

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ

Decision No. [2021] NZEnvC 189

IN THE MATTER

of the Resource Management Act 1991

AND

an appeal under clause 14(1) of the
First Schedule of the Act

BETWEEN

BRIDESDALE FARM
DEVELOPMENTS LIMITED

(ENV-2019-CHC-097)

Appellant

AND

QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner M C G Mabin

Hearing: at Queenstown on 30 September 2021

Appearances: W Goldsmith for the appellant
M G Wakefield and L Young for the respondent

Last case event: 19 November 2021

Date of Decision: 3 December 2021

Date of Issue: 3 December 2021

DECISION OF THE ENVIRONMENT COURT
Stage 2: Topic 31 – Bridesdale



A: The appeal is declined. Rural zoning is confirmed for the appeal site.

B: Costs are reserved and a timetable is set.

REASONS

Introduction

[1] This decision is on ‘Topic 31’ in Stage 2 of the review of the Queenstown Lakes District Plan (‘PDP’). It concerns an appeal by Bridesdale Farm Developments Limited (‘BFDL’).¹ BFDL and Queenstown Lakes District Council (‘QLDC’) are the only parties.²

[2] BFDL owns a 0.5164 ha area of land (part of Lot 406 DP505513) that borders Hayes Creek Road, Bridesdale (‘Site’). The notified PDP zoned the Site Rural. In its submission, BFDL sought a change to Medium Density Residential (‘MDR’) zoning and an extension of the Urban Growth Boundary (‘UGB’) to encompass the Site. That submission was declined. BFDL appealed and now seeks Lower Density Suburban Residential (‘LDSR’) zoning (subject to the inclusion of some provisions we discuss later in this decision).³ It continues to seek inclusion of the Site within the UGB.

The Site and environs

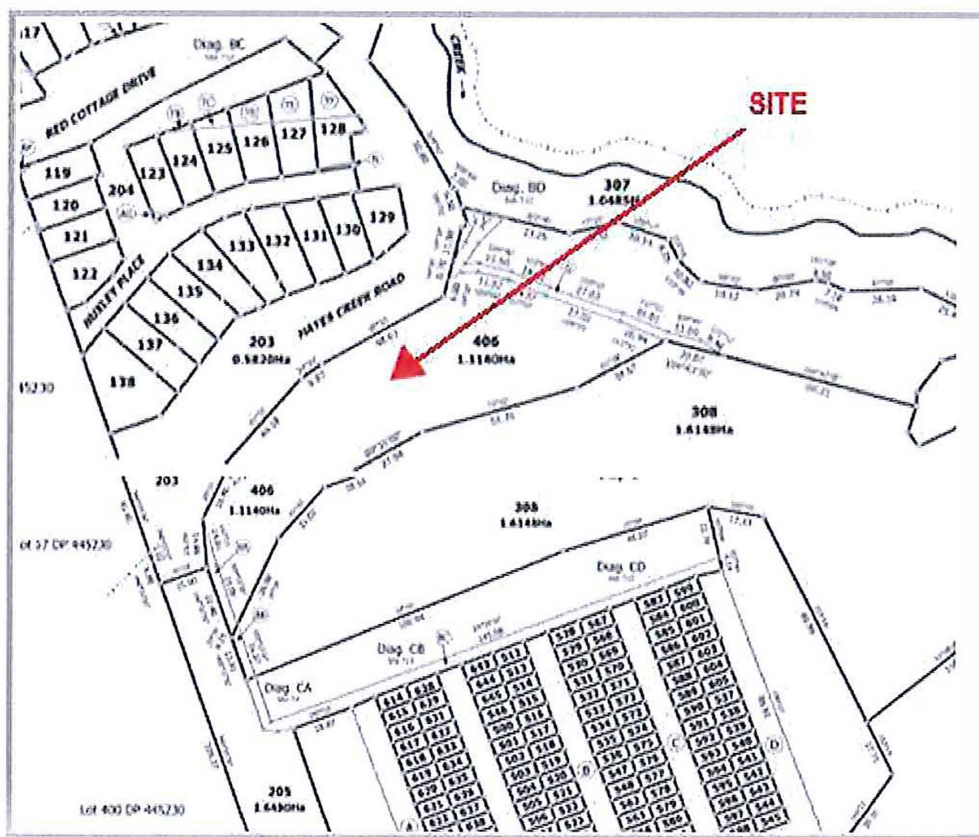
[3] The Site is broadly shown as follows:⁴

¹ ENV-2019-CHC-97, BFDL Stage 2 Appeal B (zoning), dated 7 May 2021.

² QAC and RPL/QPL withdrew as s274 parties by email of Rebecca Wolt for QAC withdrawing interest (19 March 2021) and RPL/QPL’s notice of withdrawal dated 24 September 2021.

³ Memorandum of counsel for the appellant, dated 27 September 2021 in response to directions in court Minute dated 23 September 2021.

⁴ J A Brown EIC, Fig 1.



[5] As Fig 2⁵ shows, the Site is within a mapped ‘ONF/L’ boundary, being the common boundary of the PDP’s ‘Kawarau River Outstanding Natural Feature’ (‘Kawarau River ONF’, ‘ONF’) and Northern Remarkables Outstanding Natural Landscape (‘Northern Remarkables ONL’, ‘ONL’).⁶ The Kawarau River ONF

6 The PDP does not separately map the boundaries of the Kawarau River ONF in the vicinity of the Site. Instead, it applies the same boundaries as the Northern Remarkables ONL within which the ONF is nested. As Fig 2 at [5] shows, this coterminous boundary encompasses Morven Hill. We understand from counsel that QLDC intends to address this anomaly by a future Plan variation or change that will realign the ONF boundary so as to not encompass Morven Hill.

centres on that river and its margins and extends from its Lake Wakatipu outfall through to the District's boundary at Roaring Meg. In the vicinity of the Site, the ONF/L boundary runs along a lower escarpment of the embankment and encompasses the floodplain below it. The embankment comprises several escarpments and terraces that, in geomorphological terms, mark the extent of a riverine waterbody in this locality, at different stages of geological time.⁷

Figure 2



⁷ So termed 'Judge and Judy Drive' on Fig 2 intends to refer to 'Judge and Jury Drive'.

[6] Initially, BFDL appealed against the location of the ONF/L boundary. Part of its original case to QLDC had been for the ONF/L boundary to be repositioned close to the Kawarau River margins. However, BFDL withdrew that aspect of its appeal. No other appeal challenges the ONF/L boundary and it is, therefore, treated as beyond challenge in these PDP appeal proceedings.

[7] As is illustrated in the following Figs 3 and 4,⁸ fingers of residential development undertaken for Lake Hayes Estate run over the crest of the embankment to some small terraces approximately halfway down its face. Several dwellings in Bridesdale rim its edge.

[8] Bridesdale was consented, in 2015, as a 'Special Housing Area' ('SHA') under special legislation that bypassed the RMA. The dwellings that rim the embankment have residential zoning and are within the UGB (which runs along the same lower escarpment contour line as the ONF/L).

Figure 3

Mellsop evidence, VP 4 Walkway on QLDC reserve looking north



⁸ H J Mellsop EIC, Attachment D, VP4 and VP 6.

Figure 4

Mellsop evidence, VP 6 Twin Rivers trail adjacent to carpark



Figure 5

Mellsop evidence, VP 3 south-western corner of rezoning appeal site looking north-east



[9] Hayes Creek Road was consented and constructed as part of Bridesdale and BFDL intends that it provide for access to dwellings on the 11 lots anticipated to be developed, should the Site be rezoned. As Figs 4 and 5 show, it runs behind the Site towards the floodplain and is sealed and channelled through to approximately the stormwater ponds and wetland area at the base of the embankment. That part of the road is vested in QLDC as public road.

