

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

Decision No. [2024] NZEnvC 198

IN THE MATTER of the Resource Management Act 1991

AND an appeal pursuant to clause 14(1) of
Schedule 1 of the Act

BETWEEN ARNOLD ANDREW MIDDLETON,
ISABELLE GLADYS MIDDLETON,
WEBB FARRY NOMINEES LIMITED
and STEWARD LESLIE PARKER AS
TRUSTEES OF THE MIDDLETON
FAMILY TRUST

(ENV-2019-CHC-55)

Appellants

AND QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

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

Hearing: at Queenstown on 19 and 20 March 2024
Site visit on 18 March 2024

Appearances: B Matheson and J E Macdonald for the appellants
S Scott and S Hart for the respondent
G M Todd and R Hill for the s274 parties –
Tucker Beach Residents Society Incorporated and
James Canning Muspratt

Last case event: 7 June 2024

Date of Decision: 21 August 2024

Date of Issue: 21 August 2024



DECISION OF THE ENVIRONMENT COURT

- A: The most appropriate zoning for the appellants' land is WBRAZ, modified for those parts of their land referred to as the North-west and Lower Terraces. The appellants' modified Precinct rezoning relief is inappropriate. Therefore, the appeal is allowed in part.
- B: Directions are made for QLDC to inform the court on when it can provide a final updated set of provisions for inclusion in the Plan.
- C: Costs are reserved and directions made in the event these are sought.

REASONS

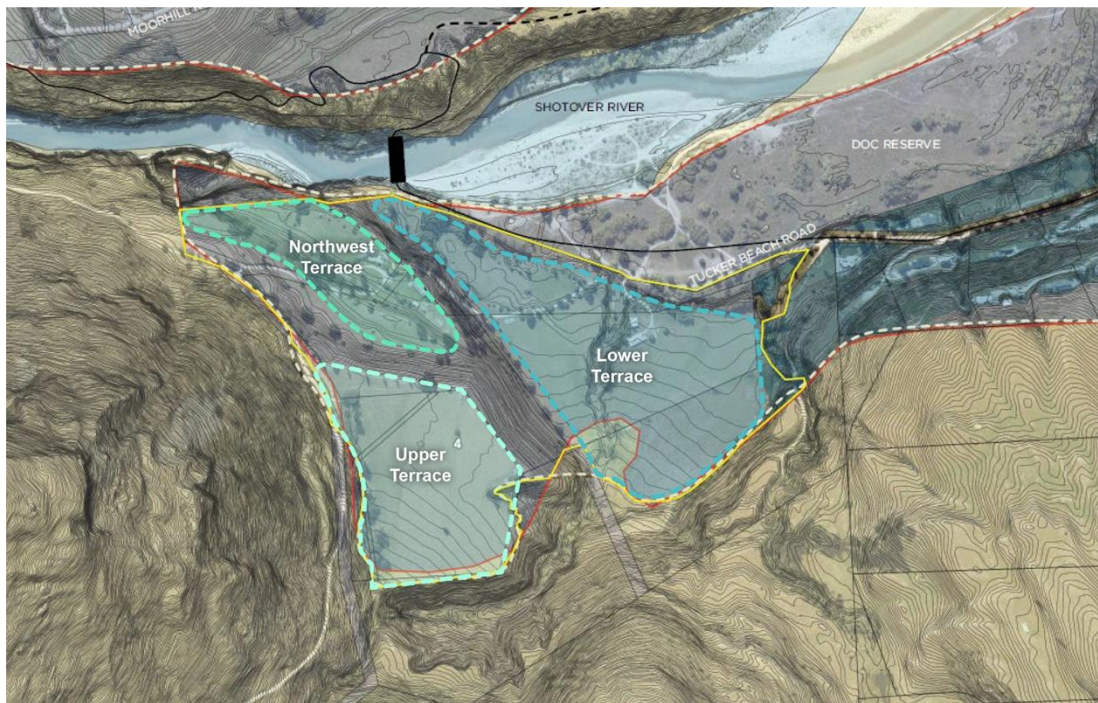
Introduction

[1] This appeal concerns the zoning of a 55.225 ha parcel ('Site') of Queenstown Hill Station owned by the appellants, the trustees of the Middleton Family Trust ('Middletons'). It is in 'Topic 31' in the staged determination of appeals in the review of the Queenstown Lakes District Plan ('PDP'). Topic 31 concerns site-specific relief pursued in regard to the Wakatipu Basin Rural Amenity zone ('WBRAZ'). The WBRAZ was included in the PDP by variation. Its provisions are primarily in PDP Ch 24 (Wakatipu Basin) and Ch 27 (Subdivision and Development).

[2] The Site is accessed via the Station gates from the westernmost 'dead end' of Tucker Beach Road. Although secluded, it is only a few minutes' drive from the busy Frankton commercial hub of 'Queenstown Central', SH6 and Queenstown Airport. The Site is in a setting of so-termed 'outstanding natural features and landscapes' ('ONF/L') under the PDP. It enjoys an elevated and generous north-west and north-east aspect over the Kimiākau (the Shotover River)

and towards Coronet Peak, the Wakatipu Basin, the Crown Range and the Remarkables. These attributes combine to make the Site highly attractive for development for rural lifestyle living.

[3] The Site is comprised of three distinct alluvial river terraces ('Upper Terrace', 'North-west Terrace', 'Lower Terrace') separated by eroding escarpments and incised watercourses, illustrated in the following Figure:¹



[4] The Upper Terrace is a broad paddock of some 6.8 ha in area that gently slopes to an extensive two-pronged 4.2 ha 'upper escarpment' that separates this terrace from the North-west Terrace and the Lower Terrace. The North-west Terrace is some 4.6 ha in area (excluding escarpment areas) and is relatively more undulating. It includes the Station homestead and outbuildings. The Lower Terrace is the largest of the terraces, at approximately 12.2 ha. It comprises a north and south paddock separated by a steeply incised watercourse for a tributary of Kimiākau (the Shotover River).

¹ Gilbert EIC, dated 8 April 2022, App A, Fig 6.

[5] Just to the east of the Site is a ribbon of rural living development. This runs along both sides of Tucker Beach Road and around the lower flanks of Ferry Hill (which is denoted an Outstanding Natural Feature ('ONF') under the PDP).

[6] The Site is only a small part of Queenstown Hill Station. The remainder, some 97%, is zoned Rural and is the subject of an ONF or Outstanding Natural Landscape ('ONL') notation under the PDP.

[7] The Station is traversed by the popular Queenstown Countryside Trail. As part of an enhancement project, a swing bridge across Kimiākau (the Shotover River) is under construction (its location depicted by a thick black line in the above Figure). As a contribution towards that project, the Middletons granted an easement through the Station that will allow cyclists and walkers much improved access through their land.

The relief sought

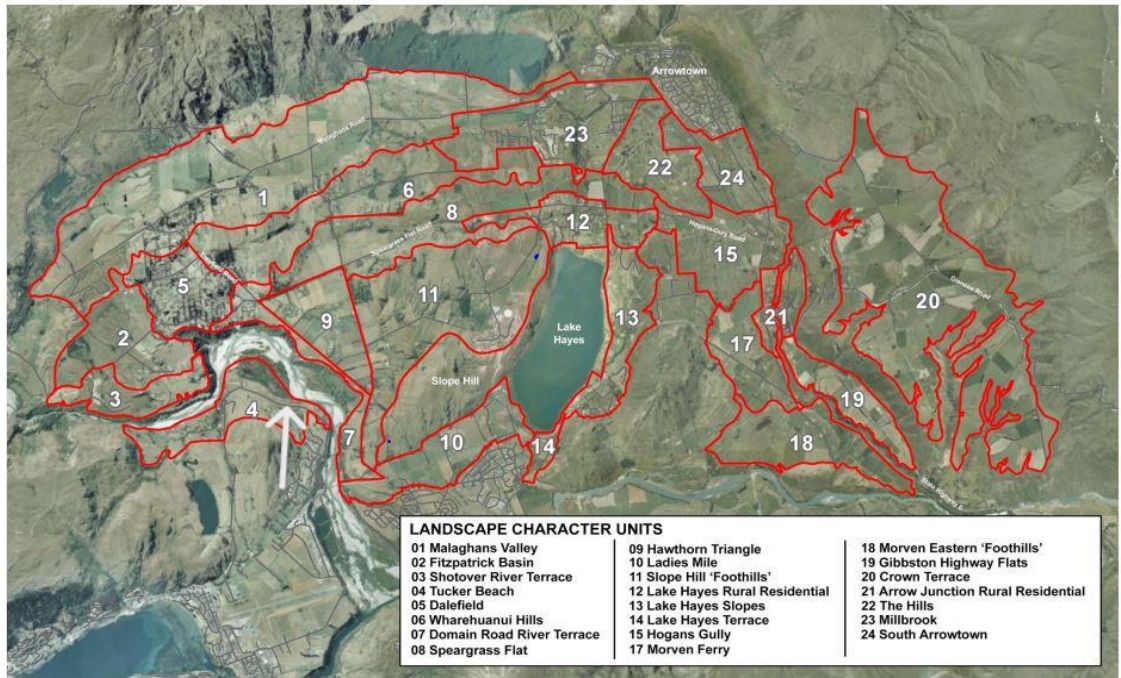
Background

[8] There are two relevant dimensions to the Middletons' appeal:

- (a) the zoning treatment of the Site, including as provided for through PDP Chs 24 and 27; and
- (b) the landscape capacity assigned to the Site as part of 'landscape character unit' 'LCU 4: Tucker Beach' ('LCU 4') in PDP Sch 24.8 (and related aspects of what that PDP schedule specifies with respect to the Site).

[9] The WBRAZ seeks to maintain the "landscape character" of the Wakatipu Basin and maintain or enhance its "visual amenity values". Those intentions are further refined by mapping the Basin into 24 'landscape character units'. The Site is part of LCU 4, identified by the arrow on the following reproduction of the relevant Sch 24.8 map:

24.8 Schedule 24.8 Landscape Character Units



[10] Sch 24.8 ascribes ratings of 'capacity to absorb additional development' (in essence, 'landscape capacity') to each LCU or specified areas of them. That is according to a six-point qualitative rating scale ranging from Very Low to High.² WBRAZ policies give direction for how those ratings apply including in the application of rules for the subdivision and development of land.

[11] Under the decision version PDP, Sch 24.8 prescribes a rating of 'Low' to that part of LCU 4 that includes the Site, (i.e. the area described as "the undeveloped low lying river terraces and scarps along the northern side of the unit and adjacent to the river"). That compares to a rating of "Moderate-High" for "the balance of the central and eastern end of the unit" (with the exception of those parts denoted "Building Restriction Area" that are ascribed a "Very low" rating).

² The other LCU capacity ratings are Low, Moderate-Low, Moderate and Moderate-High.

[12] In their submission on the notified Wakatipu Basin variation, the Middletons sought significantly greater opportunity for residential redevelopment of the Site. That was proposed to be according to a structure plan to be included in the PDP.³ Their submission also opposed “the Tuckers Beach Landscape Unit as set out in” PDP Sch 24.8.

[13] On the recommendation of an independent hearings panel (‘IHP’), QLDC declined the submission.⁴ The decision version PDP maintains the Site’s WBRAZ zoning and does not change Sch 24.8 LCU 4 as sought.

The Middletons’ requested relief and the positions of other parties

[14] The relief sought in the Middletons’ notice of appeal is that the QLDC’s decision be “overturned” and “the relief sought in the submission be granted” (or such further or other relief as may be just or necessary).⁵

[15] However, through the presentation of their case on appeal, in evidence and legal submissions, the Middletons progressively modified that initial relief.

[16] Initially, that was by seeking WBRAZ ‘Lifestyle Precinct’ (‘Precinct’) rezoning, subject to some bespoke modifications.

[17] Under the design of the Wakatipu Basin variation, ‘Precinct’ is a sub-zone of the WBRAZ. It is intended to be applied to specific areas of land “that have capacity to absorb rural living development”.⁶ This sub-zoning applies to a ribbon of rural living development east of the Site. It covers parts of the elevated Hansen Road and Tucker Beach Road as far as the established settlement of Quail Rise.

³ PDP variation submission 2332.

