Figure 10 below) showing the areas Mr Skelton considered to be appropriate to rezone Precinct and to enable development with a 4ha minimum lot size. Mr Skelton stated in the covering memorandum that the theoretical yield was 20 lots, however given areas above the 400masl contour and other considerations, the yield was more likely to be 16 lots<sup>73</sup>. Figure 10 distinguishes between the small area of Precinct sought on Speargrass Flat Road (within LCU 8) and the larger area located on the upper plateau that he considered should be subject to a 4ha minimum lot size.

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<sup>71</sup> Submissions 2270, 2296 (supported by FS2711, FS2712, FS2721, FS2722, FS2747, FS2770), 2475 (opposed by FS2715), 2500 (supported by FS2711, FS2712, FS2721, FS2722, FS2747), 2535 (supported by FS2747, FS2712, FS2721, FS2722, FS2770, opposed by FS2761) and 2591 (supported by FS2747, FS2711, FS2721, FS2722, FS2770, opposed by FS2761)

<sup>72</sup> Submission 2479

<sup>73</sup> S. Skelton Memorandum of 27 July 2018

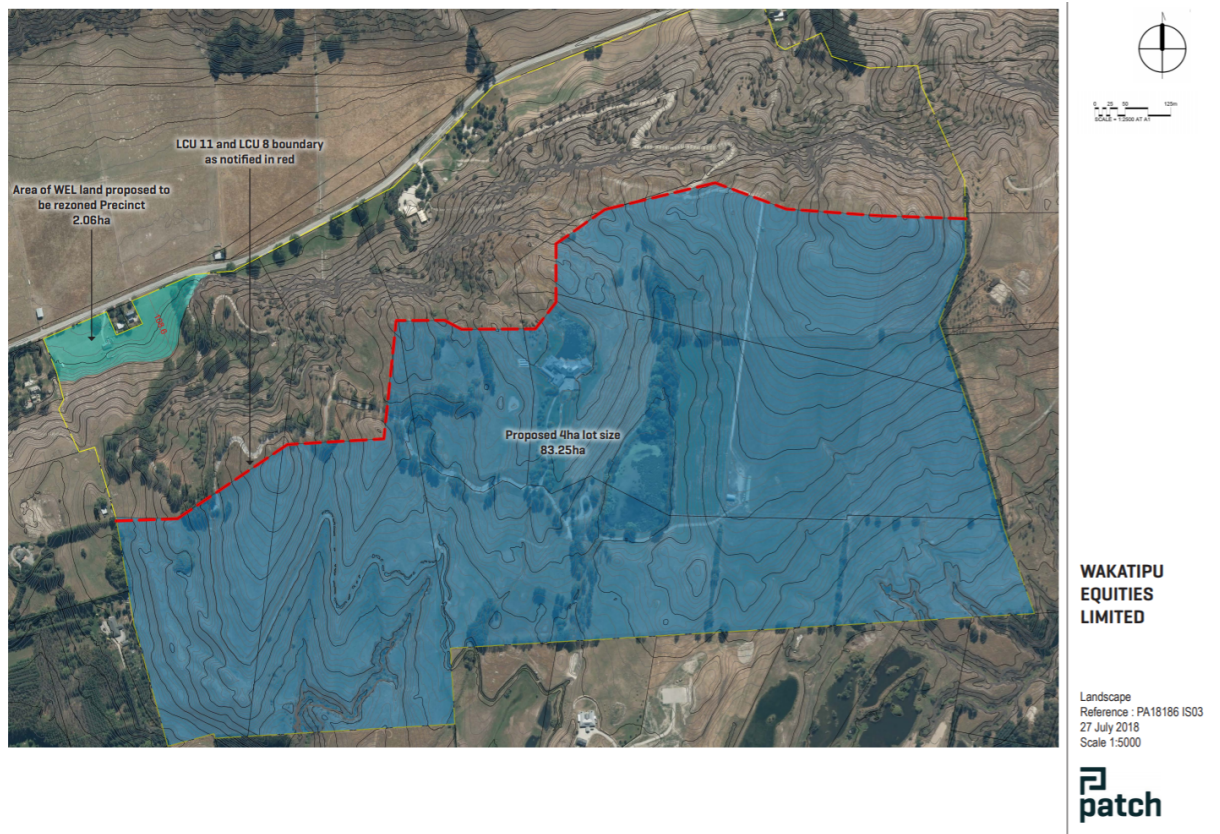


Figure 10: Plan attached to S. Skelton Memorandum of 27 July 2018

119. Ms Gilbert was critical of Mr Skelton’s proposed 4ha regime and observed that his recommendations applied only to the submitters’ land, despite his acknowledgement of a consistent landscape character across a wider area. Ms Gilbert’s rebuttal evidence concluded that this area is not appropriate for rural residential development, as it would undermine *its role as a buffer between the intensive rural living development at Hawthorn Triangle and the northern end of Lake Hayes*<sup>74</sup>. Ms Gilbert advised in her reply evidence she had not changed her view after considering the information in Mr Skelton’s memorandum.

#### 6.2.2 East Side of Lower Shotover Road

120. Mr Skelton’s evidence for two of the submitters seeking the rezoning on the east side of Lower Shotover Road<sup>75</sup> challenged the boundary separating LCU 11 from LCU 9 (Hawthorn Triangle). He considered that the lower slopes east of Lower Shotover Road should more logically be included in the same LCU as the Hawthorn Triangle<sup>76</sup>. He reasoned that there was a logical geomorphological boundary, which he called the Slope Hill Foothills Ridge, that should be preferred to the current boundary delineated by the Hawthorn hedge on the western side of Lower Shotover Road. He recommended that a minimum setback of 50m should be applied to both sides of the LCU boundary between LCU 9 and LCU 11.