[10] The stormwater ponds and wetland serve Bridesdale. Their margins are planted in native species to be maintained by BFDL in accordance with conditions of the Bridesdale SHA consent.⁹

[11] As Figs 1 and 2 show, just beyond the wetland is a grid of several small garden allotments bisected by access lanes. These are accessory freehold lots held by owners of dwellings in Bridesdale. Owners can grow vegetables and fruit trees. They can also build an implement or storage shed (10m² -20m² in area) and a few owners have taken up that opportunity to date. Some of the sheds are visible in Fig 5. We counted eight during our site visit, in addition to a concrete pad where a further shed appeared to be under construction. The sheds cannot include kitchen or ablution facilities, or be used for living accommodation.

[12] On the floodplain, Hayes Creek Road continues as a metalled private road to a carpark adjacent to the Twin Rivers trail. The floodplain has a predominantly relaxed rural character, signalled for example by gates and fencing, a hay barn and some stock yards. Some is presently used for grazing and bailage.¹⁰

[13] Much of the floodplain is vested in QLDC as informal recreation reserve and is designated for that purpose in the District Plan. There is also relatively large proportion owned by BFDL. BFDL has appealed against the Rural and 'Informal Recreation' zoning of much of this land, seeking a form of Open Space zoning

⁹ The empowering legislation, the Housing Accords and Special Housing Areas Act 2013, bypassed usual RMA processes.

¹⁰ H J Mellsop EIC, at [3.8].

that would allow for active recreation (including capacity to construct associated buildings and facilities) to serve the residents of Bridesdale and Lake Hayes Estate. Those aspects of its appeal are reserved from determination at this stage. However, we include in our consideration of the future environment the contingency of the present mix of rural and informal recreational usage evolving in time or in response to any zoning change.

[14] We were also informed that resource consent has been granted for a new ferry service that would include a terminal on the margin of the Kawarau River south of the Site. The service is intended to cater for passengers travelling between Queenstown and various points on Lake Wakatipu and the Kawarau River. However, on the evidence, we are not in a position to make any finding as to the relative likelihood of this service proceeding in the foreseeable future.

Site inspection

[15] The parties provided the court with a suggested site visit itinerary. As signalled to the parties, we undertook that visit during the afternoon prior to the hearing commencement. We addressed counsel on what we observed prior to opening submissions.

BFDL's modified relief

[16] BFDL modified its requested relief at various stages, including in its closing submissions.

Rezoning and UGB

[17] BFDL's notice of appeal sought a change from Rural to MDR zoning and inclusion of the Site within the UGB. Through its evidence-in-chief, BFDL

adjusted that to seek LDSR in place of MDR zoning¹¹ (then termed ‘Option B’, with the status quo Rural zoning being ‘Option A’).

Additional proposed policies and rules

[18] BFDL embellished this relief, firstly in its rebuttal evidence and again in its closing submissions, by seeking the inclusion of a policy and rules in the LDSR zone. Initially, this was in rebuttal evidence, in response to concerns raised by QLDC’s planning witness, Mr Langman. However, counsel’s closing submissions sought further changes to this modified relief.

[19] One set of changes was proposed in response to concerns raised by Mr Langman that the LDSR zone is not designed to protect ONF/L landscape values (by contrast to the Rural zone). On that matter, BFDL’s planning witness, Mr Jeffrey Brown, responded by proposing: ¹²

(a) a new Pol 7.2.1.7 as follows:

Ensure that development and associated landscaping on the land adjoining and below Hayes Creek Road is sympathetic to the immediate residential environment and landscape context by restricting the number of residential units, requiring external material and colour controls for buildings, and requiring that landscaping be in native species only.

(b) a companion r 7.5.22 that would render any building on the Site non-complying that did not comply with specified standards. These were as to the use of dark recessive colours in building, use of post and wire fencing, use of native species, achievement of 100% canopy

¹¹ Counsel for BFDL, Mr Goldsmith explained that this change was as a consequence of changes made by QLDC to the potential yield for MDR and LDSR zoning. In essence, those changes made it logical for BFDL to seek LDSR zoning as achieving broadly equivalent yield to what MDR zoning initially provided.

¹² J A Brown rebuttal, at [22], memorandum of counsel for the appellant, dated 8 October 2021, Appendix A.

coverage in the landscaping of identified Building Restriction Areas and restriction of vehicle access to Hayes Creek Road.

[20] In closing submissions, counsel for BFDL proposed that Mr J Brown's recommended new Pol 7.2.1.7 be replaced by new Pol 7.2.3.5 as follows:¹³

- 7.2.3.5 Ensure that development and associated landscaping on the land adjoining and below Hayes Creek Road protects the landscape values of the Outstanding Natural Landscape by:
- (a) promoting a residential density that reflects the developed density in the Medium Density Residential Zone above Hayes Creek Road;
 - (b) requiring external material and colour controls for all buildings;
 - (c) applying a Building Restriction Area, to be landscaped, outside the Urban Growth Boundary;
 - (d) requiring that landscaping be in native species only; and
 - (e) requiring that vehicle access is directly from Hayes Creek Road.

[drafting note: include additional Building Restriction Area on Planning Map]

[21] Counsel explained that this is with a view to achieving PDP Obj 7.2.3 (whereas the new Pol 7.2.1.7 would have been associated with Obj 7.2.1).

[22] A further change recommended by Mr J Brown was in response to concerns raised by Mr Langman that a LDSR rezoning could allow for up to seventeen residential units to be established on the Site as a restricted discretionary activity (as opposed to a maximum of eleven as intended by BFDL for the Site). Mr J Brown recommended a new rule r 7.4.8A to class as a non-complying activity the following if undertaken on the Site (in effect limiting likely development

¹³ Memorandum of counsel for the appellant, dated 8 October 2021, Appendix A.

capacity to 11 residential units):^{14, 15}

Residential Units where the density exceeds one residential unit per 450m² on the land adjoining and below Hayes Creek Road.

The updated ‘Options’ for consideration

[23] QLDC raises some issues of jurisdiction and procedural fairness concerning BFDL’s late refinements to its preferred relief. Subject to that, there are two broad ‘options’ before us by way of the potential outcomes of the appeal:

- (a) ‘Option A’ refers to confirming the Rural zoning (leaving the Site outside the UGB);
- (b) ‘Option B’ refers to BFDL’s now requested relief comprising:
 - (i) a rezoning of the Site to LDSR;
 - (ii) inclusion in the LDSR of the requested bespoke Pol 7.2.1.7 and rr 7.4.8A and 7.5.22;
 - (iii) inclusion of the Site (and intervening land) within a revised UGB.

[24] The following Fig 7, as provided by BFDL, helpfully illustrates the requested updated UGB as well as the proposed Building Restriction Area to be governed by the proposed new r 7.5.22.¹⁶