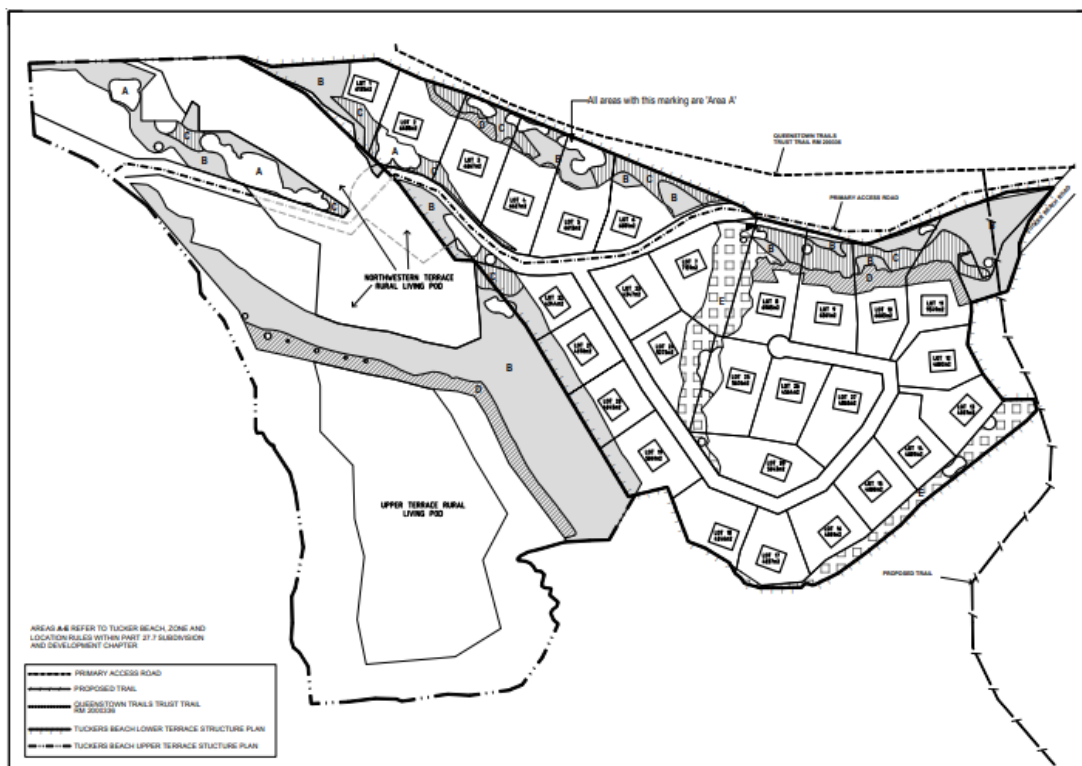
⁴ Report 18.1, of Commissioners Denis Nugent (Chair), Rachel Dimery, Trevor Robinson and Quentin Smith.

⁵ Middletons’ notice of appeal, dated 7 May 2019, at [9], [10].

⁶ Ch 24 24.1 Zone Purpose.

[18] The Middletons' appeal also challenges the Low landscape capacity rating pertaining to the Site.

[19] The Middletons' proposed modified Precinct rezoning included a structure plan and bespoke restrictions and controls on subdivision and development of the Site. The structure plan as presented in planning evidence was as follows:⁷



[20] QLDC and Tucker Beach Residents Society Inc ("Society") oppose modified Precinct rezoning of the Site.⁸

[21] QLDC takes a somewhat more permissive view in that it acknowledges that some upzoning of the Lower Terrace, as a modified WBRAZ zoning, would be appropriate. Along the same lines, it supports changing the Low landscape capacity rating in Sch 24.8 for the Lower Terrace.⁹ The Society acknowledges

⁷ Geddes supplementary evidence, dated 25 January 2024, App 1.

⁸ Society opening submissions, dated 15 March 2024, at [12]. The Society is a s274 party representing the interests of residents of this locality.

⁹ QLDC opening submissions, dated 15 March 2024, at [2.4].

some adjustment to landscape capacity rating may be appropriate for the Lower Terrace, but considers that Terrace to have less capacity than does QLDC.¹⁰

Statutory framework and principles

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

[23] In terms of the directions in s32, RMA, we evaluate available zoning options for what is most appropriate for achieving relevant PDP objectives. The objectives and related policies of most relevance are beyond challenge in the Plan review such that we can treat them as operative. They are in PDP Chs 3 (Strategic Directions), 24 (Wakatipu Basin) and 27 (Subdivision and Development). A summary of them is in Annexure 1.

[24] We evaluate rules with regard to the actual and potential effect on the environment of the activities they would enable, including any adverse effect (s76(3), RMA). Our perspective on effects encompasses predicted future effects, bearing in mind that zoning serves to enable choices for future land use, development and protection.

[25] In addition to s32, RMA, other matters for consideration include the provisions of pt 2, the territorial authority's functions (under s31, RMA) and national policy statements (s74(1) RMA). However, no party contends that the PDP does not fully and properly account for those considerations. Therefore, we do not report separately on them in our findings.

[26] Those matters were largely uncontentious. However, the Middletons submit that, in making “line calls” on the zoning outcome, the court should favour

¹⁰ Society opening submissions, dated 15 March 2024, at [12].

“enablement” where this still achieves “desired environmental outcomes”.¹¹ In relation to that submission, counsel point to the fact that 97% of the Station is subject to an ONL overlay “for the benefit of the wider community and for future generations”.

[27] The design of the PDP’s approach to landscape matters effectively results in an uneven distribution of costs and benefits. The protection accorded to ONF/Ls comes at a cost, particularly for impacted landowners, for which there is no compensation including in terms of any offsetting development opportunity rights under the PDP.

[28] We readily acknowledge that the Middletons have generously conferred benefits on the wider community in those terms. However, we must approach our determination of the appeal according to the relevant guiding and directing principles, as we have summarised. On the evidence, central in those terms are related intentions of the WBRAZ as to environmental outcomes, namely maintenance of landscape character and maintenance or enhancement of visual amenity values. Subject to those outcomes, we also have due regard to a range of other matters, including fairness and equity. In addition, we test whether regulatory responses are justified, proportionate and sound.

The zoning options and related issues

[29] Within the scope of the appeal, the spectrum of available zoning outcomes is from:

- (a) maintaining unmodified WBRAZ across the Site (‘status quo option’);
- and
- (b) upzoning the Site to Precinct, subject to the Middletons’ proposed

¹¹ Closing submissions for the Middletons, dated 7 June 2024, at [1.2] – [1.6], referring to *SWAP Stockfoods Ltd v Bay of Plenty Regional Council* [2023] NZEnvC 1, at [164] and *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51, at [59].

structure plan controls.

[30] Within that spectrum, other potential zoning outcomes include a modified WBRAZ and modified Precinct outcome for all or parts of the Site.

[31] The evaluation of those zoning options centres in particular on what is most appropriate for achieving PDP Obj 24.2.1:

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

Discussion of the evidence

Landscape and related planning issues

[32] On those zoning options, evidence was called on landscape and planning issues from:

- (a) three landscape experts, each of whom has significant experience in respect to Wakatipu Basin, Ben Espie, Bridget Gilbert and Stephen Brown;¹²
- (b) several lay witnesses called by the Society, whose evidence was entered by consent; and
- (c) four planning experts, similarly experienced in regard to the PDP and Wakatipu Basin variation, Nick Geddes (who authored the Middletons' original PDP submission), John Kyle, Craig Barr and Ben Farrell.¹³

¹² Mr Espie was called by the Middletons, Ms Gilbert by QLDC and Mr Brown by the Society.

¹³ Messrs Geddes and Kyle were called by the Middletons, Mr Barr by QLDC and Mr Farrell by the Society.

Site viewings

[33] To put that evidence in context, the court took viewings of the Site from various recommended viewpoints. That included a visit to the Site where we were guided by Mrs Middleton.

Evidence on other matters

[34] Evidence was called on a range of other matters, including as to natural hazards, QLDC infrastructural capacity and impacts of upgrading Tucker Beach Road, bird surveys and ecology.¹⁴ The parties did not seek that the various witnesses be called for cross-examination. In particular, having considered that evidence, we find that none of these matters is determinative for or against any of the zoning options in that:

- (a) relevant infrastructure will, or could properly be upgraded to, cater for anticipated loadings from development of the Site under any zoning option; and
- (b) in any event, all these matters are already sufficiently addressed through the PDP.

Preliminary observations and directions prior to closing submissions

[35] After the landscape and planning evidence had been called and tested, we made the preliminary observations in Annexure 2, subject to closing submissions. Our observations were about what the evidence tended to indicate as the most

¹⁴ On this set of matters, the Middletons called Christopher Charles Hansen (three waters infrastructure servicing), Jason Bartlett (transportation), Paul Faulkner (natural hazards expert) and Glenn Davis (ecology); QLDC called Richard Robert Powell (infrastructure engineer) and Richard Justice (natural hazards expert); the Society called Andrew (Andy) Carr (traffic engineer) and produced a report of E3 Scientific for Middletons, dated 29 September 2022, entitled “Re: Tuckers Beach Road Bird survey findings”. Joint witness statement of experts on natural hazards (dated 30 March 2022) and transportation and traffic engineering (dated 21 December 2021) were filed.

appropriate zoning outcome for the Site, namely a mix as follows:

- (a) Upper Terrace: WBRAZ;
- (b) North-west Terrace: WBRAZ perhaps modified at consenting;
- (c) Lower Terrace: WBRAZ modified.

[36] In light of those observations, we directed the planning witnesses to undertake further conferencing (reserving leave for parties to seek a resumption of the hearing to test the planners on any resulting joint witness statement). That resulted in the planners filing a second joint witness statement (‘JWS-Planning (2)’).¹⁵ We recognise that the views they express in that JWS are in order to assist the court as directed, subject to their overall opinions on the most appropriate zoning outcome.

[37] No party sought that the hearing resume. As parties proposed, the court then made directions for closing submissions.¹⁶ As we next discuss, none of those submissions suggest that the court’s preliminary observations do not accord with the evidence. Except where we indicate otherwise, we are satisfied that the observations are sound in those terms and we confirm them as our findings.

Issues addressed in closing submissions

[38] The Middletons’ closing submissions do not further address the appropriate zoning of the Upper Terrace. Rather, they largely focus on remaining differences between the planning witnesses (as reflected in the JWS-Planning (2)) on the zoning treatment of the North-west and Lower Terraces. On those matters, they rely on the opinions of Messrs Kyle and Geddes. As counsel explain, those differences pertain to certain “line calls” in the sense of how enabling or restrictive various PDP provisions should be framed.

¹⁵ JWS-Planning (2), at [2.6].

¹⁶ Direction dated 4 April 2024.

[39] That is similarly the approach of QLDC and the Society. Both observe that the court's preliminary observations closely align to their respective cases on appeal. QLDC relies on Mr Barr's opinions on points of difference with the Middletons. The Society relies on both Mr Barr and Mr Farrell. We take that to indicate that the Society's position on the zoning approach to the North-west and Lower Terraces is somewhat more restrictive than QLDC's.

[40] We address further points raised in closing in the context of addressing the particular zoning issues. In summary, they concern the following questions with respect to the appropriate zoning treatment of the North-west and Lower Terraces:

- (a) is it appropriate to prescribe different WBRAZ modifications for each of those terraces?
- (b) is a structure plan an appropriate WBRAZ modification?
- (c) should any WBRAZ policy be modified?
- (d) what maximum density standards should be prescribed for the North-west and Lower Terraces?
- (e) what should the escarpment building setback be for the North-west Terrace?
- (f) should subdivision on the Lower Terrace be restricted discretionary or discretionary and should applications be notified?

[41] Before we address those issues, we set out our findings on two key issues that were the significant focus of the landscape evidence:

- (a) the landscape capacity of the Site and its component terraces (including why we modify our preliminary rating of capacity for the North-west Terrace); and
- (b) the related matter of the most appropriate zoning option in the spectrum from Precinct to WBRAZ.

What is the landscape capacity of the Site or its component terraces?

[42] Under the design of Chs 24 and 27, the “capability to absorb additional development” as prescribed in Sch 24.8 (or “landscape capacity”) can have a bearing on related PDP policies and rules for subdivision and development. It has significance in the determination of whether land is appropriately assigned to the Precinct subzone. Partly as a result of refinements made to Chs 24 and 27 through the court’s Topic 30 decisions, this capability or landscape capacity rating can make it appropriate to assign specific minimum lot size/minimum average lot size and associated density standards to the land (in place of the default 80 ha minimum standard).