121. Counsel for the submitters, Mr Leckie, relied on the Environment Court’s observation in *Hawthorn Estates Ltd v QLDC*<sup>77</sup> that the Other Rural Landscape the Hawthorn Triangle sat within included the lower slopes of Lower Shotover Road.

<sup>74</sup> B. Gilbert, Evidence in Chief at [12.12]

<sup>75</sup> Submissions 2535 and 2591

<sup>76</sup> S Skelton, Eic, Attachment E

<sup>77</sup> C83/2004

122. Ms Gilbert disagreed with Mr Skelton’s proposed amendments to the LCU boundaries and support of additional Precinct zoned land within LCU 11. In contrast, she considered that the generous sized rural living lots on the eastern side of Shotover Road were in marked contrast to the development in LCU 9. She considered that what Mr Skelton had relied on was at too coarse a grain to be relied on to inform the Precinct mapping<sup>78</sup>. She recommended that the LCU boundary remain as notified and remained opposed to submissions requesting rezoning as Precinct within the boundaries of LCU 11.
123. When we discussed the rationale for her view regarding the LCU boundary, she emphasized to us the different character of the development that has occurred in the Hawthorn ‘Triangle’ from that on the east side of Lower Shotover Road. She observed that the development within the Triangle is the overwhelming and dominant character, prompting identification of it as a separate LCU.
124. Ms Gilbert generally opposed requests for additional Precinct land in this area that were based on cadastral boundaries. She considered that this would make the land adjacent vulnerable to development creep.

### 6.3 Planning

#### 6.3.1 258 Speargrass Flat Road

125. Mr Farrell, relying on Mr Skelton’s opinion, considered that a 4ha minimum lot size was appropriate for the Wakatipu Equities’ land. His support was contingent on the inclusion of additional provisions to manage the effects of built development. We have discussed these provisions in Report 18.1.
126. Mr Langman’s Section 42A Report, relying principally on Ms Gilbert’s evidence, recommended that the zoning remain as notified. In his rebuttal evidence, he noted Ms Gilbert’s view that some level of further development may be acceptable on the Wakatipu Equities’ land, but that it would be more appropriate to do this via a resource consent<sup>79</sup>.