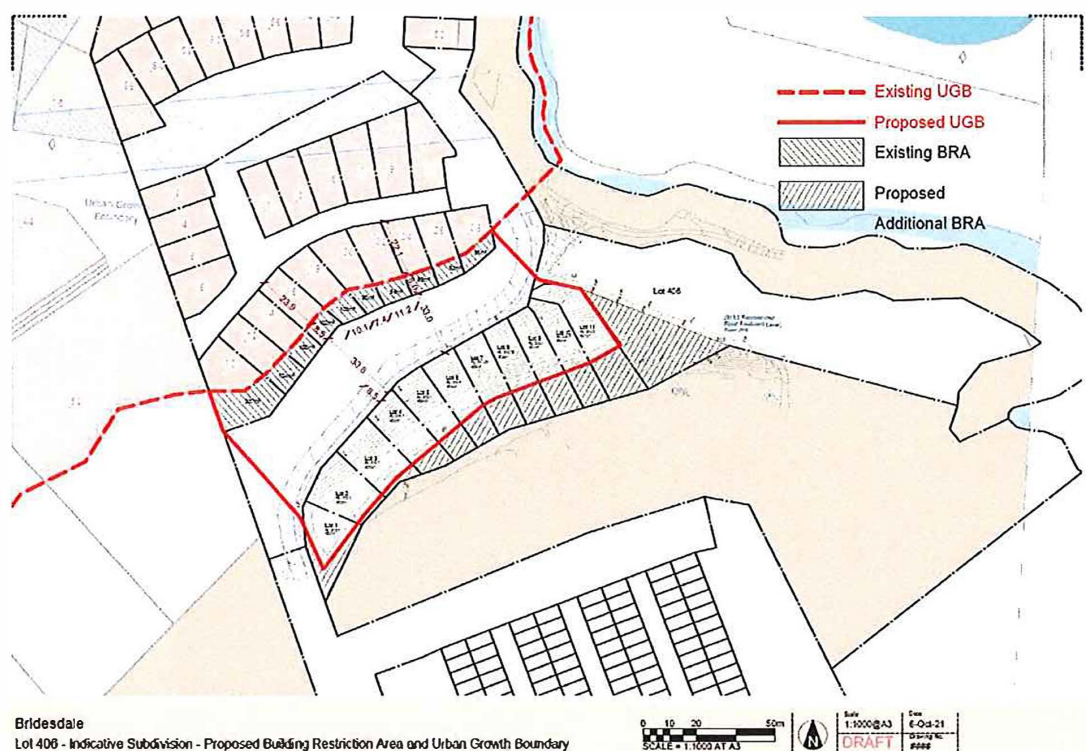
Figure 7

Existing and proposed UGB and proposed additional Building Restriction Area

¹⁴ Rule 7.4.8A was proposed in response to concerns raised by Mr Langman that a LDSR rezoning could allow for up to seventeen residential units to be established on the Site as a restricted discretionary activity (as opposed to a maximum of eleven as intended by BFDL for the Site).

¹⁵ J A Brown rebuttal, at [9].

¹⁶ Memorandum of counsel for the appellant, dated 8 October 2021, Appendix B.



The issues

[25] Prior to the hearing, in response to directions, the parties filed a joint memorandum as to issues.¹⁷ Drawing from that and accounting for the refined relief ultimately pursued by BFDL, we identify the following as the key substantive issues:

- (a) what are the ONF/L values that pertain to our consideration of the Site?
- (b) would Option B significantly degrade those values?
- (c) which of Option A or Option B is the most effective and efficient planning provision for the Site?
- (d) which of Option A or Option B is the most appropriate for achieving the relevant PDP objectives and assisting to implement its policies?
- (e) would Option B undermine the Plan's integrity and/or set an adverse precedent?

¹⁷ Joint memorandum dated 13 May 2021 at [6].

[26] Later in this decision, we also traverse the scope/jurisdiction and procedural fairness issues raised by QLDC as to the belated refinements BFDL pursue under Option B. However, we record that those matters are not determinative given that we find Option A is the most appropriate.

Statutory framework and related legal principles

[27] 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).¹⁸ We have regard to the appealed decision (s290A).

[28] In terms of the directions in s32, RMA, our evaluation is essentially concerned with which of Option A or Option B is the most appropriate for achieving relevant PDP objectives.¹⁹ Those objectives are now beyond challenge (including those to be included in the PDP in implementation of other Environment Court decisions in the review).

[29] Insofar as BFDL now seeks a bespoke new policy and rules, as additional LDSR provisions, we include them in our consideration of the most appropriate provisions for achieving relevant PDP objectives (s32(1)(b), RMA). We evaluate the requested rules under Option B with regard to the actual and potential effect on the environment of the activities they would enable, including any adverse effect (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.

[30] In addition to s32, RMA, other matters for consideration include the

¹⁸ We must have regard to that decision (which we extend to include the report and recommendation of the independent hearings commissioners that informed QLDC's decision) (s290A, RMA).

¹⁹ Even in its expanded form, encompassing the bespoke policy and rules, BFDL's relief concerns provisions to be evaluated for whether they are the most appropriate for achieving the relevant objectives.

provisions of pt 2, the territorial authority's functions (under s31, RMA) and national policy statements (s74(1) RMA).²⁰ However, it is unnecessary to report any further findings on those matters for the following reasons:

- (a) guided by the Higher Courts,²¹ we treat the relevant objectives and policies as already fleshing out and giving local effect to pt 2, such that it is not necessary to give those provisions further independent consideration. That was not a matter of contention. It is particularly in regard to matters concerning s6(b), (regarding ONF/Ls), s7(b) (regarding efficient use and development of resources) and s5 (sustainable management purpose), RMA;
- (b) we agree with the planners that most of the higher order policy instruments (i.e. the partially-operative Otago Regional Policy Statement ('pRPS'), the residual predecessor Otago Regional Policy Statement ('oRPS') and the National Policy Statement on Urban Development 2020 ('NPS-UD')) are already given effect to by the PDP.²² Mr Langman considers oRPS Pol 3.2.4 (as to the protection, enhancement or restoration of ONF/Ls and seascapes) warrants separate consideration.²³ Mr J Brown disagrees, as he interprets the PDP (particularly through Chs 3 and 6) as already sufficiently giving effect to this oRPS policy. We agree with Mr J Brown. In any case, we find the policy is materially closely similar in direction to what the PDP objectives and policies say. Hence, we do not discuss this oRPS policy further; and

²⁰ Section 74(1) lists other considerations including the New Zealand Coastal Policy Statement 2010, national standards and regulations and s25A directions, but none of these are relevant to the appeal.

²¹ In particular, *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 at [30]; *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [47], [50] – [51]; *Tauranga Environmental Protection Society Incorporated v Tauranga City Council* [2021] NZHC 1201 at [72] – [79].

²² Joint witness statement, dated 27 September 2021, at [10] – [11].

²³ Joint witness statement, dated 27 September 2021, Table 5.

- (c) we find QLDC's s31 functions are already sufficiently expressed through the various PDP provisions, including its objectives and policies and the various zone rules, maps and other provisions. In any case, we find nothing in those functions necessarily favouring or counting against either option. That is particularly given that the settled PDP objectives are to assist the carrying out of those functions. Consideration of QLDC's functions has some bearing however, on our consideration of whether the options maintain plan integrity. That is in the sense that any material loss of plan integrity negatively impacts on the exercise of QLDC's planning authority functions.

[31] Our evaluation accounts for any risks to District Plan integrity, bearing in mind the intentions that the PDP's objectives and policies seek to achieve. That encompasses consideration of whether Option B would set an adverse precedent.

The PDP objectives and policies and their relevant directions on the issues

[32] The planners differ to a relatively minor extent on what PDP objectives and policies bear upon the issues and their intended meanings. We set out the more pertinent provisions in the **Annexure**. How the directions in those provisions bear upon our decision very much turns on our findings on the landscape evidence, as we next discuss.

The landscape evidence

[33] We heard from two experienced landscape experts, Mr Stephen Brown for BFDL and Ms Helen Mellsop for QLDC. They each applied sound methodology and both impressed as reliable independent experts, including in their readiness to make appropriate concessions in cross-examination and court questioning. While we ultimately make our determinations as a matter of evaluative judgment, both experts significantly assisted us in those terms.

Methodology

[34] According to the sequence of evidence exchange, the primary landscape evaluation was offered by Mr Stephen Brown. Ms Mellsop largely critiqued that evaluation, as well as offering her own perspectives. Both witnesses gave proper regard to relevant PDP policies.

[35] Key components of their evaluations concern landscape ‘attributes’, ‘values’, and ‘capacity’. The following PDP definitions of those terms apply:²⁴

‘Landscape values’ in relation to any Outstanding Natural Feature, Outstanding Natural Landscape or Rural Character Landscape includes biophysical, sensory and associative attributes (and ‘values’ has a corresponding meaning);

‘Landscape capacity’ ... in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means the capacity of a landscape or feature to accommodate subdivision and development without compromising its identified landscape values.

[36] We understand each expert treats those concepts similarly and their methodologies are materially in accordance with related new Ch 3 Policy SP 3.3.38. It relevantly prescribes a methodology for the identification of landscape attributes (physical, sensory and associative), values and capacity as follows:

...