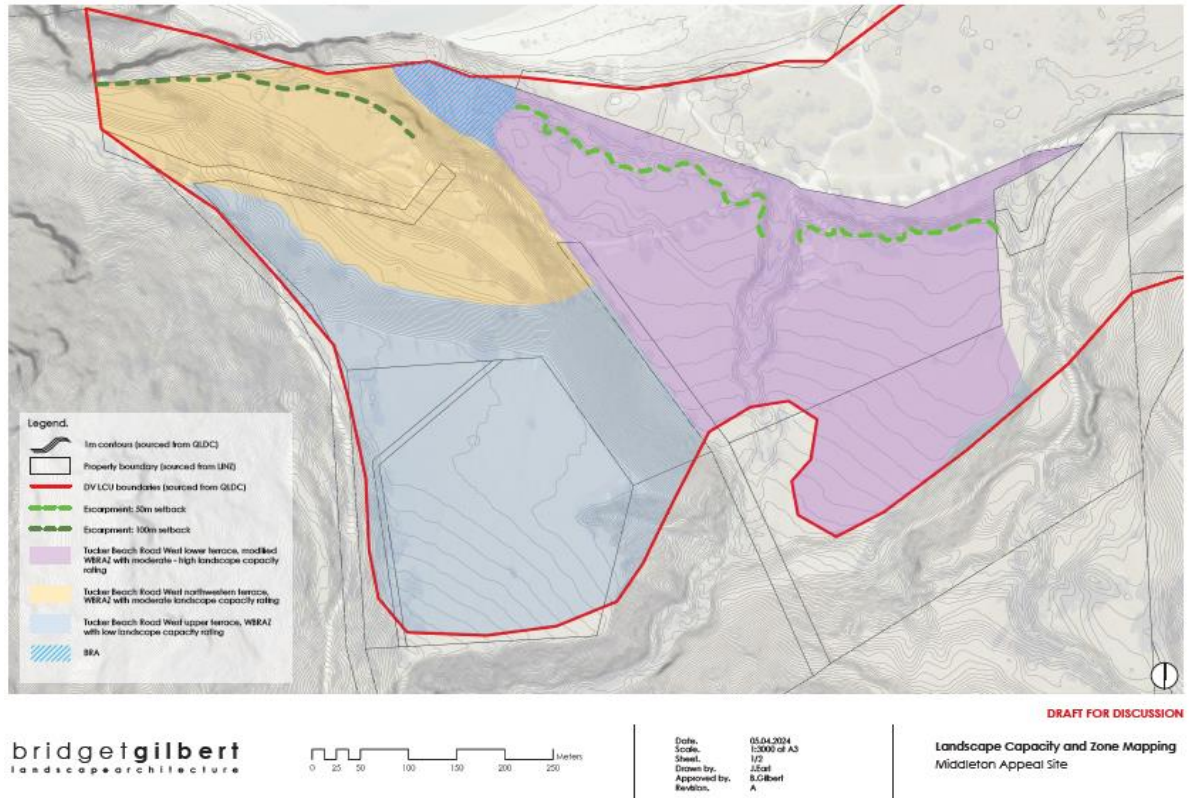
The evidence

[43] Mr Espie considers that the Upper, North-west and Lower Terraces have a Moderate-High landscape capacity, with the exception of their escarpment facings (which he rates as having Very Low capacity such that they should be denoted ‘building restriction areas’ (‘BRAs’)).¹⁷ Ms Gilbert rated the landscape capacity of the Upper Terrace and North-west Terraces as Low and the Lower Terrace as Moderate-High. Mr Brown differed from Ms Gilbert insofar as he rated the capacity of the Lower Terrace to be Low-Moderate.¹⁸

[44] For the purposes of the JWS-Planning (2), Ms Gilbert prepared an associated plan (‘JWS-Planning (2) landscape capacity plan’) showing the three Terraces, according to the court’s preliminary observations on landscape capacity, as well as other features, including escarpments from which setbacks are recommended in the JWS-Planning 2. For reference, this is as follows:

¹⁷ Also Espie rebuttal, dated 2 September 2022, at [29].

¹⁸ Gilbert EIC, dated 8 April 2022, at [7.1] – [7.2], Brown EIC, dated 27 April 2022, at [34].



[45] In the JWS-Planning (2), the planners explain different perspectives on some associated planning matters.

[46] They agree that PDP Pol 24.2.1.5 should be amended if different landscape capacity ratings are prescribed in Sch 24.8 for the North-west Terrace and the Lower Terrace. They recommend wording as we have tracked and differ only on the words we have highlighted in **bold**:

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

a. In LCU 4 described in Schedule 24.7 as the ‘Tucker Beach Road West Lower Terrace and Northwestern Terrace’ areas:

...

ii. minimise the visibility of development from:

...

c. Moorhill Road and private properties located to the east and north.

[47] The bold text is proposed by Mr Barr and supported by Mr Farrell. It is opposed by Messrs Geddes and Kyle. Their concern is that this addition would extend the reach of this policy to private land and a private road. They consider that to be a departure from what the WBRAZ otherwise provides by way of landscape assessment policy. They consider other Ch 24 policies on the “broad range of landscape and visual amenity based assessment considerations to be applied to proposed development in the WBRAZ” are sufficient.

[48] Mr Barr recommends that an amendment be made to WBRAZ r 24.5.1.6 which prescribes standards for new buildings, to apply a bespoke approach for the North-west Terrace. This would be by the addition, as new 26.5.1.6.2, of a standard of a maximum of one residential unit per 4000m² net site area and a maximum of three residential units for this Terrace (any contravention resulting in this discretionary activity defaulting to a non-complying activity).

[49] The other planners agree that a 4000m² net site area without an associated average would align with Ms Gilbert’s evidence. However, Messrs Kyle and Geddes point out that the court’s preliminary observations concerning the North-west Terrace did not offer any residential yield. They suggest there would be potentially a feasible configuration allowing for an additional residential unit to the maximum recommended by Mr Barr.¹⁹

[50] Mr Barr recommends an amendment to r 24.5.10 on setback standards. That would be to add, as a new 24.5.10.3, a bespoke standard that buildings be set back a minimum of 100m from the boundary of an Escarpment Feature shown on the PDP planning map (in essence where this is located on Ms Gilbert’s JWS-Planning (2) landscape capacity plan). He proposes that contravention of this new

¹⁹ JWS-Planning (2), at [11.2], [11.3].

standard would mean the proposal would default to a non-complying activity.

[51] As for his recommended 100m setback from escarpments, Mr Barr relies on Ms Gilbert's evidence. Together with his support for two additional (three in total) residential lots and units on the North-west Terrace, he considers the setback would be effective for directing development to locations on this Terrace "where there is the greatest capacity to accommodate development while still maintaining rural character". Mr Farrell agrees.²⁰

[52] Messrs Kyle and Geddes oppose the specification of a 100m setback. They consider "a more nuanced approach" is required because they consider there may be locations within this setback area that are well suited for carefully designed residential development which would successfully align with the matters in proposed Pol 24.2.1.5, and the other relevant policies in PDP Ch 24 that are collectively assessed with full discretion. In the event the court considered a setback appropriate, they recommend it be specified as only 50m.²¹

[53] The planners agree that resource consent for residential activity and subdivision development on the North-west Terrace should be discretionary (as opposed to restricted discretionary). That is so as to bring proposed Pol 24.2.1.5 and all other relevant policies under Obj 24.2.1 into proper consideration in any resource consent application.

Closing submissions

[54] In closing, QLDC expresses reservations about assigning different landscape capacity ratings to each Terrace, in terms of PDP plan integrity. They refer to and support an observation made during the hearing by the court,

²⁰ JWS-Planning (2), at [9.5].

²¹ JWS-Planning (2), at [9.6].

namely:²²

we resist trying to isolate out specific components or areas within the Site, such as escarpments or parts of a Terrace, for a different capacity rating as that is not in accordance with sound landscape practice.

[55] However, QLDC acknowledges that the Site is “unique” in the Basin insofar as it comprises three highly visible terraces, each with identifiable areas and defensible edges. Counsel point out that the Lower Terrace is directly adjacent to Precinct zoned land, such as to give rise to a “low” precedent risk. Furthermore, QLDC acknowledges that, if the North-west Terrace is given a modified WBRAZ zoning, it would be located directly adjacent to the Lower Terrace which itself is next to land already zoned Precinct.

[56] Those factors lead QLDC to support an upzoning of the North-west Terrace to a modified WBRAZ. However, that is on a basis of all the recommendations of Mr Barr in the JWS-Planning (2), including on the specification of private viewpoints (subject to some recommended refinements). Counsel submit that, unless the full package of recommendations made by Mr Barr is accepted, there would be Plan integrity risks with any upzoning from WBRAZ.²³ However, that submission is not supported by any analysis of the PDP. Rather, counsel refer to s7(c) RMA (requiring particular regard to the maintenance and enhancement of amenity values) and to some observations made by the court in *Donaldson v Queenstown Lakes District Council* (another Topic 31 appeal decision).²⁴

[57] The Middletons oppose any addition of private views or views from Moorhill Road in Pol 24.2.1.5. They submit, in terms of the private viewpoints in issue, residents will continue to be “spoilt for choice” such as to not be affected

²² Closing submissions for QLDC, dated 21 May 2024, at [3.2], referring to transcript, at p 279.

²³ Closing submissions for QLDC, dated 21 May 2024, at [3.10] – [3.12].

²⁴ Closing submissions for QLDC, dated 21 May 2024, at [4.3], [4.4], referring to *Donaldson v Queenstown Lakes District Council* [2023] NZEnvC 190 at [39].

by a change to their outlook across the Site. Furthermore, they point out the policy outcome in *Donaldson v Queenstown Lakes District Council*, is comparatively much more benign than Mr Barr proposes, namely:²⁵

... Landscape character and visual amenity values are maintained or enhanced, including when viewed from Millbrook and other neighbourhood-level locations.

[58] They also dispute the plan integrity risks claimed by QLDC. Given the North-west Terrace is adjacent to the Lower Terrace, they submit that QLDC characterisation of it being an isolated “pond” of modified WBRAZ zoning does not hold true.²⁶

Evaluation

[59] On the matter of landscape capacity, we find Ms Gilbert’s JWS-Planning (2) landscape capacity plan accurate in its demarcation of each of the relevant terraces on the Site.

[60] For the following reasons, applying the same seven-point scale that the landscape experts used:

- (a) we confirm the rating we provisionally assigned to the Upper Terrace, shown blue on Ms Gilbert’s plan, namely Low;
- (b) we revise our rating for the North-west Terrace, shown beige on that plan, from Moderate to Moderate-Low; and
- (c) we confirm our rating for the Lower Terrace, shown lavender on the plan, namely Moderate-High.

[61] In deriving those ratings, we have been most assisted by Ms Gilbert’s evidence. Ms Gilbert was a principal author of the *Wakatipu Basin Land Use Planning Study* (“WBLUPS”) that underpinned the Wakatipu Basin variation

²⁵ Closing submissions for the Middletons, dated 7 June 2024, at [3.4], [3.5].

²⁶ Closing submissions for the Middletons, dated 7 June 2024, at [2.5], [2.6].

including the development of Sch 24.1 on the Basin's 24 LCUs. Nevertheless, she carefully reappraised LCU 4 in light of the more specific evidence in this appeal concerning its landscape attributes. She did so properly in accordance with the profession's guidance manual, *Te Tangi a te Manu*.²⁷ We agree with Mr Brown's observation that her approach was "forensic".²⁸

[62] Mr Brown differs somewhat from Ms Gilbert, particularly in the fact that he rates the Lower Terrace as having Low-Moderate (but variable) landscape capacity (as opposed to Ms Gilbert's Moderate-High rating). His different rating is in essence as a result of his somewhat more conservative evaluative judgment. In view of the fact that the Lower Terrace is at a much lower elevation, with correspondingly less exposure to public viewpoints and is adjacent to an established enclave of Precinct-zoned rural lifestyle dwellings, we prefer Ms Gilbert's opinion on that matter.

[63] Ms Gilbert and Mr Brown differ significantly from Mr Espie in that he applies a uniform Moderate-High landscape capacity rating to the entire Site. Mr Espie also has a depth of familiarity in the landscapes of the Basin. However, we find his Moderate-High uniform rating is derived on the basis of two unsound assumptions.

[64] One flaw is in his reliance on planning history pre-dating the PDP. Whilst that history resulted in a pattern of rural living development east of the Site, that history is not a valid benchmark of the landscape capacity for the Site. Rather, our task is to consider what is appropriate in terms of the intentions of the PDP. As we have noted, those intentions in essence seek to maintain landscape character and maintain or enhance visual amenity values. Commencing Ch 24 is the 24.1 Zone Purpose statement including the following relevant observations as to the

²⁷ *Te Tangi a te Manu*, Aotearoa New Zealand Landscape Assessment Guidelines, Tuia Pito Ora New Zealand Institute of Landscape Architects, July 2022.

²⁸ Brown EIC, dated 27 April 2022, at [16].

PDP intentions:

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.

[65] Mr Espie’s uniform Moderate-High rating of the Site’s landscape capacity is also on a flawed assumption that the Site does not have a high visual “profile”. From several public viewpoints, including mid-range viewpoints, the Upper Terrace and much of the North-west Terrace are highly visible. Those include from public land parts of the Trail, parts of Domain Road, Fitzpatrick Road and Hansen Road.

[66] What is plainly visible now is the highly legible geomorphological relationship of those terraces (and to some extent the Lower Terrace) to the surrounding ONF/L ranges and the Shotover Gorge end of Kimiākau (also an ONF). In essence, that is as summarised with regard to LCU 4 in Sch 24.8 and discussed in the evidence of Ms Gilbert and Mr Brown.²⁹

[67] Nor is Mr Espie’s argument that “relatively few observers” access and experience its environs a sound justification for assigning a relatively higher landscape capacity to the Site.³⁰ The present status of the Site in those terms will likely change to the extent that usage of the Trail increases over time. Furthermore, those on the Trail will enjoy an enhanced view across the Site in their approach to the swing bridge now under construction. In any event, we find the relative

²⁹ Brown EIC, dated 27 April 2022, at [36], [44]; Gilbert EIC, dated 6 April 2022, at [4.3].