#### 6.3.2 East Side of Lower Shotover Road

127. Mr Farrell also gave expert planning evidence in support of several of the requests<sup>80</sup> seeking Precinct in this area. Based on Mr Skelton’s evidence he supported Precinct or Rural Lifestyle for this area. He considered that the Precinct sub-zone would: legitimise the existing rural lifestyle pattern in the area; enable further subdivision which would be a more efficient use of land; increase the supply and choice of housing; and he also noted that there were no parties in opposition to the rezoning of his clients’ land<sup>81</sup>. It was his view that of the landscape evidence, that of Mr Skelton was to be preferred<sup>82</sup>.
128. Mr Brown’s evidence in support of the submission by Slope Hill Joint Venture<sup>83</sup> was silent on the submitter’s request to rezone the land Precinct. Rather he focused his consideration of rezoning issues on the east side of Lake Hayes.

<sup>78</sup> B. Gilbert, Rebuttal Evidence at paragraphs 13.10-13.17

<sup>79</sup> M. Langman, Rebuttal Evidence at paragraphs 11.8 and 11.9

<sup>80</sup> Submissions 669, 2591, 2535, 2500, and Further Submissions 2712, 2711 and 2770

<sup>81</sup> B Farrell, EiC at paragraph 37

<sup>82</sup> *ibid*

<sup>83</sup> Submission 2475

129. We note that Ms M Wales attended the hearing in support of her family's submission<sup>84</sup>. She told us that while their land was zoned Rural Amenity, the land across the road was zoned Precinct. She considered that their site could be developed equally as well as the land across the road.
130. Mr Langman maintained his view, relying on Ms Gilbert's evidence, that Rural Amenity Zone was to be preferred. In his reply evidence, Mr Langman noted that Mr Skelton's responses to the Panel appeared to confirm Ms Gilbert's analysis, when he stated that a lower density would be appropriate<sup>85</sup>.

#### 6.4 Discussion and Conclusions

131. We found Mr Farrell's conclusions discussed at Section 6.3.1 above rather curious. Our Report 18.1 sets out the policy framework and the recommended provisions for Chapter 24. We have discussed at Section 2.4 of Report 18.1 our conclusions that the zoning we recommend needs to fit within this framework. The exception to this is where submissions have requested a special zone. In such cases we think the correct test (under Section 32) is against the policy framework of the strategic chapters of the PDP. We consider the fact that Mr Skelton and Mr Farrell needed to promote bespoke provisions for the Wakatipu Equities land makes a clear statement that Precinct is not the appropriate zoning for the part of the site in LCU 11. As for the small area in LCU 8, we do not agree with Mr Skelton's opinion that further development could occur in that area without undermining the existing character of that small part of Speargrass Flat Road.
132. Turning to the land on the east side of Lower Shotover Road, the evidence put to us in support of the rezoning was predicated on the relocation of the boundary between LCU 9 and LCU 11. Reference to Map 17 in Appendix I to the WB Landscape Study shows there is a clear distinction between the development pattern on the west side of Lower Shotover Road from that on the eastern side. In addition, the development pattern on the east side is generally consistent with that on the properties on west Slopehill Road. Given that clear distinction we consider Ms Gilbert is correct in identifying this contrast as a reason to use Lower Shotover Road as the LCU boundary. Much of the development in the Hawthorn Triangle post-dates the Environment Court's 2004 decision and necessarily could not be considered by the Court. We therefore do not find the Court's observation (technically *obiter dicta* given that the focus of its decision was on development within the Triangle) determinative. We also agree with Ms Gilbert that to zone this land Precinct would invite development at an intensity similar to that within the Hawthorn Triangle. In our view, such an outcome would not give effect to Strategic Policy 3.3.24.
133. Consequently, we recommend the zoning of the land in LCU 11 and the small area of LCU 8 subject to Submission 2479 remain as notified.