- a. identify the key physical, sensory and associative attributes that contribute to the values of the Feature or Landscape that are to be protected;
- b. describe in accordance with SP 3.3.43, and then rate, those attributes; and
- c. assess and record the related landscape capacity for subdivision, use and development activities including but not limited to: ... iii. urban

²⁴ Ch 3 3.1B.7.

expansions; ... v. earthworks; vi. farm buildings; ... viii. transport infrastructure; ix. utilities and regionally significant infrastructure; ... xii. rural living.

[37] The PDP does not presently specify the landscape attributes, values or capacity of any ONF/L. The court's 'Topic 2' decisions in the review identify this as a significant deficiency in the PDP.²⁵ Those decisions directed that a number of new provisions be included in the PDP, notably new Pol 3.3.36. This gives direction for schedules of ONF/L attributes, values and capacity be included in the Plan through plan change. These are for certain identified 'priority areas' (selected with input from QLDC and other parties by reference to matters such as development pressures).²⁶ The Kawarau River ONF and Northern Remarkables ONL are two of those prioritised areas. We are informed that landscape experts (including Mr S Brown) are underway with work to identify and specify their landscape attributes, values and capacity for the intended plan change processes. Both experts considered this work in preparing their evidence, as we later explain.

The relevant landscape 'unit' or 'reach' and landscape context

[38] As we have noted, the Kawarau River ONF is shown on the PDP maps as generally extending along the river from the Lake Wakatipu outlet to its district boundary at Roaring Meg. The Northern Remarkables ONL is even more extensive.

[39] The experts largely agree about the following general description of the landscape values of the ONF/L (including in the vicinity of the Site):²⁷

²⁵ Decision 2.1 [2019] NZEnvC 160 at [18], [246]; Decision 2.2 [2019] NZEnvC 205 at [272] – [273], [308] – [309]; Decision 2.3 [2019] NZEnvC 206 at [180]; Decision 2.4 [2020] NZEnvC 157 at [5] – [6], [30].

²⁶ In essence, based on development pressures and other factors, various ONF/L areas (including the Kawarau River ONF and Northern Remarkables ONL) were identified as 'priority areas' for this Sch 1 plan change process.

²⁷ S K Brown EIC, at [41], H J Mellsop EIC, at [4.11].

Particularly important views include ... Highly attractive close, mid and longer range views along the predominantly vegetation clad, river corridor. Vegetation and landform patterns together with the winding corridor serve to contain and frame views, contributing a highly variable albeit generally relatively enclosed character to the outlook. In places, the roche moutonnée of Morven Hill and/or the mountain slopes of the Remarkables add a sense of drama and grandeur. The dynamic river waters form a dominant visual element. ...

Generally, there is a high perception of naturalness throughout the river corridor by virtue of the dominance of the waterbody and its vegetated margins. Whilst boating activity and trails are evident in the corridor, these activities speak to the high recreational values of the ONF (see shortly). Where evident, structures are of a modest scale and/or sympathetic character and remain subservient to the more natural landscape. ...

Farm tracks, fencing, power lines, a 220kV transmission corridor and the margins of the Bridesdale and Lake Hayes Estate settlements are also evident. However, the confined, often intimate, nature of the river corridor limits exposure to such elements, creating a landscape that is highly picturesque, variable and aesthetically appealing.²⁸

[40] To evaluate the effects of Options A and B on the ONF/L landscape values, it is necessary to identify a relevant landscape ‘unit’ for evaluative purposes. The experts agree that this should be of an appropriate ‘reach’ of the Kawarau River, being the central focus of the Kawarau River ONF. They agree that this reach should be, in essence, the river and margins and the floodplain between an elongated knoll to the southwest and Morven Hill to the northeast and the enclosing escarpment (‘Landscape Unit’).²⁹ This is generally as shown in Fig 2.

[41] Ms Mellsop explained that the majority of Lake Hayes Estate (including

²⁸ The fact that there is a broad open floodplain between Bridesdale and the river is in some contrast to the reference in the third paragraph to the “confined, often intimate nature of the river corridor”. However, we understand this description refers more to the river corridor’s overall character.

²⁹ Transcript, p 29, l 8 – 32 (S Brown), p 72, l 1 – 27 (Mellsop).

Bridesdale SHA) is located on an alluvial terrace.³⁰ As we have explained, the ONF/L boundary runs along a lower escarpment of an embankment of that terrace. While the embankment appears as a singular feature when viewed at a distance, it is comprised of several small escarpments and intervening terraces that become more evident at closer viewpoints. Ms Mellsop explained that these were formed at various stages and courses of the river.³¹ Although neither expert offered evidence on when the lower escarpment would have last served as a containing riverine embankment, we accept it to have that historical geomorphological relationship to the Kavarau River and the intervening floodplain.

[42] For our evaluative purposes, we treat the Landscape Unit as encompassing the embankment in its entirety (whilst acknowledging that the ONF/L boundary is along its lower escarpment). The Landscape Unit, therefore, extends outside the ONF/L boundary back into land of Lake Hayes Estate and Bridesdale that is already developed for residential purposes.

The values of the lower escarpment of the ONF/L

[43] There was no dispute between the experts that the Twin Rivers trail is an important viewpoint for consideration of the relationship of the embankment to the remainder of the Landscape Unit. From that viewpoint, the experts generally agree that the embankment reads, as a whole, as a framing and enclosing feature. For example, Ms Mellsop acknowledged that, even if eleven houses are built on the Site, the embankment would remain a strong feature when viewed from the Twin Rivers trail.³² That is in the sense that it would continue to be perceived as rising up and enclosing the river corridor. In essence, we find the lower escarpment has limited, if any, legibility from that more distant perspective.

³⁰ H J Mellsop EIC, at [4.18] – [4.21].

³¹ Transcript, p 82, l 25.

³² Transcript, p 62, l 15 – p 63 l 32.

[44] Where the experts materially differ is on the significance, or otherwise, of closer viewpoints from where the lower escarpment emerges as clearly legible.

[45] Mr S Brown acknowledged that, from closer viewpoints, the lower escarpment “remains a legible feature”.³³ He accepted that, in relevant proximity to the Site, this ONF/L boundary extends at the same elevation “from the very corner of the mown lawn at 52 Judge and Jury Lane, ... then wraps around the front of those Bridesdale properties to the south of Huxley Place”.³⁴ He acknowledged that the only “built form” on the lower escarpment is Hayes Creek Road.³⁵ However, he does not read the escarpment on its own but as part of a “sequence of features” including terraces, where there is already residential development, at Huxley Place.³⁶ More particularly, he observed:³⁷

... at some places the top-lower terrace, from more close-up viewpoints, ... reads as the top of the escarpment. But then as you move away from that, back towards the river and even across the river, and even across the river, it’s quite clear that the escarpment goes beyond that edge. ... So it is in fact a sequence.

[46] He characterised the Site as being part of an area of “transition” in the sense of being an interface from the relatively unbuilt floodplain and lower scarp to the urbanised areas above the visible ridge of the escarpment.³⁸ As such, he does not regard as significant the fact that there is no development below the ONF/L line on the lower escarpment.³⁹

[47] Ms Mellsop regards the lower escarpment as “a clearly legible topographical boundary for the Kawarau River ONF corridor”.⁴⁰ She considers that rezoning

³³ Transcript, p 4, l 10 – 27.

³⁴ Transcript, p 12, l 18 – 21.

³⁵ Transcript, p 10, l 32.

³⁶ Transcript, p 11, l 19 – 20.

³⁷ Transcript, p 11, l 25 – 30.

³⁸ S K Brown EIC, at [14].

³⁹ Transcript, p 15, l 20 – 23.