³⁰ Espie rebuttal, dated 2 September 2022, at [32].

remoteness of the western end of LCU 4 is fundamentally part of its special landscape character. It is part of a highly legible glacier-formed landscape. Adding to that, it has a character of remoteness from the madding crowd of Frankton Flats. That is in pleasing contrast to established rural lifestyle areas to the east along Tucker Beach Road and at higher elevations, including at Quail Rise. It is part of the landscape character, and visual amenity values, that the PDP is designed to maintain or enhance.

[68] The assignment of landscape capacity ratings in Sch 24.8 is part of an associated policy intention in the WBRAZ. That is in particular in terms of Pols 24.2.1.2 and 24.2.1.3.

[69] Pol 24.2.1.2 applies only to areas outside the Precinct with a Very Low, Low or Moderate-Low landscape rating. Companion Pol 24.2.1.3 applies to areas outside the Precinct that are rated to have a Moderate landscape capacity. Each of the policies serves to achieve Obj 24.2.1. Both policies give directions concerning the “scale, nature and design” of subdivision or residential development. Both policies direct that the “landscape character and visual amenity values of each relevant LCU as identified in Schedule 24.8 is maintained or enhanced by ensuring that landscape capacity is not exceeded”. Pol 24.2.1.2.b goes further in that it extends that direction on landscape outcomes to “the landscape character of the Wakatipu Basin as a whole”.

[70] While that difference is subtle, it is important for the overall intentions of the PDP concerning the Basin. Not all areas of the Basin are in a location or elevation or otherwise of a character whereby inappropriate development could degrade the landscape character and visual amenity values of the Basin as a whole. Rather, as the design of Sch 24.8 in terms of its 24 LCUs would suggest, in most circumstances, the focus is appropriately at a localised LCU level. However, in those exceptional cases where impacts could be Basin-wide, it is plainly important that this be carefully accounted for in the consideration of residential development and subdivision. Otherwise, the WBRAZ zone purpose, as reflected in Obj 24.2.1

(i.e. “[l]andscape character and visual amenity values in the Wakatipu Basin are maintained or enhanced”) could be jeopardised.

[71] As compared to the Lower Terrace, the North-west Terrace is materially higher (20-25m) in elevation and more visually exposed to mid-range and distant Basin public viewpoints. That will be increased, for users of the Trail, when the bridge is operational. In addition, as explained by Ms Gilbert, there are sensitivities associated with the western-most end of this terrace. That is in terms of a close visual association with two ONFs.³¹ Sugar Loaf encloses part of this terrace. The Shotover River runs relatively close to this part of the terrace along its northern edge.

[72] In those terms, we find that inappropriate subdivision or development of the North-west Terrace would degrade landscape character not just within LCU 4 but in the Basin as a whole.

[73] Given the importance of these LCU 4 and Basin-wide considerations, we find that the North-west Terrace does not have landscape capacity for the scale or design of a development envisaged by the structure plan included in Mr Geddes’ supplementary evidence. Rather, a much less intense and more sensitive design and layout that is truly responsive to the landform is called for. That is so as to achieve material mitigation of visual impacts of dwellings and their curtilages, roading and other more visible features of any development, particularly from mid-range and more distant views across the Site.

[74] Hence, we find the most appropriate landscape capacity rating for the North-west Terrace is Moderate-Low.

[75] We differ from Ms Gilbert’s Low landscape capacity rating for that terrace in view of some particular features of that terrace that our site visit brought to light and which we find to assist that capacity. Ms Gilbert explained that the North-

³¹ Gilbert EIC, dated 8 April 2022, App A at [2.8].

west Terrace comprises “a ... series of narrow terraces (or shelves), interspersed with shallow slopes and scarps”.³² However, neither she nor Mr Brown appear to have factored that into their consideration of the North-west Terrace’s capacity to absorb sensitive rural living development. That is understandable insofar as the Middletons’ proposed structure plan (reproduced in the Introduction part of this decision) does not appear to respond to that landform attribute either. In contrast, we find that this undulating landform is an attribute that assists landscape capacity. That is in addition to the visual containment afforded by the steep escarpment that separates this terrace from the Upper Terrace.

[76] We are satisfied that our adjustment to the capacity rating of the North-west Terrace to Moderate-Low reflects the intentions of the PDP. As such, we are satisfied that, with that adjustment, there are no material risks to Plan integrity.

[77] Those findings are informed by the evidence of the landscape experts and our viewing of the Site from various public viewpoints recommended by the parties. That is not of course to say that the Site is only visible from those viewpoints. Rather, they are representative.

[78] Our findings are not materially influenced by consideration of private viewpoints, including from Moorhill Road or any private properties to the east and north of the Site.

[79] QLDC’s closing submissions appear to misread the findings in *Donaldson v Queenstown Lakes District Council* in regard to private viewpoints. Those findings are in their particular factual context and are as follows:³³

There will undoubtedly be some loss of amenity values currently enjoyed by some residents of Millbrook Resort. Those who value the quiet cul-de-sac nature of Ishii Lane will lose that to some extent in that this would become a through lane

³² Gilbert EIC, dated 8 April 2022, App A at [2.8].

³³ *Donaldson v Queenstown Lakes District Council* [2023] NZEnvC 190 at [116].

serving the Site. Those who value the semi-rural vista across the Site will find that interrupted by views of some dwellings and their curtilages and access lanes, and the associated activities of new neighbours. On a plain reading of s7(c) RMA, the modified option would not maintain amenity values in those terms.

However, nor is it the case that a zoning option is rendered inappropriate if it fails to maintain all amenity values. Rather, it is a more strategic level focus that is to be applied, in particular by reference to what is the most appropriate zoning outcome for achieving the PDP's relevant objectives and intentions. For the reasons we have set out, we find that the modified relief option, including its structure plan, would assist to maintain both landscape character and visual amenity values. The latter is for the benefit of the wider community and nearby residents. For the latter, we find their initial understandings of how much they would see of new dwellings over the Site were somewhat exaggerated. They did not properly account for the natural attributes of the Site that will assist to soften these changes.

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

[80] The factual context here is materially different. Furthermore, as counsel for the Middletons point out, the relevant policy outcome in *Donaldson* is quite different from what Mr Barr proposes for private viewpoints.

[81] On the evidence, including in the uncontested statements of the various residents called by the Society, we find no justification for Mr Barr's proposed reference to views from Moorhill Road and private properties to the north and east in an amended Pol 24.2.1.5.

[82] Whilst in no sense diminishing the concerns of residents, we agree with counsel for the Middletons that residents in those localities have a lot to choose from when it comes to spectacular views. Furthermore, the landscape experts properly focussed their assessments predominantly on public viewpoints. In any

case, the PDP already provides ample policy direction to ensure properly-weighted consideration is given to amenity values. Insofar as Basin-wide viewpoints are concerned, those are already addressed in Pol 24.2.1.2, albeit with emphasis on particular landscape character rather than private amenity values.

[83] Subject to that adjustment, we agree with Ms Gilbert as to the various factors that inform our ratings of capacity for the Upper and Lower Terraces as respectively Low and Moderate-High.

[84] As for the Lower Terrace, we confirm our preliminary observation that an exception to that capacity rating is the narrow western extremity of the Lower Terrace. As this is close and has high visual exposure to the Trail bridge under construction, this area would not be suitable for housing development. Again, that finding is assisted by Ms Gilbert's evidence.

[85] We confirm our preliminary observations as to the inappropriateness of assigning separate capacity ratings to the scarp faces of the Terraces. We appreciate that there is some precedent for doing so in Sch 24.8's description of the landscape capacity of other areas in LCU 4. However, that description is not the subject of this appeal. We find that assigning a separate landscape capacity to the scarps would not accord with the purpose of Sch 24.8. That is as a tool for the assessment of landscapes, rather than of small components of a site within a landscape. Setbacks and associated rules are more suitably used for the purposes of maintaining the contribution that any discrete components of a site may contribute to landscape character or visual amenity values.

[86] We set out our associated determinations on changes to PDP Sch 24.8 later in this decision.

WBRAZ for the Upper Terrace and modified WBRAZ elsewhere

[87] At the stage of QLDC's decisions on submissions, the Wakatipu Basin variation was designed on a simple binary basis:

- (a) the Precinct sub-zone catered for those parts of the Basin adjudged to have capacity for rural living development, reflected in policies, standards and other rules that enable this;
- (b) outside the Precinct, a uniform 80 ha minimum lot size and density regime applied, with subdivision defaulting to non-complying activity status.

[88] That design has been significantly refined through the course of the determination of appeals in Topics 30 and 31 (and some consent orders).³⁴ Notably, in areas of the WBRAZ that are outside the Precinct sub-zone, it is no longer the case that there is a uniform 80 ha minimum lot size and density regime. That remains as a default. However, bespoke minimum lot size and density controls apply to several pockets of the Basin adjudged to have the landscape capacity to allow for a relatively greater rural residential development.³⁵ We evaluate the zoning options on that basis.

[89] As we have explained, the Middletons' modified Precinct rezoning relief on appeal evolved from what they pursued in their submission on the variation. In substance, a consistent thread of their case has been to enable, on a structure plan basis, the development of their Site for rural living residential redevelopment.

[90] Given our findings on landscape capacity, we find Precinct zoning of any part of the Site would be inappropriate and contrary to the WBRAZ's landscape objectives and policies. That is even on the modified structure plan basis proposed in evidence for the Middletons.

³⁴ *Barnhill Corporate Trustee Ltd v Queenstown Lakes District Council* [2022] NZEnvC 58, [2023] NZEnvC 41, [2023] NZEnvC 91.

³⁵ *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* [2021] NZEnvC 189; *Feeley v Queenstown Lakes District Council* [2023] NZEnvC 189, [2023] NZEnvC 263; *Donaldson v Queenstown Lakes District Council* [2023] NZEnvC 190, [2024] NZEnvC 44; *Hanan v Queenstown Lakes District Council* [2023] NZEnvC 200; *Waterfall Park Developments Ltd v Queenstown Lakes District Council* [2023] NZEnvC 207, [2024] NZEnvC 87, [2024] NZEnvC 134; *Trustees of Spruce Grove Trust v Queenstown Lakes District Council* [2023] NZEnvC 279.

[91] A further way in which the Middletons' case evolved is in its recognition that there is different landscape capacity across the three terraces, and that this can be recognised in the zoning outcome. That is reflected in our findings on landscape capacity which are to be reflected in changes to LCU 4 in Sch 24.8. Those findings inform our following findings as to the most appropriate zoning treatment of the Upper, North-west and Lower Terraces of the Site.

WBRAZ should remain for the Upper Terrace

[92] We find the Upper Terrace to have only Low landscape capacity according to Sch 24.8's evaluative scale. It is an open and highly legible alluvial terrace closely related geomorphologically to the ONF/Ls that frame it. That does not necessarily preclude some development of it. However, on the evidence, we are not in a position to be satisfied what scale and nature of development it has capacity for. We go only so far as to record that the grid of rural development across this Terrace as indicated by Mr Geddes' structure plan would be plainly excessive and inappropriate in all respects. However, these matters are best left for resource consent application processes according to the status quo WBRAZ zoning (including its 80 ha minimum lot size and density standards). That is to ensure due scrutiny of whether the scale, nature and design of development would not be contrary to the WBRAZ's objectives and policies.

Modified WBRAZ is appropriate for the North-west and Lower Terraces

[93] We find the North-west Terrace to have a Moderate-Low landscape capacity and the Lower Terrace to have a Moderate-High capacity. In relative terms, those ratings allow for more rural-lifestyle development capacity than the Upper Terrace. We find the WBRAZ's default 80 ha minimum lot size and density is unduly restrictive for both these terraces. In contrast to the Upper Terrace, we find the evidence to better place us to make appropriate density, setback and other determinations. Hence, we are in a position to reduce development uncertainty through bespoke WBRAZ standards and controls for the purposes of the

consideration of resource consent applications. Hence, we find that modified WBRAZ is an appropriate zoning outcome for each of these terraces.

[94] Each of these terraces is of a sufficient scale that they can be treated as separate units for the purposes of considering the nature of bespoke WBRAZ provisions.

[95] The North-west and Lower Terraces are a “transition” area between high density rural lifestyle enclaves and the open Rural western end of LCU 4.³⁶ Relatively speaking, that allows for greater development capacity on the Lower Terrace given that it shares its eastern boundary with the Precinct-zoned residential enclave along Tucker Beach Road.

[96] The North-west and Lower Terraces are legibly separated, in a geomorphological sense, particularly by the intervening escarpments. That would affect how development would be read, in terms of landscape character and visual amenity values, from near, mid-range and distant public viewpoints across the Site. The significantly higher elevation of much of the North-west Terrace gives it higher relative visual exposure. Its closer proximity to the ONF/L elements that frame the Site is a further sensitivity needing to be accounted for in consideration of its zoning treatment.

[97] Much of the Lower Terrace currently has more limited visual exposure (although that is to some extent attributable to stands of mature exotic trees that could be removed over time or with development). An important exception to that, when considering WBRAZ provisions, is its western end. As Ms Gilbert noted, it will have significant visual exposure from the new swing bridge, once it is operational, for users of the Trail. Our site visit reinforced to us that any rural living development there would have potentially significant adverse effects on landscape character and visual amenity values, not only for LCU 4 but Basin-wide

³⁶ Gilbert EIC, dated 8 April 2022, at [4.3], [4.5], [6.3], [7.3]; Gilbert supplementary dated 16 February 2024, at [6.16].