### 7. RECOMMENDATIONS

134. For the reasons given above, we recommend that:
- a. Submission 22239 by QLDC be accepted and Further Submission 2785 be rejected;
  - b. Submission 2559 by J & R Hadley and Further Submission 2710 be accepted and Further Submission 2795 be rejected;
  - c. Submission 2385 by Boxer Hills Trust and Further Submission 2784 be rejected;
  - d. Submission 2388 Waterfall Park Developments Limited be rejected and Further Submissions 2710 and 2772 be accepted;
  - e. Submission 2619 X-Ray Trust Limited and Avenue Trust be accepted in part and Further Submissions 2797 and 2710 be accepted in part;

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<sup>84</sup> Submission 2270

<sup>85</sup> M Langman, Reply Evidence at 18.2

- f. Submission 2229 by R & M Donaldson be rejected;
- g. Submission 2135 by D Shepherd be accepted in part and Further Submission 2797 be rejected;
- h. Submission 2295 by Millbrook Country Club Limited and Further Submissions 2773, 5710, 5745, 2785, 5797, 2720, 2723 and 2734 be accepted in part;
- i. Submission 2123 by R & D Hill and Further Submission 2710 be accepted and Further Submission 2762 be rejected;
- j. Submission 2272 by S Williamson be rejected and Further Submission 2762 be accepted;
- k. Submission 2403 by L & J Nelson be rejected;
- l. Submission 2422 by D Hamilton & L Hayden be rejected;
- m. Submission 2610 by S Botherway be rejected;
- n. Submission 2270 by R & M Wales be rejected;
- o. Submission 2296 by L McFadgen and Further Submissions 2711, 2712, 2721, 2722, 2747 and 2770 be rejected;
- p. Submission 2475 by Slope Hill Joint Venture be rejected and Further Submission 2715 be accepted;
- q. Submission 2500 by P Smith and Further Submissions 2711, 2712, 2722, 2747 be rejected;
- r. Submission 2535 by E & M Harris (Ashford Trust) and Further Submissions 2747, 2712, 2721, 2722 and 2770 be rejected and Further Submission 2761 be accepted;
- s. Submission 2591 by M & C Burgess (Burgess Duke Trust) and Further Submissions 2747, 2711, 2721, 2722 and 2770 be rejected and Further Submission 2761 be accepted;
- t. Submission 2479 by Wakatipu Equities Limited be rejected;
- u. Consequential changes be made to the text relating to LCU 8 Speargrass Flat in Schedule 24.8 by deleting references to Precinct changing the “Capability to absorb additional development” to “Low”;
- v. No change be made to the zoning in LCU 11;
- w. The Planning Maps be amended in the areas of LCU 6 and LCU 8 by applying the zoning and Escarpment, Ridgeline and River Cliff Feature lines as shown on Figures 11 and 12 below.