⁴⁰ H J Mellsop EIC, at [4.21].

down the escarpment below the ONF/L boundary would amount to “obvious creep of urban development” “to that extent it would be more noticeable and attract attention because it would be the first change coming down that escarpment towards the floodplain”.⁴¹ She maintained that residential development of the Site would significantly reduce the naturalness of the scarp and obscure “lower viewpoints”.⁴²

[48] When questioned by the court, Ms Mellsoy confirmed that she puts more emphasis on her “closer viewpoints” as the lower escarpment is “more prominent” from them.⁴³ She clarified that she was not suggesting that those closer viewpoints are “more representative” than those from the Twin Rivers trail. Rather, in her opinion, they serve to illustrate that “visual enclosure formed by the lower escarpment varies depending on your viewpoint”.⁴⁴ Part of her explanation for why consideration of closer viewpoints is important was:⁴⁵

Previous development has slowly crept through resource consents and various processes down that series of escarpments from the upper terrace of Lake Hayes Estate but the ONF line has been located at a legible boundary that contains that urban development.

[49] The landscape experts applied different weightings to the nearby grid of garden allotments and associated sheds. Mr S Brown considers these to transpose “a quite urban form and pattern of development to part of the Kawarau River flood plain”⁴⁶ and, hence, assist in putting the Site in a ‘transition’ area of diminished landscape values.⁴⁷ Ms Mellsoy regards them as “more consistent

⁴¹ Transcript, p 75, l 19, 22 – 24.

⁴² Transcript, p 62, l 27 – 30.

⁴³ Transcript, p 79, l 9.

⁴⁴ Transcript, p 79, l 27 – 29.

⁴⁵ Transcript, p 77, l 13 – 17.

⁴⁶ S K Brown EIC, at [53].

⁴⁷ S K Brown EIC, at [51], [14], [31], [48].

with” rural activities.⁴⁸

The planning issues and evidence

[50] That divergence of opinion between the landscape experts carried into the differences between the planning experts on issues as to:

- (a) the most effective and efficient Option for the Site;
- (b) the most appropriate Option for achieving the relevant PDP objectives and assisting to implement its policies; and
- (c) the implications for District Plan integrity and any matters of adverse precedent.

Which Option is more efficient and effective?

[51] The evaluation of provisions encompasses consideration of their relative efficiency and effectiveness in achieving relevant objectives (s32(1)(b)(ii), RMA). That encompasses consideration of the efficient use and development of natural and physical resources (s7(b), RMA).

[52] Mr J Brown considers Option B superior to Option A in these terms. That is in the sense that there is already existing servicing, roading and other infrastructure (and, hence, a lack of associated infrastructure costs for the community) and a lack of issues pertaining to noise or reverse sensitivity.⁴⁹ He does not offer any wider evaluation of benefits and costs, including the costs of landscape degradation. However, that is on the footing that he relies on Mr S Brown’s landscape evaluation in preference to Ms Mellsop’s.

[53] Mr Langman considers that these infrastructural and location efficiency

⁴⁸ H J Mellsop EIC, at [5.5].

⁴⁹ J A Brown EIC, at [6.3].

matters are secondary to the importance of the s6(b) landscape matters in issue.⁵⁰

Which option is the most appropriate for achieving the PDP's objectives?

[54] The experts' opinions on this issue are primarily (although not entirely) reflective of the differences between the respective landscape experts:

- (a) Mr J Brown considers LDSR rezoning would help achieve the relevant objectives. On landscape matters, that is premised on his acceptance of Mr S Brown's opinion as to the lack of significant impact on ONF/L values. Moreover, he considers that Option B would better achieve objectives on urban development given the greater efficiency in enabling already-serviceable land to be put to best use, namely as residentially zoned land;
- (b) Mr Langman considers Option B falls at the "first hurdle" in not achieving the PDP's landscape protection objectives. Further, in the manner in which Option B would extend the UGB and urban development to the specific Site, he considers that it would also fail to achieve the PDP's objectives or implement its policies for urban development and the UGB.

Are there significant plan integrity and precedent risks?

[55] Again, largely paralleling differences between the landscape experts:

- (a) Mr J Brown does not consider there would be any compromise to the integrity of the ONF/L and related landscape values.⁵¹ He sees no risk of 'development creep' precedent given the unique and difficult-to-replicate features of the Site and surroundings, especially the existing Hayes Creek Road and the consented grid of garden

⁵⁰ M H Langman EIC, at [5.1].

⁵¹ J A Brown EIC, at [4.4].

allotments and the associated sheds;⁵²

- (b) Mr Langman considers there would be significant plan integrity repercussions of any rezoning in that it would undermine a legible geomorphological boundary to the ONF/L and allow for residential development below this.⁵³ He comments that, if a pattern or precedent is established that allows for urban development within ONF/Ls, that could lead to the degradation of their values and a weakening of the defensibility of UGBs “which seek to utilise topographical features where these are available”.⁵⁴

[56] Counsel for BFDL tested the planners on whether QLDC undertook any “on the ground” analysis in settling on the locations of the UGB boundaries in the PDP, or simply positioned them along existing zone boundaries. On this, the planners’ answers were ambivalent. Mr Langman explained that he was not involved during QLDC’s plan preparation stage and did not know what evaluations were carried out.⁵⁵ Mr J Brown, asked for his opinion during re-examination following court questioning, only went so far as to agree that QLDC “mainly” applied UGBs around the existing urban zones.⁵⁶

Submissions

[57] Opening submissions were largely overtaken by subsequent modifications that BFDL made to its position on relief. However, closing submissions helpfully crystalized the parties’ respective positions, in light of the evidence heard. It is convenient to deal with those submissions in the order presented.

⁵² J A Brown EIC, at [9.16].

⁵³ M H Langman EIC, at [7.1] – [7.15].

⁵⁴ M H Langman EIC, at [7.12].

⁵⁵ Transcript, p 93, l 16 – 33.

⁵⁶ Transcript, p 52, l 12 – 15.

Would Option B significantly degrade ONF/L landscape values?

[58] The issues concerning ONF/L values centre on the significance or otherwise of maintaining the legibility of the lower escarpment. More particularly, that is because Option B would enable development to extend below that escarpment and into the ONF/L.

[59] For QLDC, Mr Wakefield acknowledges that, in geomorphological terms, the lower escarpment is a remnant of a larger one with the balance already having been colonised by urban development. However, as it is largely free of built development and “readily perceived as the framing/enclosing landform for the ONF corridor”, he submits that it should remain protected. That is particularly in terms of the emphasis given by the PDP’s strategic objectives and policies. He submits that Option B would be contrary to the intentions of those objectives and policies.⁵⁷

[60] For BFDL, Mr Goldsmith acknowledges that the landscape significance of the requested rezoning involves factual findings and matters of judgment. He emphasises the importance of applying an appropriate scale, in terms of representative viewpoints, in consideration of the landscape *values* of the landform. That should correspond to the scale of the Landscape Unit and how it would be experienced. On that basis, he submits that Mr S Brown’s evidence should be preferred as he took such a ‘larger frame’ approach (whereas Ms Mellisop tended to focus on the immediate surrounding context). He submits that the court should find that the values of the framing escarpment would remain clear and legible even with the eleven dwellings that would be enabled under the requested rezoning.⁵⁸

How do the Options compare in planning terms?

[61] Given the points emphasised in closing submissions, it is convenient to

⁵⁷ Closing submissions for QLDC, dated 22 October 2021, at [4.6] – [4.11].

⁵⁸ Closing submissions for BFDL, dated 5 November 2021, at [10] – [15].

collect the remaining issues under this broader heading.

Would the proposed extension of the UGB undermine Plan integrity and set an adverse precedent?

[62] On the issues as to Plan integrity and precedent, closing submissions focus on the proposal to extend the UGB.

[63] For QLDC, Mr Wakefield observes that UGBs are a planning tool for an intended purpose. He refers in particular to PDP Obj 4.2.1:

Urban Growth Boundaries used as a tool to manage the growth of urban areas within distinct and defensible urban edges.