(in the latter case, particularly because users of the Trail would commonly see this part of the Site in the context of their wider impressions of the Basin).

Bespoke density standards and other WBRAZ modifications should apply for each terrace

[98] Those considerations lead us to the same general view as the planners espouse in the JWS-Planning (2), namely that different density regimes and other WBRAZ modifications should be made for the North-west and Lower Terraces.

[99] The JWS-Planning (2) includes a number of the WBRAZ modifications that are supported by all the planning experts. Except where we state otherwise, we find those agreed modifications (or equivalent) appropriate. That is because we find they are supported by the evidence and best assist to achieve relevant PDP objectives.³⁷

A structure plan is not an appropriate WBRAZ modification

[100] As we have noted, the Middletons proposed a structure plan as a modification to Precinct zoning. Whilst we find Precinct zoning inappropriate, the value or otherwise of a structure plan as part of a modified WBRAZ zoning outcome for the North-west and Lower Terrace was a matter of debate in evidence.

[101] One role that the Middletons' proposed structure plan served was to show where BRAs applied on the Site. Ms Gilbert identified BRAs as important for the purposes of protecting escarpments and stream banks in order to maintain landscape character and visual amenity values. However, she expressed concerns

³⁷ We leave aside technical wording refinement matters that can be tidied up by provision of an updated full set of provisions for the court's final approval for inclusion in the PDP. For example, we use the same wording as the JWS-Planning (2) on matters where our findings may use different words to the same ends.

about the effectiveness of BRAs for achieving density outcomes.³⁸

[102] We acknowledge the importance of protecting escarpments and stream banks in order to maintain landscape character and visual amenity values. However those matters can be satisfactorily addressed through PDP standards and controls without the need for a structure plan.

[103] That is also the case for vegetation management. On this aspect, we reported in our preliminary observations on why we did not consider a structure plan helpful. That is especially in the absence of any evidence as to the state of the trees. Our site visit revealed that several mature trees border the Lower Terrace but few, if any, appeared to be notable in quality terms. Between confirmation of zoning and the making of resource consent applications, much could change concerning those trees. Furthermore, there would be important issues to work through concerning ongoing tree maintenance regimes in a context in which subdivision would result in multiple new landowners. We are not satisfied that sufficient consideration of such matters has informed the Middletons' Precinct structure plan proposal.

[104] Consistent with our preliminary observations, the JWS-Planning (2) makes no provision for a structure plan. Nor do any closing submissions invite us to revisit our preliminary observations on the lack of value of this approach. We confirm those observations in finding a structure plan would not serve any useful purpose as a modification to the WBRAZ for either the North-west or Lower Terrace.

Annexure 3 – associated findings on modifications to WBRAZ provisions

[105] In the next part of this decision, we give our reasons for the various determinations we make concerning appropriate WBRAZ modifications with respect to the North-west or Lower Terrace of the Site. Annexure 3 sets out our

³⁸ Gilbert supplementary, dated 16 February 2024, at [6.3].

related findings on the drafting of particular provisions in Chs 24 and 27 and Sch 24.8.

The only WBRAZ policy modification should be to Pol 24.2.1.5

[106] Decisions in Topic 30 resulted in the inclusion in the WBRAZ of Pol 24.2.1.5, which is designed to provide bespoke direction for subdivision and development within specified LCUs. It includes blank placeholders intended for use in cases such as this, commencing:

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

a. *(This has been left intentionally blank)* ...

[107] The JWS-Planning (2) sets out the planners' recommendation on how that intentionally blank subclause should be expressed. As we have discussed, the planners disagree about one matter of substance. Mr Barr and Mr Farrell recommend that this subclause include a direction concerning outcomes for views from Moorhill Road and other private viewpoints (subclause a.ii. in the JWS). We have explained why we find that direction concerning private viewpoints inappropriate.³⁹ The planners agree in most other respects concerning their proposed expression of subclause a. of this policy. They explain their common intentions as follows (leaving aside subclause a.ii. on private viewpoints):

(a) subclause a.i is intended to maintain the predominant sense of rural character and also recognise the transitional role the Site plays in relation to the surrounding context of the mountain ONL and Shotover River ONF values. Messrs Barr, Geddes and Kyle support this limb. Mr Farrell supports it in principle, but prefers that the words "rural character" be refined to read "open unbuilt rural

³⁹ Our findings are under the heading 'What is the landscape capacity of the Site or its component terraces?'

character”;

- (b) subclause a.iii is agreed and relates to ensuring buildings are not located on the terrace faces and that they are set back from the front edge of terraces;
- (c) subclause a.iv is agreed and requires that development is located to optimise the screening effect of landform and vegetation (both existing and any proposed vegetation at the time of subdivision). All the planners support it as reflecting the court’s preliminary observations.

[108] On the point of difference concerning subclause a.i., we prefer the majority opinion. Rural character, as is exhibited in the Wakatipu Basin, is not typically “unbuilt”. Rather, the Basin is peppered with many visible buildings and other structures. Nor is it uniformly “open” in character. While those may be attributes of the Site at present, requiring that the Site continue to be so is not appropriate for the achievement of the PDP’s intentions. That is, landscape character and visual amenity values are dynamic constructs that can evolve with time whilst still being maintained.

[109] We find all those remaining recommended amendments to this policy appropriate for assisting to achieve the PDP’s intentions for landscape character and visual amenity values.

Bespoke density standards should be prescribed for each terrace

The evidence

[110] A significant factor in the determination of appropriate density controls for the North-west and Lower Terraces is whether those terraces serve any landscape role of transitioning between the rural lifestyle enclaves to the immediate east of the Site and the rural and open character evident at the western end of LCU 4.

[111] We were informed that the Precinct-zoned enclaves that run close to the

Lower Terrace eastward along Tucker Beach Road (as well as those on Hansen Road) have an average density in the order of 4000m². That contrasts to the 6000m²/1 ha average density limits that typically apply in the Precinct under the PDP.

[112] For the Lower Terrace, Mr Geddes' revised structure plan showed in the order of 28 lots and associated residential units. That was on the premise that residential building platforms would be identified at the time of subdivision and development as a restricted discretionary activity.

[113] For the North-west Terrace, Mr Geddes modified his original position somewhat in his supplementary evidence. In that evidence, he proposed a revised structure plan (still according to a Precinct zoning) that proposed "no more than four (in addition to the existing dwellinghouse) residential building platforms to be identified at the time of subdivision and development as a restricted discretionary activity".⁴⁰

[114] Mr Espie supports that level of density on the Lower and North-west Terraces. He considers there is a helpful pattern in the way the existing residential enclaves east of the Site have developed along Tucker Beach Road, namely as a "ribbon of stepped rural living patterning". He considers the transition point to the open rural land to the west of LCU 4 is at the western margins of the Site. That is the point where the geomorphology of Sugar Loaf and the Shotover River start to enclose the Site. Those factors inform his opinion that a similar density and development pattern could be provided on the Lower Terrace as is apparent in the Tucker Beach Road enclaves.

[115] Ms Gilbert considers that Mr Geddes' proposed structure plan would result in "discordant" development of the Site that would detract from visual amenity values and fail to maintain the sense of "spaciousness".⁴¹ She does not consider

⁴⁰ Geddes supplementary evidence, dated 15 January 2024, at [18].

⁴¹ Gilbert supplementary, dated 16 February 2024, at [6.7].

the Tucker Beach Road enclaves to demonstrate any “ribbon of stepped rural living patterning” along Tucker Beach Road. As she put it, the North-west Terrace (together with the Upper Terrace) serves as an attractive rural “bookend” to the existing rural living pattern at Tucker Beach Road and a “sympathetic transition” to the proximate ONFs.⁴²

[116] As for the North-west Terrace specifically, she offered the following opinion in questioning:⁴³

You wind up [to the northwestern terrace], again, and to the south, you’ll see two pole markers. Through that area, that’s just sort of an elevated shelf, I would call it, or narrow terrace, where there is the potential to integrate one, possibly two, house sites...The other two pole positions further to the northwest of the existing homestead, I, I’m not comfortable with in terms of effects on the Shotover River in particular, Kimi-ākau.

[117] As compared to Ms Gilbert’s opinion, Mr Brown considers the Lower Terrace to have less development capacity. That is essentially a reflection of his somewhat more conservative judgement on these matters.

[118] The planning witnesses offered similar opinions on density, in essence consistent with the views of the respective landscape experts. We have noted Mr Geddes’ opinion, shared by Mr Kyle. Mr Barr recommended that the Precinct’s usual 6000m² minimum/1 ha average densities be applied to the Lower Terrace.⁴⁴ Mr Farrell recommended that usual regime be modified for the Lower Terrace by the addition of a 2 ha average density standard.⁴⁵

[119] In our preliminary observations, we indicated our preference for Ms Gilbert’s opinions on these matters. That was subject to our observation that the

⁴² Gilbert supplementary, dated 16 February 2024, at [6.17].

⁴³ Transcript, p 161 – 162.

⁴⁴ Transcript, p 227, l 14 – p 228, l 28.

⁴⁵ Transcript, p 270, l 22 – 28.

North-west Terrace had Moderate, rather than Low, landscape capacity. For the reasons we have given, we have now refined that to a finding of Moderate-Low capacity for that Terrace. However, by contrast to the Lower Terrace, we did not signal a view on associated density standards.

[120] In the JWS-Planning (2), Mr Barr and Mr Farrell recommend the following density standards, relying on Ms Gilbert's evidence:

- (a) for the North-west Terrace, a 4000m² minimum density and a maximum of 3 residential units;
- (b) for the Lower Terrace, a dual density standard of a 7000m² minimum and 1.5 ha average.

[121] The JWS-Planning (2) explains that they do not consider an average density standard is warranted for the North-west Terrace. That is in light of their associated recommendation for a standard specifying a 100m setback from the escarpments shown on Ms Gilbert's JWS-Planning (2) landscape capacity plan.

[122] Messrs Geddes and Kyle acknowledge that those recommendations reflect Ms Gilbert's evidence. They note, however, that the court did not make any preliminary observations concerning the residential yield of the North-west Terrace. They consider that a maximum of four residential units (i.e. one more than as envisaged by Messrs Barr and Farrell) may be able to be accommodated, whilst still according with the objectives and policies of the PDP (particularly in view of their recommendation for a 50m, rather than 100m setback).

[123] In essence, therefore, insofar as the court's findings confirm its preliminary observations as to the landscape capacity of the North-west and Lower Terraces, the differences between the planners on related density controls are confined.

Closing submissions

[124] Closing submissions on density focus on the North-west Terrace in

particular, being the part of the Site where there are more significant differences in the landscape and planning opinions.

[125] For QLDC, Ms Scott and Mr Hart point to the consistency in Ms Gilbert’s opinion on these matters. As for the North-west Terrace, they submit that the appellants have not offered any evidence that is sufficiently detailed to inform a conclusion that any development at its western-most end can be accommodated without having adverse effects on Kimiākau (Shotover River). Hence, QLDC ask the court to draw from Ms Gilbert’s evidence in determining the density and location of development on this Terrace.

[126] The Middletons seek a more flexible density regime than QLDC proposes for the North-west Terrace, noting that the court’s preliminary observations did not indicate a minimum density for this Terrace. Counsel propose that this be by way of a dual density standard. That is, in addition to Mr Barr’s proposed 4000m², they propose a minimum average of 2 ha. That is in place of Mr Barr’s recommendation for a specification that no more than three residential units be allowed (including existing). Counsel refer to the JWS-Planning (2) landscape capacity plan as depicting that the North-west Terrace has an area of some 8.22 ha. On that premise, they calculate that their proposed dual density standard would yield an upper limit of 4 lots (including a lot for the existing homestead). Identifying this as one of their so-termed “line calls” where the court should err on the side of enablement, counsel summarise their position as follows:⁴⁶

... a finding by the Court of moderate capacity for this terrace, policy 24.2.1.5.a.ii.a (with its direction to minimise the visibility of development from inter alia the Shotover River), coupled with the fully discretionary regime will provide a robust test for assessment of future development on the Northwestern Terrace, such that the level (in terms of a specific number of lots) and location of that development should be left to the future consenting process. MFT [*Middletons*] also observes that farm buildings located near the existing homestead could conceivably be

⁴⁶ Closing submissions for the Middletons, dated 7 June 2024, at [3.12] – [3.21].

moved to another location on the property in the future, which may well provide a suitable location for an additional lot.

[127] With respect to the Lower Terrace, the Society supports the court's preliminary observations on density. For the North-west Terrace, the Society supports the standard recommended by Mr Barr in the JWS-Planning (2). However, as with other parties, that is subject to their position on setbacks, to which we return later in this decision.⁴⁷

Evaluation

[128] As we signalled in our preliminary observations, we prefer Ms Gilbert's opinion on these matters, subject to our finding that the North-west Terrace has Moderate-Low (rather than Low or Moderate) landscape capacity.