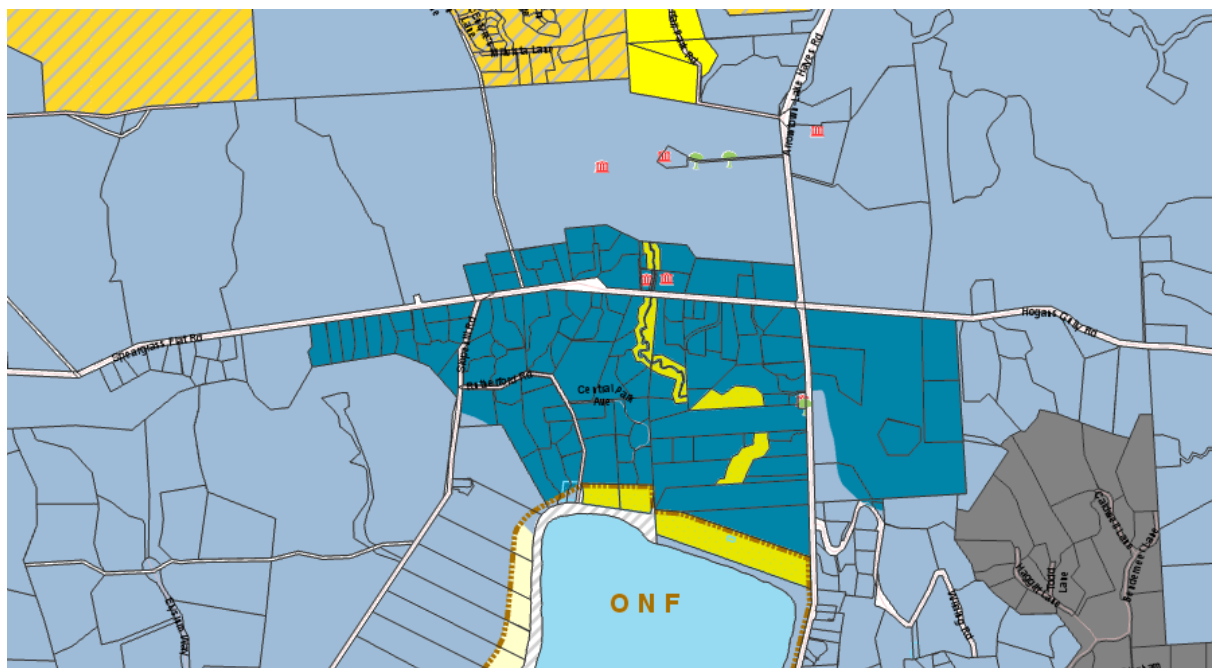


Figure 11: Eastern end of LCU 8

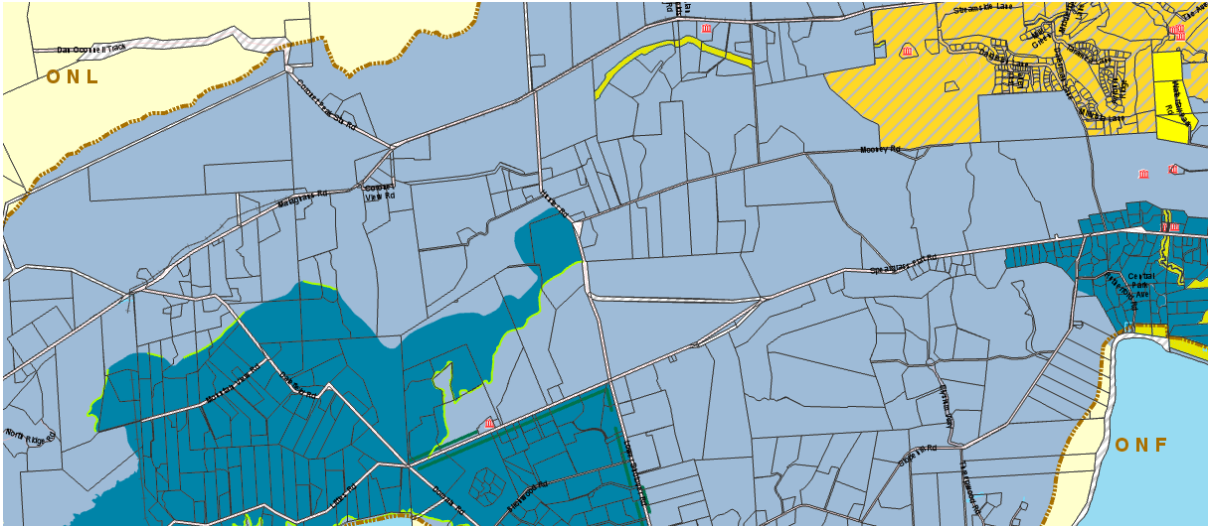


Figure 12: LCU 6 and remainder of LCU 8

For the Hearing Panel

Denis Nugent, Chair  
Dated: 15 February 2019