[64] Counsel agrees with the court’s preliminary observations to counsel that the language of Obj 4.2.1 implies an intention to preserve the coherence of any UGB, as a form of boundary. He submits that, to assist the achievement of that objective, it is appropriate to require any proposal to depart from the UGB to be tested. Specifically, he submits that there must be principled reasons to justify any proposed departure. Furthermore, care must be exercised to avoid the holistic purpose of UGBs being undermined. As to that purpose, he refers to related PDP policies as intending to achieve urban containment, avoid sporadic, ad hoc, urban growth, provide sufficient development capacity and protect ONF/L values.⁵⁹

[65] Mr Wakefield submits that BFDL has failed to justify its altered UGB in those terms. He submits that, on the contrary, the evidence demonstrates that the ONF/L boundary (with which the present UGB boundary coincides) is legible and distinct and needs to be protected.⁶⁰

[66] Counsel further submits that Option B would set an adverse precedent. As the Site and its environs are not “unique” as claimed, he submits that the change to the UGB boundary could trigger other efforts to fill up the lower escarpment”

⁵⁹ Closing submissions for QLDC, dated 22 October 2021, at [5.1] – [5.14].

⁶⁰ Closing submissions for QLDC, dated 22 October 2021, at [5.10] – [5.11].

causing a complete loss of the framing landform above the flood plain.⁶¹

[67] For BFDL, Mr Goldsmith submits that the UGB, as a planning construct, itself “creates a ‘... distinct and defensible urban edge’ ... without reference to any physical landscape factors such as, for example, a topographical factor”.⁶² He acknowledges that Obj 4.2.1 is open to different interpretations, if read in isolation, and that protection of ONF/L values is “one factor relevant to determining the location of a UGB” (referring to Pol 4.2.1.5).⁶³ However, on the basis that landscape values would remain intact, he submits that there is no need for the added caution urged by QLDC. In particular, he submits that the PDP does not imply or intend that there is any need to consider the UGB in holistic terms or to guard against “loss of coherence” of the UGB in any “site by site modification”.⁶⁴

[68] Mr Goldsmith submits that Option B is based upon, and justified by, a unique set of specific factors that do not give rise to any ‘precedent’ concern. In particular, any future person seeking to relocate the UGB would have to establish an appropriate case for such extension taking into account all of the factors detailed in relevant policies (noting, in particular, Pols 4.2.1.4, 4.2.1.5, 4.2.1.7 and 4.2.2.13).⁶⁵

Are BFDL’s proposed new policy and rules beyond scope/would it be procedurally unfair to entertain them?

[69] Mr Wakefield submits that the court does not have jurisdiction to entertain BFDL’s requested new Pol 7.2.3.5. That is in the sense that neither the notice of appeal nor BFDL’s original submission suggest that there is a need for such a policy nor give any reasonable signal to a reader to anticipate such relief being sought. Rather, the submission seeks to remove the ONL classification from the

⁶¹ Closing submissions for QLDC, dated 22 October 2021, at [5.13].

⁶² Closing submissions for BFDL, dated 5 November 2021, at [21].

⁶³ Closing submissions for BFDL, dated 5 November 2021, at [29], [44].

⁶⁴ Closing submissions for BFDL, dated 5 November 2021, at [44].

⁶⁵ Closing submissions for BFDL, dated 5 November 2021, at [44].

subject land in its entirety, and the notice of appeal records that “residential development could be accommodated ... with nil or insignificant adverse effect on the wider ONL”.⁶⁶

[70] In addition, Mr Wakefield raises a procedural unfairness issue in the fact that BFDL substantially modified its position on this related relief throughout the hearing. He submits that QLDC neither contemplated nor was able to meaningfully address this shifting related relief. He argues that less weight should be accorded to BFDL’s evidence because it initially endorsed what can no longer stand, namely a change of zoning without the attendant additional policy and rules. He observes that the ultimate package of relief goes beyond the evidence offered. He observes that BFDL is effectively inviting the court to undertake its own evaluation of the appropriateness of provisions without supporting evidence. Furthermore, he says the additional provisions represent a significant concession in BFDL’s case on the core issue in dispute, namely effects on the ONF/L.⁶⁷

[71] Mr Goldsmith responds that the notice of appeal provides ample jurisdiction in the fact that it seeks ‘such alternative, consequential, or additional relief to that set out in this appeal as may be appropriate or necessary to give effect to the matters raised generally in the appeal and in BFDL’s Submission 655’. Counsel characterises the ultimate relief as falling ‘between’ the status quo and the relief originally sought. Counsel further submits that the complaint that a reader of the submission and notice of appeal could not reasonably have anticipated the additional policy and rules also lacks substance. That is in the sense that the relief continues to pertain to the same land and seeks a lesser extent of development subject to greater restriction.⁶⁸

[72] As for the allegation of unfairness, Mr Goldsmith traverses various stages of the hearing where the evolving relief was tested, including in cross-examination

⁶⁶ Closing submissions for QLDC, dated 22 October 2021, at [6.4].

⁶⁷ Closing submissions for QLDC, dated 22 October 2021, at [6.3] – [6.13].

⁶⁸ Closing submissions for BFDL, dated 5 November 2021, at [48].

of QLDC's planning witness, Mr Langman. He submits that, in any case, insofar as QLDC considers it has a valid basis for this concern, it could have asked that the adjourned hearing be re-opened.⁶⁹

[73] Mr Goldsmith also urges that the court bear in mind the inherently complex and evolving processes involved in determining appeals in the Plan review, of which this Topic 31 is just part. He notes that this has included several processes whereby PDP provisions have been changed through various processes of scrutiny, now over several years, ultimately with a view to determining the most appropriate PDP outcome. As part of this process, higher order directions are resolved and attention is now on the site-specific zoning relief pursued such as in the present Topic 31. Counsel adds:⁷⁰

... there is no reason why private appellants, seeking to resolve their own property related issues, should not be accorded the same degree of attention, and latitude where required, as has occurred in relation to the higher order objectives and policies, in order to ensure that every chance is taken to ensure that the outcome (in terms of plan provisions) is as appropriate as can reasonably be achieved.

Which Option is the most efficient, effective and appropriate?

[74] The parties' positions on these ultimate issues generally parallel the different perspectives offered by their experts:

- (a) Mr Wakefield submits in favour of Option A, as continuing to protect ONF/L landscape values as the PDP intends and not undermining the UGB (in contrast to Option B);
- (b) Mr Goldsmith submits, on the premises that Option B would protect ONF/L landscape values and not undermine the UGB, that Option B is also superior in terms of efficiency in that it would enable the use of existing urban infrastructure.

⁶⁹ Closing submissions for BFDL, dated 5 November 2021, at [49] – [57].

⁷⁰ Closing submissions for BFDL, dated 5 November 2021, at [62].

Discussion

Preliminary matters

The Anderson Lloyd opinion is given no weight

[75] On the view that QLDC did not undertake any ‘on the ground’ assessment but simply positioned the PDP’s UGB boundaries along existing zone boundaries, Mr Goldsmith also sought to rely on a legal opinion prepared for him by law firm Anderson Lloyd (a copy of which he attached to his closing submissions). In substance, this offers a view on how QLDC identified the locations of UGBs in the PDP, based on the author’s consideration of the identified background documents.

[76] Mr Wakefield filed a memorandum in reply asking the court to set aside the legal opinion. One reason is that the opinion refers to some new background material not included in the common bundle and not tested with experts. Counsel also submits that the opinion invites the court to approach the interpretation of the PDP by reference to selected excerpts from documents that would not normally be given consideration in statutory interpretation terms.⁷¹

[77] In response, Mr Goldsmith signals that BFDL considers that issues that the court needs to determine, as to whether the UGB was set by reference to “physical landscape factors”, were sufficiently addressed in the cross-examination and re-examination of witnesses. Nevertheless, counsel maintains that the Anderson Lloyd opinion is offered to assist the court on the “wider implications” of this issue.