[129] Our site visit did not reveal any material "stepped ... patterning" of rural living along Tucker Beach Road as would support or justify the density envisaged in Mr Geddes' structure plan. We agree with Mr Espie that the two ONFs, Sugar Loaf and the Shotover River enclose and frame the Site. However, as Ms Gilbert and Mr Brown maintain, the open rural foreground of the North-west Terrace and, to some extent, the Lower Terrace, are also important contributors to the landscape character and visual amenity values of this part of LCU 4. This openness has an important relationship with Sugar Loaf and other ONF/L elements in the vicinity of the Site, as well as itself being important to character and visual amenity values. Hence, we agree with Ms Gilbert that the North-west Terrace is itself the transition point to the rural western end of LCU 4 – that is to say, the transition occurs on the North-west Terrace, not just its westernmost margin.

[130] For the North-west Terrace, we are persuaded to the more flexible regime proposed by the Middletons in closing. According to counsels' calculations, the dual standard regime would allow for the potential for no more than 4 lots

⁴⁷ Closing submissions for the Society, dated 7 May 2024, at [8](d), [9].

(including a lot for the existing homestead). That is, it would represent one more lot than would be allowable under Mr Barr's proposed residential unit maximum standard.

[131] We agree that that part of the North-west Terrace has sensitivities that would indicate that locating two dwellings there would not be appropriate. On the other hand, as we have noted, our Site visit impressed on us the potential to make advantageous use of the Terrace's undulations and other features so as to ensure a design that maintained landscape character and visual amenity values. That is where a dual standard approach, as proposed by the Middletons, has advantages over Mr Barr's more prescriptive regime.

[132] That, of course, is sensitive to our choice of activity classification for subdivision and development. We address that later, but at this stage note the further strength of the Middletons' proposal is that it will allow for proper scrutiny of applications as to whether they deliver upon the WBRAZ's intentions, as reflected in objectives and policies included as will be amended by this decision. In particular, we find that there will be appropriate discretion available in consenting processes so as to consider landscape character and visual amenity values and ensure these are maintained. That is both for LCU 4 and the wider Basin.

[133] With respect to the Lower Terrace, on the matter of density we prefer the views of Mr Barr as are expressed in the JWS-Planning (2), particularly in the fact that they best accord with Ms Gilbert's landscape opinion and our related findings.

[134] Therefore, we determine that the PDP should, as part of a modified WBRAZ regime, specify:

- (a) for the North-west Terrace, the dual 4000m² and 2 ha average standard as recommended in the Middletons' closing submissions (not including any specification of a limit on residential units); and
- (b) for the Lower Terrace, Mr Barr's recommended dual standards,

namely for a 7000m² minimum and 1.5 ha average density.

Escarpment building setbacks: 100m (North-west) and 50m (Lower)

The evidence

[135] The Middletons' original modified Precinct relief proposed that the escarpment faces to the Terraces be protected, but did not propose setbacks from those escarpments. That was with the support of Mr Espie's opinion which acknowledged that the scarp faces would "remain the most visually prominent parts" of the Site, but took issue with Ms Gilbert's opinion that the outcome would be of "cookie cutter ... suburban development".

[136] However, Mr Geddes' supplementary evidence modified the relevant proposed structure plan by introducing a form of setback from escarpments. This was in the form of an 'overlay' along the upper edge of the front face of the Upper and Lower Terraces.

[137] Under the WBRAZ, within the Precinct only, a default setback distance from escarpments is prescribed as 50m (with contravention of this standard triggering a restricted discretionary activity classification).⁴⁸ In light of the court's preliminary observations, the JWS-Planning (2) records agreement by the planners that this setback should be prescribed for the Lower Terrace (subject to excluding vehicle accesses from it).⁴⁹

[138] With respect to the North-west Terrace, however, the JWS-Planning (2) reveals two camps of opinion on the extent of that setback:

- (a) Messrs Kyle and Geddes consider that the same restricted discretionary activity 50m setback as would pertain to the Lower

⁴⁸ PDP rr 24.5.10.1 and 27.7.19.1.

⁴⁹ JWS-Planning (2), at [9.2], [9.4].

Terrace should apply. That is in view of their understanding that there are locations within 100m of the escarpments of the North-west Terrace area that are well suited for carefully designed residential development. As such, assuming that the PDP Ch 24 policies (including amended Pol 24.2.1.5) would apply in the exercise of discretion in the consideration of consent applications, they consider a 100m setback unwarranted;

- (b) Messrs Barr and Farrell rely on Ms Gilbert's evidence for their recommendation that a bespoke 100m setback from escarpments apply for the North-west Terrace (again with breach triggering restricted discretionary activity status). This is as depicted in Ms Gilbert's JWS-Planning (2) landscape capacity plan. They envisage that this setback standard would be an effective tool to direct development to locations on the North-west Terrace where there is the greatest capacity to accommodate development while still maintaining rural character.

[139] Ms Gilbert's relevant evidence was with respect to the sensitivities associated with the northern most end of the North-west Terrace. That is especially with respect to the visual exposure that development there would have with regard to the Shotover River/Kimiākau ONF.

Submissions

[140] Closing submissions generally follow the theory of those different perspectives of the planning experts.

[141] The Middletons submit that the location of buildings is a matter where detailed evaluation from a landscape expert is better tested through the fully discretionary consenting regime.⁵⁰

⁵⁰ Closing submissions for the Middletons, dated 7 June 2024, at [3.22].

[142] QLDC challenges the opinions offered by Messrs Kyle and Geddes, in support of a 50m rather than 100m setback, as not supported by the landscape evidence. Insofar as they are correct that sensitive and well-designed development could be located within 100m of the escarpment, counsel submit that this could be considered as a non-complying activity. They submit that status would provide for an appropriate additional level of scrutiny.⁵¹

[143] For the Society, Mr Todd's submissions are closely similar to QLDC's in support of a 100m setback. He notes Ms Gilbert's related opinion as to the importance of anchoring development. Whilst that evidence was as to the role of foothills in those terms, Mr Todd submits that positioning building platforms "back towards the landfall" (and by implication, back from escarpments) is important in order that the Terrace continue to read as an open, uncluttered pastoral landscape.⁵²

Evaluation

[144] In light of the consensus planning opinion, our task is straightforward with respect to setbacks for the Lower Terrace. Relying on Ms Gilbert's opinion, we find the 50m setback standard recommended in the JWS-Planning (2) the most appropriate. That is by way of amendments to PDP rr 24.5.10 and 27.7.19 as recommended in that JWS.

[145] With respect to the North-west Terrace, we understand Ms Gilbert's relevant evidence pertains to the particular visual sensitivities associated with that part of the North-west Terrace nearest the Shotover River/Kimiākau ONF. The answers she gave in cross-examination referred to by Mr Todd were with respect to the Upper Terrace, not the North-west Terrace. We consider the issues on that more confined understanding. We add that our site visit revealed to us that the Upper and North-west Terraces are materially different in relevant terms. The

⁵¹ Closing submissions for QLDC, dated 21 May 2024, at [5.12].

⁵² Closing submissions for the Society, dated 7 May 2024, at [8].

Upper Terrace, apart from its higher elevation, is on a gentle slope. In that context, Ms Gilbert's answers to Mr Matheson ring true: positioning development towards the foothills could be a helpful means of mitigating their visibility and hence impacts on landscape character and visual amenity values.

[146] The North-west Terrace, apart from generally being at a lower elevation, is different from the Upper Terrace in those terms. Interestingly, tall trees closer to the escarpment that separates this Terrace from the Upper Terrace were quite noticeable at least viewing them from the Site. That is in the sense that they appeared elevated above that escarpment as a disruption to its legibility. Unlike the Upper Terrace, however, the North-west Terrace is quite undulating. As we have noted, that is a feature that would appear to be advantageous for accommodating sensitively designed development.

[147] However, the front-facing escarpment of the North-west Terrace is closely proximate and overlooks the Shotover River/Kimiākau ONF. Standing on that part of the Site on our site visit, we were able to better appreciate Ms Gilbert's concerns. The risks of degradation to landscape character extend beyond LCU 4 to the Basin as a whole. That is because of the high value placed on that ONF and the increased exposure that will arise through enhancement to the Trail, including the new swing bridge. We find this risk needs to be effectively addressed through the PDP. We do not agree that it would be appropriate to simply rely on the directions given in PDP policies for consenting processes to manage it.

[148] Of the various options available in those terms, we find on balance that the 100m setback is the most appropriate. Insofar as the Middletons are correct that there is landscape capacity to have some sensitive and well-designed development within 100m of that escarpment, that is not excluded from consideration. We make clear that we make no evidential finding to exclude of that possibility. In those terms, we acknowledge that the landscape sensitivities we have described do not necessarily run for the full extent of the escarpment as depicted on Ms Gilbert's JWS-Planning (2) landscape capacity plan. That is a tool based on

geomorphology, not visual sensitivity per se. We recognise that the specification of a 100m setback would mean that any development proposal for that part of the Site within that setback would be rendered non-complying. However, in terms of upholding the intentions of the WBRAZ, we find that appropriate. That is in the fact that it would mean any such proposal would be carefully scrutinised for its effects and whether it would be contrary to relevant PDP objectives and policies.

[149] For completeness, we have considered but find inappropriate the alternative of assigning a different landscape capacity to the northernmost end of the North-west Terrace. No party invited that approach in their closing submissions. In any case, we agree with QLDC that it would be problematic. Whilst assigning different capacities to each of the Terraces adds some complexity to Sch 24.8, complicating LCU 4 further in those terms for a particular Site goes too far in our judgment.

[150] Therefore, we find, with reference to the escarpments shown on JWS-Planning (2) landscape capacity plan:

- (a) for the North-west Terrace, the 100m escarpment setback standard recommended in the JWS-Planning (2) is the most appropriate for achieving relevant PDP objectives and policies;
- (b) for the Lower Terrace, the 50m escarpment setback standard recommended in the JWS-Planning (2) is the most appropriate in those terms.

Subdivision – discretionary without change to the PDP notification regime

The evidence

[151] The JWS-Planning (2) records the planners agree that subdivision of the North-west Terrace should be a discretionary activity. All agreed that is subject to achieving the specified densities. Messrs Geddes and Kyle further record that discretionary activity status would be appropriate in that it would engage with

proposed Pol 24.2.1.5 and all other relevant WBRAZ policies under Obj 24.2.1. Their positions are recorded as being subject to their opinions on other PDP provisions, as we have discussed.⁵³

[152] With respect to the Lower Terrace, Messrs Geddes and Kyle consider that restricted discretionary activity status is more appropriate. That is partly because it has a landscape capability rating of Moderate-High. They consider the relevant matters to which discretion is restricted and related assessment matters, under PDP rr 24.4.6, 24.7.5, 27.5.9 and 27.9.3.3 are comprehensive and impose a stringency of assessment that is commensurate with this landscape capacity. However, they flag that there would need to be some drafting refinements to those rules so as to encapsulate the Lower Terrace.

[153] Messrs Barr and Farrell recommend that discretionary activity status apply also to the Lower Terrace, rather than restricted discretionary. They acknowledge the Moderate-High landscape capacity of the Lower Terrace. However, they note that rejection of Precinct zoning of this Terrace reflects its landscape sensitivities, including its proximity to ONF/Ls and potential for development to be highly visible from public places. They also comment that providing a bespoke restricted discretionary classification for subdivision on the Lower Terrace would be “unwieldy and inefficient” in terms of the overall PDP design.⁵⁴

[154] Mr Farrell points out that, as PDP Ch 27 is presently designed, restricted discretionary subdivision outside wāhi tūpuna would not require consideration of effects on Manawhenua values. He recommends that, should the court favour restricted discretionary activity classification for subdivision on the Lower Terrace, the rules should be amended so as to encompass consideration of those effects.⁵⁵

[155] As an alternative approach, if the court prefers discretionary activity status

⁵³ JWS-Planning (2), at [10.1].

⁵⁴ JWS-Planning (2), at [10.3] – [10.4].

⁵⁵ JWS-Planning (2), at [10.5].

for the Lower Terrace, Messrs Kyle and Geddes recommend a change to rules on notification with respect to the Lower Terrace only. In their opinion, non-notification is appropriate given the Moderate-High landscape capacity of this Terrace. That would be by way of amendment to PDP rr 24.6 and 27.10. They note this would be consistent with how the PDP applies to Precinct-zoned land with the same landscape capacity.⁵⁶

[156] Messrs Barr and Farrell consider that would not be an appropriate change to the PDP's notification regime. Mr Barr points out that does not preclude the possibility of non-notification if appropriate. Rather, it would subject consideration of that to s95 RMA processes. He considers that appropriate as a further check in ensuring proper consideration of the amended Pol 24.2.1.5.⁵⁷ Consistent with his concerns about the importance of consideration of Manawhenua values, Mr Farrell considers that, in the event the court decides that there should be an amendment to the PDP notification regime, that should be qualified so as to allow for limited notification to allow for consideration of effects on Manawhenua values.⁵⁸

[157] Finally, the planners note that, should discretionary activity status be assigned to subdivision on the Site, there should be an amendment to r 27.5.19A (in Ch 27). Mr Barr proposes that this be by way of the following specification of LCU 4 in the list of LCUs to which this discretionary activity rule applies:

LCU 4 limited to the area identified as the Tucker Beach Road West Lower Terrace and Northwestern Terrace areas.

Submissions

[158] Closing submissions reflect the theory of those different perspectives of the

⁵⁶ JWS-Planning (2), at [12.7].

⁵⁷ JWS-Planning (2), at [12.8].

⁵⁸ JWS-Planning (2), at [12.9].

planning experts.

[159] QLDC submits there is no compelling landscape justification to depart from a discretionary activity classification. Counsel refer to observations in *Barnhill Corporate Trustee Ltd v Queenstown Lakes District Council* (on Topic 30) that the sensitivity of modified-WBRAZ areas “... makes it important that all policies have full effect in order to achieve Obj 24.2.1 and SO 3.2.5.3, SO 3.2.5.8” and to the effect that restricted discretionary activity matters “would be inherently and unduly restrictive of the application of relevant policies”. Furthermore, counsel submit that policy considerations weigh strongly against any restricted discretionary activity classification for the Lower Terrace. That is in the sense that it would add a further tier to the “four-tier framework” for the WBRAZ confirmed by the court’s Topic 30 decisions.⁵⁹

[160] Similarly, QLDC opposes any change to the PDP’s notification regime. It submits the case offered for this change by Messrs Geddes and Kyle is based purely on a landscape capacity analysis rather than proper scrutiny of the four-tiered design of the WBRAZ framework including its other relevant objectives and policies. It notes those provisions apply in different ways depending on whether a site is zoned WBRAZ or Precinct.⁶⁰

[161] For substantially similar reasons, the Society’s position aligns with QLDC on these matters.⁶¹

[162] Mr Matheson and Ms Macdonald submit that QLDC overlooks the fact that the Lower Terrace is the only area, if zoned modified WBRAZ, that would be rated as having Moderate-High landscape capacity. Furthermore, they point out that there is opportunity to decline consent to a restricted discretionary activity. That is particularly in the sense that the Lower Terrace will be a “blank canvass”

⁵⁹ Closing submissions for QLDC, dated 21 May 2024, at [6.3], [6.4].

⁶⁰ Closing submissions for QLDC, dated 21 May 2024, at [6.6] – [6.8].

⁶¹ Closing submissions for the Society, dated 7 May 2024, at [10] – [17].

within which “lot boundaries and building platform placement will have to be justified with reference to policy”. That includes bespoke Pol 24.2.1.5.a, and relevant assessment matters, including those addressed to adjacent ONF/Ls. As for the alternative of a non-notification regime, counsel submit that this should not affect how applications are assessed against applicable objectives and policies.⁶²

[163] Counsel for the Middletons also observe that the most sensitive part of the Lower Terrace visually is the north-western tip, (which is subject to a BRA), and the edge of the reserve escarpment (from which development is to be set back a minimum of 50m). They point out that breach of related standards would trigger non-complying activity status.⁶³

Evaluation

[164] For a number of reasons, we find the most appropriate planning outcome on these matters is for full discretionary activity status to apply to both the North-west and Lower Terraces without any amendment to the PDP’s notification regime.

[165] Under the design of the WBRAZ, the landscape capacity ratings prescribed in Sch 24.8 have significance as a measure in determining whether subdivision or development is appropriate in terms of the zone intentions. That is especially outside the Precinct areas. These ratings are intended to serve the zone intentions as to the maintenance of landscape character and maintenance or enhancement of visual amenity values. For instance, Pol 24.2.1.1 is to the effect that landscape capacity of areas outside the Precinct “to absorb subdivision and residential development” is to be identified in Sch 24.8 according to its six-point scale. The scale essentially operates as an evaluative measure of relative capacity.

⁶² Closing submissions for the Middletons, dated 7 June 2024, at [3.24] – [3.32].

⁶³ Closing submissions for the Middletons, dated 7 June 2024, at [3.32].

[166] Moderate-High is the second highest capacity on that scale. Mr Matheson and Ms Macdonald point out that the Lower Terrace of the Site can be distinguished as the only area outside the Precinct with such a rating. However, their closing submissions, and the associated opinions of Messrs Kyle and Geddes, place undue reliance on that rating for their argument on the appropriate activity classification for subdivision on the Lower Terrace.

[167] As is explained in its introductory text, Sch 24.8 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”. Similarly, while landscape capacity ratings have importance in the application of WBRAZ policies, they are not themselves policies. Nor does a greater relative prescribed landscape capacity in Sch 24.8 necessarily justify modification to WBRAZ activity classification rules in order that those rules properly assist to achieve or implement WBRAZ policies.

[168] Ascribing a Moderate-High landscape capacity to the Lower Terrace will provide greater opportunity to pursue relatively higher residential development densities than in parts of the WBRAZ rated lower in Sch 24.8. For example, even for a discretionary activity, a Moderate-High rating (as opposed to the current rating of ‘Low’) would mean Pol 24.2.1.4 would not apply. That includes its directions for subdivision or development to:

- (a) avoid sprawl along roads;
- (b) maintain a defensible edge to and not encroach into any area identified as having Moderate-low, Low or Very Low landscape capacity rating;
- (c) minimise incremental changes to landform and vegetation patterns associated with mitigation which adversely affect important views of the landform and vegetation character identified for relevant LCUs; and
- (d) not degrade openness when viewed from public places if that is

identified as important in Sch 24.8.

[169] However, notwithstanding that rating, several other WBRAZ policies would remain applicable for the consideration of discretionary activities. That is part of an overall intention to assist to implement the zone objectives, including for landscape character and visual amenity values. For example, that would potentially include:

- (a) Pol 24.2.1.6 on design (including of accessways, services, utilities and building platforms) to minimise inappropriate modification to the natural landform;
- (b) Pol 24.2.1.7 on maintaining or enhancing the landscape character and visual amenity values identified in Sch 24.8 LCUs;
- (c) Pol 24.2.1.8 on controlling the colour, scale, form, coverage, location (including setbacks) and height of buildings and associated infrastructure, vegetation and landscape element;
- (d) Pol 24.2.1.9 on requiring buildings to be located and designed so that they do not compromise the landscape and amenity values and the natural character of ONF/Ls that are either adjacent to the building or where the building is in the foreground of views from a public road or reserve of the ONF/L.

[170] A key purpose of restricted discretionary activity classification is that it restricts what is able to be considered in the determination of the related consent application. That is by way of prescribed limits in the relevant plan rule. Those restrictions can, therefore, operate to exclude the application of policy directions that would be relevant to consideration of a full discretionary activity.

[171] Notwithstanding our Moderate-High landscape capacity rating of the Lower Terrace, we have no sound evidential basis to adjudge that any of the priorities identified in Pols 24.2.1.6 – 24.2.1.9 would be unimportant for any future subdivision proposal. Nor do the Middletons' closing submissions offer assistance

on this.

[172] Therefore, we find that there is no sound basis to assign restricted discretionary activity classification to subdivision on the Lower Terrace. We prefer the opinions of Messrs Barr and Farrell in finding the most appropriate activity classification is discretionary.

[173] According to *Te Tangi a te Manu*, the New Zealand landscape profession's current guidelines for landscape assessment 'landscape' ('Guidelines'):

... embodies the relationship between people and place.

[174] That is a useful explanation of the construct of landscape, including for our purposes in considering what if any modifications should be made to the WBRAZ with respect to the Lower Terrace of the Site. In particular, both "landscape character" and "visual amenity values", as used in the WBRAZ, are related constructs. Each embodies the relationship between people and place. That is in the sense that:

- (a) 'landscape character' is intended to have its usual meaning, again drawing from the Guidelines "each landscape's distinctive combination of physical, associative and perceptual attributes", which effectively embodies a people and place relationship; and
- (b) 'visual amenity values' is a subset of the RMA concept of "amenity values", being "natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes", and hence also embodying that relationship.

[175] At the heart of the design of the WBRAZ is an intention that the landscape character of the Basin is maintained and visual amenity values are maintained or enhanced. As the Zone Purpose statement in 24.1 further explains, that is in a context in which there are areas of the Basin that are considered to have reached

or be 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”.

[176] The challenge in maintaining landscape character and maintaining or enhancing visual amenity values is that environments change. Hence, both landscape character and visual amenity are dynamic constructs, as part of a relationship between people and place. Changes in the perceptual and associative dimensions of landscape over time may influence how people respond to proposed changes that occur in it, including on the Lower Terrace of the Site. That is acknowledged, for example, in the following statement commencing Sch 24.8 pertaining to its descriptions of the various LCUs:

The descriptions also acknowledge that there will be change, through future development and use, particularly within the Lifestyle Precinct.

[177] Within the design of the WBRAZ, the regime concerning how applications for subdivision and development are treated in terms of public notification, limited notification or non-notification tracks is important. That is in the sense that it is relevant to the design intentions of the WBRAZ in regard to the maintenance of landscape character and maintenance or enhancement of visual amenity values. That is, insofar as environments and landscapes change, so does the relationship of people and place. Submissions on applications can serve to help the consent authority gauge that relationship at the relevant time. That can help resource consenting to assist to fulfil the intentions of the WBRAZ.

[178] Therefore, we are not persuaded by the Middletons’ closing submission that the consent assessment process can be necessarily relied upon to bring relevant landscape matters to light under a prescribed non-notification regime.

[179] As the WBRAZ is currently designed, non-notification is prescribed for controlled and restricted discretionary activities (subject to some specified

exceptions). Non-notification for those activity classes can be understood to not offend intentions of the WBRAZ in the fact that those classes significantly prescribe what is to be considered (including leaving aside consideration of various policies as to landscape character and visual amenity values).

[180] However, as we have discussed, we do not have a sound evidential basis to adjudge that any of the priorities identified in several WBRAZ policies on landscape character and visual amenity values would be unimportant for any future subdivision proposal for the Lower Terrace.

[181] As for Mr Farrell's observations concerning Manawhenua values, we did not receive authoritative evidence that would enable us to safely conclude that those values could be addressed by simply providing for limited notification.

[182] Rather, we find the most appropriate regime for these matters is that provided under s95A RMA. In essence, that allows for properly-informed contextual judgements on all matters to be made in the determination of whether any application would be publicly notified, limited notified or non-notified.

[183] Therefore, we find that:

- (a) discretionary activity classification is the most appropriate for subdivision on both the North-west and Lower Terraces:
- (b) no change is appropriate to the PDP's consent application notification regime.

Conclusion and directions

[184] Insofar as we find that modifications should be made to the WBRAZ for the North-west and Lower Terraces of the Site and associated changes be made to Sch 24.8: LCU 4, the appeal is allowed in part.

[185] QLDC is directed to file a memorandum, **within 15 working days of the date of this decision** to report on when it is anticipated that a final set of provisions for the court's approval for inclusion in the PDP can be filed. Directions on that will be by Minute, in light of that memorandum.

[186] Costs are reserved, although parties are reminded of what the court's Practice Note 2023 sets out with respect to those matters. Any party seeking costs must confer with others before proposing a timetable, by memorandum to be filed **within 15 working days of the date of this decision**.

[187] Leave is reserved to any party to seek further or amended directions on those matters, by memorandum to be filed **within 15 working days of the date of this decision**.

For the court:



J J M Hassan
Environment Judge



Annexure 1

Relevant objectives and policies

[1] The relevant PDP objectives are in Chs 3 (Strategic Direction), 24 (Wakatipu Basin) and 27 (Subdivision and Development). As the geographic focus is the Wakatipu Basin, those objectives and policies pertaining to that locality have particular significance.

Ch 3: Strategic Direction

[2] Strategic objective SO 3.2.5.8:

Within the Wakatipu Basin Rural Amenity Zone:

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

[3] Ch 3 includes an associated definition of ‘landscape capacity’ that relevantly states:

- b. ‘Landscape capacity’:
 - ...
 - 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.

Chapter 24 – Wakatipu Basin

24.1 Zone Purpose

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

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

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

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

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

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

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

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

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

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

Obj 24.2.1

[5] This objective is:

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

Policies to achieve and implement Obj 24.2.1

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

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

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

24.2.1.2 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 the landscape capacity is not exceeded.

24.2.1.3 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 as identified in Schedule 24.8 is maintained or enhanced by ensuring that landscape capacity is not exceeded.