[78] The author of the legal opinion is neither counsel nor witness and hence has no standing before the court in the appeal proceeding. Some of the referenced material appears to extend beyond the Common Bundle. The opinion does not

⁷¹ Memorandum of counsel for QLDC, dated 17 November 2021.

apply a sound statutory interpretation approach in seeking to draw from such material rather than interpreting PDP provisions within their relevant Plan context. To be fair to the author, it is not apparent that there was any understanding that the opinion would be put to the court. For those reasons, we do not find the opinion helpful and assign it no weight.

Whether the belated request for additional LDSR provisions is beyond scope or procedurally unfair

[79] We have traversed the fact that BFDL’s case on relief has significantly evolved both in the lead up to and during the course of the hearing, including even in closing submissions. QLDC responsibly identified where it was comfortable on matters of scope (e.g. the change from seeking MDR rezoning to seeking LDSR rezoning, and the final enunciation of the relief concerning the UGB boundary). It fairly identified the unfairness inherent in counsel offering a new iteration of an important additional policy just in advance of when QLDC filed its closing submissions. Mr Goldsmith somewhat understates the significance of this belated change in BFDL’s approach. Rather than simply being a policy to better achieve Obj 7.2.3, the proposed Pol 7.2.3.5 is materially different in substance than what BFDL’s planner, Mr J Brown, recommended in rebuttal. That is:

- (a) the main emphasis of Mr J Brown’s recommended Pol 7.2.1.7 was on ensuring “development and associated landscaping” of the Site “is sympathetic to the immediate residential environment and landscape context”; whereas
- (b) BFDL’s finally recommended Pol 7.2.3.5 seeks to grapple directly with the core issue of ensuring ONF/L landscape values are protected, but then seeks to qualify how that would be achieved in the proposed clauses (a) – (e), the efficacy of which was not tested with experts who gave evidence.

[80] Whilst QLDC had notice of the substance of this late change, it did not

have fair opportunity to put matters to its planning witness, Mr Langman. We do not accept the proposition that QLDC's remedy on issues of unfairness was to ask the court to re-open the hearing. Even were QLDC to have elected that course, any remediation of unfairness would be partial at best in that it would come with the cost of having to resource for this. Furthermore, it would give grace to provisions that were never offered in evidence at any stage by BFDL.

[81] BFDL has an onus to support its case for relief with evidence. Its Pol 7.2.3.5 is an integral part of its package of requested relief in that policies serve to implement related objectives and rules to achieve objectives and policies (ss 75, 76, RMA). However, that requested policy is not sufficiently or soundly supported by evidence. Rather, the new policy suggestion only emerged in closing submissions to replace the policy endorsed by BFDL's planning witness in rebuttal evidence.

[82] That is of itself fatal to Option B, aside from whether BFDL has scope to pursue this ultimate relief. While the ultimate relief significantly embellished what BFDL initially signalled in its notice of appeal, we do not need to decide whether it was within scope and we refrain from doing so.

Findings on relevant objectives and policies

[83] With reference to the objectives and policies listed in the Annexure, we find that the PDP intends and directs that:

- (a) the landscape values of ONF/Ls are identified and protected (including when making any change to a UGB) (P 4.2.1.5, P 4.2.2.13);
- (b) subdivision and development within an ONF/L is inappropriate unless those landscape values are protected (SO 3.2.5.1, SP 3.3.30, SO 3.2.5.3, P 6.3.3.1);
- (c) buildings, structures and changes to landform or other physical changes to the appearance of the land within an ONF/L are expected to be reasonably difficult to see from beyond the boundary of the Site in question (P 6.3.3.1). However, that intention is subordinate to the

- primary PDP intentions for the protection of ONF/L values;
- (d) UGBs are a tool for managing the growth of urban areas within distinct and defensible urban edges (SO 4.2.1, P 4.2.1.3). It is anticipated that they will be reviewed and amended when required to address changing community needs, respond to monitoring evidence, and enable appropriate urban development (P 4.2.1.6). However, this is on the basis, inter alia, that ONF/L values would be protected (P 4.2.1.5, P 4.2.2.13).

Rezoning the Site would fail to protect ONF/L landscape values at this time

[84] For the following reasons, we find that Option B would fail to protect the ONF/L's landscape values at this time and Option A is relatively more appropriate in those terms.

[85] Public viewpoints along the Twin Rivers trail are relatively important because the trail skirts the centrepiece of the Kavarau River ONF, the waterbody and its margins. Option B would not have a significant effect on how viewers from the Twin Rivers track would perceive the embankment insofar as it is part of the ONF/L. Those viewers would not discern a lower escarpment as either legible or having any particular significance. Rather, from those viewpoints, it is the embankment's overall shape and outline that impresses as the enclosing feature of the floodplain. Hence, such viewers would already perceive the embankment as a transition area that is dominated somewhat by the line of residential dwellings that crown it and thread down its face. In essence, from the trail, the impression is of a landscape that is both within and beyond the ONF/L boundary.

[86] From those viewpoints, however, Hayes Creek Road still impresses as a reasonably significant engineered cut down the embankment face. In those terms, it serves to demarcate a hard edge between residential and undeveloped land. Residential development of the Site would be read in conjunction with the existing, slowing developing, garden allotment grid. The cumulative impression would be

of incremental residential colonisation further down towards and onto the floodplain.

[87] While closer viewpoints along Hayes Creek Road in the vicinity of the garden allotments are less important than those along the Twin Rivers trail, they are not irrelevant. From those closer viewpoints, residential development of the Site at this time would aggravate an impression of incremental urban colonisation and associated degradation of the ONF/L. It would appear to effectively close the gap between Bridesdale and the grid of garden allotments and sheds, whereas those allotments currently impress as a separate enclave that is distinct from the Site.

Only Option A would achieve relevant objectives and implement policies

[88] On the basis of those findings, we find as follows in regard to how Options A and B compare in terms of achievement and implementation of the relevant PDP objectives and policies summarised at [83].

	Would assist to achieve/implement relevant objectives ('O', 'SO')/policies ('P/SP')?	
	<i>Option A</i>	<i>Option B</i>
P 4.2.1.5, P 4.2.2.13	Yes	No
SO 3.2.5.1, SP 3.3.30, SO3.2.5.3, P 6.3.3.1	Yes	No
P 6.3.3.1	No	No
SO 4.2.1, P 4.2.1.3, P 4.2.1.6, P 4.2.1.5, P 4.2.2.13	Yes	No

[89] Those findings in essence derive from the related evidential findings we have discussed. By way of further explanation, our findings concerning P 6.3.3.1 are on the basis of the highly visible nature of the Site, where earthworks for the

formation of Hayes Creek Road have left it already significantly modified. As such, we find both Option A and B incapable of fulfilling its intentions. Subject to that, we find:

- (a) Option A would assist to achieve relevant objectives and implement related policies;
- (b) Option B would fail in those respects and is not appropriate at this time.

Rezoning would not be the most effective and efficient option at this time

[90] We heard relatively limited evidence on matters of economic efficiency. Nevertheless the evidence enables us to find that Option A is the most effective option, whereas Option B would be neither effective nor efficient.

Rezoning the Site LDRS at this time would undermine the Plan's integrity

[91] On the basis of those findings, we find that Option B would undermine the Plan's integrity and, hence, set an adverse precedent. In essence, that is in the fact that it would be contrary to the PDP's intentions, as we have explained, particularly of ONF/L protection but also for keeping urban expansion within distinct and defensible UGBs.

The most appropriate zoning for the Site at this time is Rural

[92] It follows that Option A is the most appropriate zoning outcome for achieving the PDP's objectives.

Potential for future revisiting of the ONF/L boundary

[93] While those findings see us reject the appeal, we record that they do not exclude the potential for a holistic re-positioning of the ONF/L boundary at some stage in the future. At least from the Twin Rivers trail, there would appear to be


further capacity to allow for further residential development of the embankment in a way that maintains the role of the embankment in framing and enclosing the floodplain. As for closer viewpoints, future significant change to embankment land above the ONF/L boundary and/or to usage of the floodplain (should this be enabled through zoning change for example) could be material in reducing the importance of maintaining a legible lower escarpment ONF/L boundary to precisely where it is currently positioned. That is particularly if it were to be undertaken in tandem with a holistic realignment of the UGB along the embankment.