- 24.2.1.4 Within those areas identified as having a landscape capacity rating of Moderate, do not allow any new residential development and subdivision for residential activity that is not located and designed so as to:
- a. avoid sprawl along roads;
 - b. maintain a defensible edge to and not encroach into any area identified as having Moderate-Low, Low or Very Low landscape capacity rating;
 - c. minimise incremental changes to landform and vegetation patterns associated with mitigation such as screen planting and earthworks which adversely affect important views of the landform and vegetation character identified for the relevant Landscape Character Units in Schedule 24.8; and
 - d. not degrade openness when viewed from public places if that is identified in Schedule 24.8 as an important part of the landscape character of the relevant area, including as a result of any planting or screening along roads or boundaries.
- 24.2.1.5 Ensure the following outcomes in the consideration of any proposal for subdivision or residential development:
- a. *[left intentionally blank]*
- ...
- 24.2.1.6 Ensure subdivision and development is designed (including accessways, services, utilities and building platforms) to minimise inappropriate modification to the natural landform.
- 24.2.1.7 Ensure that subdivision and development maintains or enhances the landscape character and visual amenity values identified in Schedule 24.8 - Landscape Character Units.
- 24.2.1.8 Maintain or enhance the landscape character and visual amenity values of the Rural Amenity Zone including the Precinct and surrounding landscape context by:
- a. controlling the colour, scale, form, coverage, location (including setbacks) and height of buildings and associated infrastructure, vegetation and landscape elements.

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

Schedule 24.8

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

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

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

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

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

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

Ch 27 Subdivision and Development

[9] The Ch 27 objectives and policies are primarily directed towards the more

specific intentions of subdivision design and control. These provisions effectively apply subject to the strategic directions in Ch 3 and the directions given in regard to landscape and visual and other amenity values concerning the Wakatipu Basin in Ch 24. Nevertheless:

(a) Obj 27.2.1 is:

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

(b) Obj 27.2.2 is:

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

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

Annexure 2

Preliminary observations following testing of evidence and site visit⁶⁴

...

[1] In light of the testing of the landscape and planning evidence, and our site visit, we are in a position now to give an indication of what is emerging as the most appropriate zoning outcome for the Site. That indication is subject to closing submissions.

[2] As parties identified in submissions, the key determinative issue concerning zoning outcome is as to landscape capacity, and in particular what is the most appropriate for maintaining landscape character and maintaining or enhancing visual amenity values. There are of course a range of other matters for consideration, but those are the key issues in a determinative sense. Related to both are the intentions of the PDP, more specifically the Wakatipu Basin Rural Amenity Zone (or WBRAZ), including its Precinct provisions. There is a further landscape issue in that the Site abuts an Outstanding Natural Feature and Outstanding Natural Landscape and is in relatively close proximity to the Shotover River, itself an ONF.

[3] Our Site visit was helpful in giving context to the opinions we heard, particularly of the landscape experts.

[4] Where there is a lack of any clear evidential basis or explanation for assumptions, those matters weigh significantly against the reliability of evaluative opinion on landscape matters. The court is also mindful that what we have now been asked to consider is one of several zoning iterations that have been proposed for the Site. The clear trend in those iterations has been of increasing acknowledgement of the intentions of the PDP.

[5] Starting with **landscape capacity**, an initial observation we make is that the Site has this important relationship to outstanding natural features and landscapes in the immediate environs. Those are both in the framing hills and the river. This context informs our consideration of LCU 4, the relevant landscape character unit. We observe there are three relatively distinct capacities or capabilities, with respect to development, as those terms are used in Schedule 24 of the plan:

⁶⁴ Transcript, pp 278 – 282.

- (a) for the *Upper Terrace, Low*, given its proximity to the ONF and its strong perceptual and geomorphological association with it, its elevation and associated visual exposure;
- (b) for the *North-west Terrace, Moderate*, due to the greater relative distance from the ONL, its relatively more undulating terrain (allowing for more sensitive design treatment) and its lower relative elevation and hence visual exposure; and
- (c) for the *Lower Terrace, Moderate-High*, but noting that this assumes that the narrow Western end would not be suitable for housing development given its close and important exposure to the new trail bridge.

[6] It can be noted that we resist trying to isolate out specific components or areas within the Site, such as escarpments or parts of a Terrace, for a different capacity rating as that is not in accordance with sound landscape practice.

[7] Turning now to **zoning and provisions** and some related issues concerning them. The evidence leads us to our preliminary view that WBRAZ is preferable for the Upper and North Western Terrace, perhaps modified in the case of the second terrace, by contrast to Precinct.

[8] For the *Lower Terrace, modified WBRAZ* is emerging as more appropriate, namely WBRAZ with a Moderate to High rating that includes prescribed minimum lot and minimum average lot sizes.

[9] But in each case, that is subject to some matters of detail as we now discuss.

[10] We are very mindful of the transitional role that this Site needs to play to ensure PDP integrity. It is not plausible to envisage it as a natural extension of what we see nearby in that land use pattern – in its relative intensity – as it is not in keeping with the proposed plan’s intentions for the Basin and nor for ONLs or ONFs.

[11] Any development of the *Upper Terrace* should best be a matter for consenting processes under the PDP as it is designed with respect to the **WBRAZ** including with regard to the intentions for LCU 4.

[12] We do not at this stage consider there is a justified basis for making adjustments to the WBRAZ regime for this part of the Site. That does not mean no development. Rather, the evidence does not justify to us at this stage any basis for departing from how the PDP objectives, policies and rules are intended to apply when considering applications for subdivision and

development.

[13] Any development of the *North-west Terrace* should similarly be best considered on the basis of the *WBRAZ* zoning, *perhaps modified, at the consenting stage*. However, we acknowledge its different characteristics from the Upper and Lower Terraces. And hence, our rating of Moderate and comment is come to shortly about potential modification.

[14] The *Lower Terrace* on balance justifies a *modified WBRAZ treatment*, according to its Moderate-High development capacity. We are not presently persuaded that it would warrant upzoning to Precinct. In essence, it would appear to go beyond the evidence to do that, particularly guided by Ms Gilbert's opinions on points of difference from Mr Espie and Mr Brown.

[15] It is important, when considering *rules on minimum and average lot sizes*, to understand, as I said, the Site fulfils a transition purpose in landscape terms. That is, the approach must seek to ensure plan integrity in the face of adjacent established development that does not accord with the change of philosophy in the plan. That tends to support a more limited development capacity rather than a more generous one.

[16] Turning to *setbacks and building restriction areas*. Our preliminary view on the evidence is that the Upper Terrace is best left without specification of setbacks or BRAs. Rather, it can be simply treated according to the *WBRAZ* regime. That allows for the usual objectives, policies and rules to give guidance and direction on all matters, including both landscape and natural hazard aspects.

[17] Similarly, our present view is that we do not need to have a structure plan for setbacks on the North-west Terrace, but rather rely on what the proposed district plan provides for. That is on the assumption that Ms Gilbert's setback illustration is all contained within the lower terrace part of the site.

[18] Turning to the question of use of *rules and structure plans*. Our preliminary thinking is that there is little if any residual purpose in having a structure plan for any part of the Site. That is in particular because of these four reasons:

- (a) we do not have sufficient evidence to make determinations on lot configurations or building platforms or roading layouts, hence greater flexibility in each of these matters in the PDP is more efficient and appropriate;

- (b) we are not confident that the vegetation management plan regime is sufficient or appropriate or indeed that it may continue to remain current for the purposes of considering development consents. Hence, this is best left to the consenting stage;
- (c) landscape setbacks for the Lower Terrace, to supplement the 50m setback regime in the proposed plan is more clearly and simply addressed by rules; and
- (d) that is also the case for ecology and riparian management.

[19] Turning to *rules for minimum lot sizes and minimum average lot sizes*. On the basis of the landscape and other evidence, our preliminary views are as follows (on the basis of the zoning outcomes we have discussed):

- (a) the Upper Terrace – the usual regime should apply including the 1 in 80 ha regime;
- (b) North-west Terrace – we acknowledge a Moderate landscape capacity. It could tolerate more than the 1 in 80 ha regime on that basis. However, that should be materially less dense than either Precinct or our modified WBRAZ preliminary views on density for the Lower Terrace. We invite closing submissions on those matters for the North-west Terrace, as we discuss shortly;
- (c) Lower Terrace – our preliminary view subject to closing submissions is a minimum of 7000m² and a minimum average of 1.5 ha.

[20] So just to **conclude**, before we hear from counsel and then make directions for the purposes of adjournment. Our thinking on those, subject to what we might hear shortly, is:

- (a) we give direction for further planning conferencing, to provide updated opinions on planning outcomes reflective of these preliminary observations (reserving however, the primary opinions of the experts as stated in the evidence);
- (b) probably, on that basis, we do not need to reconvene a hearing; and
- (c) we could then receive sequential closing submissions, including on the matter of the North-west Terrace as I noted, with the appellants getting final say.

[21] We note that these preliminary findings or preliminary observations closely compare with the case offered by the council, with some adjustments perhaps for the North-west Terrace. As such, it is appropriate we signal that we would anticipate reservation of costs and that these are matters that could usefully be discussed between parties in the meantime.

[22] So everyone, those are the court's preliminary views, the line of travel subject to closing submissions. They don't represent final findings, they represent preliminary views and

observations. However, you need to understand that in this process of consideration, it has obviously followed the court's careful consideration of the written evidence and the testing of evidence through the proceeding.

Annexure 3

Associated findings on modifications to the WBRAZ with respect to the North-west and Lower Terraces

Pol 24.2.1.5 as to outcomes

[1] PDP Pol 24.2.1.5 is to be amended by the addition of the following subclause a. (or equivalent) (in place of the bracketed text):

- a. In LCU 4 described in Schedule 24.7 as the ‘Tucker Beach Road West Lower Terrace and Northwestern Terrace’ areas:
 - i. maintain a predominant sense of rural character, recognising the transitional role the site plays to the Outstanding Natural Landscape mountain context and the Kimiākau (Shotover River) Outstanding Natural Feature; and
 - ii. minimise the visibility of development from:
 - a. the Shotover River, Tucker Beach Road, Tucker Beach Reserve, Hansen Road, Littles Road, Domain Road; and
 - b. the Queenstown Trail and the Fitzpatrick Road Trail link;... .

PDP rr 24.5.1.6 and 27.6.1 as to density and minimum lot size standards

[2] PDP r 24.5.1.6 on non-complying activities is to be amended by the addition of the following (or equivalent):

24.5.1.6.1 LCU 4 limited to the area identified as the Tucker Beach Road West Lower Terrace area: 7,000m² and 1.5 ha average.

24.5.1.6.2 LCU 4 limited to the area identified as the Tucker Beach Road West Northwestern Terrace area: 4,000m² and 2 ha average.

[3] PDP r 27.6.1 as to standards for minimum lot areas as pertaining to the WBRAZ is to be amended by the addition of the following to the table (or equivalent):

LCU 4 limited to the area identified as the Tucker Beach Road West Lower Terrace area	7000m ² minimum and 1.5 ha average
LCU 4 limited to the area identified as the Tucker Beach Road West Northwestern Terrace area	4000m ² and 2 ha

PDP rr 24.5.10 and 27.7.19 on setbacks

[4] Rule 24.5.10 is to be amended by the addition of the following (and consequential renumbering) (or equivalent):

24.5.10.2 Outside of the Lifestyle Precinct and within the Tucker Beach Road West Lower Terrace area, buildings shall be set back a minimum of 50m from the boundary of the Escarpment Feature shown on the District Plan web mapping application.

24.5.10.3 Outside of the Lifestyle Precinct and within the Tucker Beach Road West Northwestern Terrace area, buildings shall be set back a minimum of 100m from the boundary of the Escarpment Feature shown on the District Plan web mapping application.

[5] Rule 27.7.19 is to be amended by the addition of the following (or equivalent):

27.7.19.2 Outside of the Lifestyle Precinct and within the Tucker Beach Road West Lower Terrace area, buildings shall be set back a minimum of 50m from the boundary of the Escarpment Feature shown on the District Plan web mapping application.

- 27.7.19.3 Outside of the Lifestyle Precinct and within the Tucker Beach Road West Northwestern Terrace area, buildings shall be set back a minimum of 100m from the boundary of the Escarpment Feature shown on the District Plan web mapping application.

PDP r 27.5.19A on discretionary activity subdivision

[6] PDP r 27.5.19A is to be amended by the addition of the following (or equivalent):

- a. LCU 4 limited to the area identified as the Tucker Beach Road West Lower Terrace and Northwestern Terrace areas.

PDP Sch 24.8

[7] Subject to the following, that part of PDP Sch 24.8 as pertains to LCU 4 is to be amended according to the drafting provided with QLDC's closing submissions. Insofar as those amendments go beyond the scope of relief in the Middletons' appeal, we find they are appropriate as consequential technical refinements to the PDP.

[8] The existing PDP Sch 24.8 text for LCU 4 is to be modified to the effect that, in the second column alongside "Capacity to absorb additional development", the text is to be amended according to the following tracking (or equivalent):

Very low: Precinct zoned land at the eastern end of the unit where a Building Restriction Area applies.

Low:

- Except as provided below, the western portion of the unit;
and
- In the Central portion of the unit:

- Above the 400m contour;
- That corresponds to the undeveloped terraces and escarpments along the northern side of the unit and adjacent to the river.

Moderate-Low: Tucker Beach Road West: Northwestern Terrace as identified on the District Plan web mapping application.

Moderate-High:

- Tucker Beach Road West: Lower Terrace as identified on the District Plan web mapping application; and
- The Precinct Zoned land throughout the balance of the central and eastern end of the unit.