[94] Given the emphasis in the PDP on urban development, including to assist in providing for residential supply, a rezoning that did not offend landscape objectives would be readily able to be demonstrated as superior at least in terms of infrastructure and housing supply and demand.

Conclusion

[95] Therefore, the appeal is declined. Costs are reserved. Any party seeking costs is to file, within ten working days, a proposed timetable for memoranda to be filed (such memoranda not to exceed 10 pages).

For the court


J J M Hassan
Environment Judge



Annexure

Pertinent and directive PDP objectives and policies and other provisions

PDP provisions confirmed by [[2021] NZEnvC 155 (Decision 2.12 on Topic 2 Rural Landscape) issued 5 October 2021 and [2021] NZEnvC 124 (Decision 2.9 on Topic 2 Rural Landscape) issued 24 August 2021 but not yet included in the PDP are marked ()*

PDP Ch 3 ‘Strategic’ Objectives and Policies

SO – Strategic Objective, SP – Strategic Policy

SO 3.2.2

Urban growth is managed in a strategic and integrated manner.

SO 3.2.2.1

Urban development occurs in a logical manner so as to *[partial quote, in view of the evidence]*:

- a. promote a compact, well designed and integrated urban form; ...
- c. achieve a built environment that provides desirable, healthy and safe places to live, work and play; ...
- e. protect the District's rural landscapes from sporadic and sprawling urban development;
- f. ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in; ...
- h. be integrated with existing and proposed infrastructure and appropriately manage effects on that infrastructure.

SO 3.2.5(*)

The retention of the District's distinctive landscapes.

SO 3.2.5.1(*)

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

SO 3.2.5.2(*)

Within the Rural Zone, new subdivision, use and development is inappropriate on Outstanding Natural Features or in Outstanding Natural Landscapes unless: ... [*partial quote, in view of the evidence*]

- b. where the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes are not specified in Schedule 21.22, the values identified according to SP 3.3.45 are protected.

SO 3.2.5.3(*)

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

SP 3.3.15(*)

Apply provisions that enable urban development within the UGBs and avoid urban development outside of the UGBs

SP 3.3.29(*)

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

- a. for Priority Areas identified in Schedule 21.22, in accordance with the values

identification framework in SP 3.3.36 – 3.3.38 and otherwise through the landscape assessment methodology in SP 3.3.45 and through best practice landscape assessment methodology; and [partial quote, in view of the evidence]

SP 3.3.30()*

Protect the landscape values of Outstanding Natural Features and Outstanding Natural Landscapes.

Related Ch 3 provisions

Pertaining to the interpretation of those objectives and policies, we note the following provisions:

3.1A Strategic Issues

Relevantly:

The following Strategic Issues are overarching. While not intended to be an exhaustive list or description of issues to be addressed in the District's pursuit of sustainable management, these Strategic Issues are identified as warranting to be addressed at the present time and during the lifetime of the Plan (and beyond) to enable the retention of the special qualities listed at a. – j. of 3.1 Purpose: ...

Strategic Issue 4: Some resources of the District's natural environment, particularly its outstanding natural features and outstanding natural landscapes and their landscape values, require effective identification and protection in their own right as well as for their significant contribution to the District's economy.

Chapter 4 (Urban Development)

(O – Objective, P – Policy)

SO 4.2.1

Urban Growth Boundaries used as a tool to manage the growth of urban areas within distinct and defensible urban edges.

P 4.2.1.1

Define Urban Growth Boundaries, where required, to identify the areas that are available for the growth of urban settlements.

P 4.2.1.2

Focus urban development primarily on land within and adjacent to the existing larger urban areas and, to a lesser extent, within and adjacent to smaller urban towns and rural settlements.

P 4.2.1.3

Ensure that urban development is contained within the defined Urban Growth Boundaries, and that aside from urban development within existing towns and rural settlements, urban development is avoided outside of those boundaries.

P 4.2.1.4

Ensure Urban Growth Boundaries encompass, at a minimum, sufficient, feasible development capacity and urban opportunities consistent with: [partial quote, in view of the evidence]

...

- c. the constraints on development of the land such as its topography, its ecological, heritage, cultural or landscape significance; or the risk of natural hazards limiting

the ability of the land to accommodate growth; ...

- e. a compact and efficient urban form;
- f. avoiding sporadic urban development in rural areas; ...
- h. a future development strategy for the District that is prepared in accordance with the National Policy Statement on Urban Development Capacity.

P 4.2.1.5

When locating Urban Growth Boundaries or extending towns and rural urban settlements through plan changes, protect the values of Outstanding Natural Features and Outstanding Natural Landscapes.

P 4.2.1.6

When locating Urban Growth Boundaries or extending towns and rural settlements through plan changes to provide for urban development have particular regard to minimising significant adverse effects on the values of open rural landscapes.

P 4.2.1.7

Review and amend Urban Growth Boundaries, as required, to address changing community needs, respond to monitoring evidence, or to enable appropriate urban development.

SO 4.2.2A

A compact and integrated, and well-designed urban form with the Urban Growth Boundaries that:

- (i) is co-ordinated with the efficient provision, use and operation of infrastructure and services; ...

SO 4.2.2B

Urban development within Urban Growth Boundaries that maintains and enhances the environment and rural amenity and protects Outstanding Natural Landscapes and Outstanding Natural Features, and areas supporting significant indigenous flora and fauna.

P 4.2.2.2

Allocate land within Urban Growth Boundaries into zones which are reflective of the appropriate land use having regard to: [partial quote, in view of the evidence]

...

- b. its ecological, heritage, cultural or landscape significance if any;

P 4.2.2.13

Define the Urban Growth Boundaries for the balance of the Wakatipu Basin, as shown on the District Plan web mapping application that:

- a. are based on existing urbanised areas;
- b. identify sufficient areas of urban development and the potential intensification of existing urban areas to provide for predicted visitor and resident population increases over the planning period;
- c. enable the logical and sequenced provision of infrastructure to and community facilities in new areas of urban development;
- d. protect the values of Outstanding Natural Features and Outstanding Natural Landscapes;
- e. avoid sprawling and sporadic urban development across the rural areas of the Wakatipu Basin

Chapter 6 – Landscapes and Rural Character

(There are no objectives in Ch 6. Hence below provisions are policies)

6.3.2.7

Ensure that subdivision and development in the Outstanding Natural Landscapes and Rural Character Landscapes in proximity to an Outstanding Natural Feature or Outstanding Natural Landscape does not compromise the landscape values of that Outstanding Natural Feature or Outstanding Natural Landscape.

6.3.3.1

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

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

6.3.3.5

Maintain the open landscape character of Outstanding Natural Features and Outstanding Natural Landscapes where it is open at present.

Related Ch 6 provisions

Pertaining to the interpretation of those objectives and policies, we note the following provision:

6.1 Purpose

Relevantly:

The purpose of this chapter is to provide greater detail as to how the landscape, particularly outside urban settlements, will be managed in order to implement the strategic objectives and policies in Chapter 3. This chapter needs to be read with particular reference to the Chapter 3 strategic objectives and policies, which identify the outcomes the policies in this chapter are seeking to achieve.

Chs 21 Rural and 7 Lower Density Suburban Residential

Given that the appeal seeks a change from the status quo Rural zoning of the Site to a Low Density Suburban Residential zoning, we identify the following zone purpose statements and objectives of Chs 21 and 7 as pertinent to our consideration of the appeal.

(O – Objective, P – Policy)

21.1 Zone Purpose

... The purpose of the Rural Zone is to enable farming activities and provide for appropriate other activities that rely on rural resources while protecting, maintaining and enhancing landscape values, ecosystem services, nature conservation values, the soil and water resource and rural amenity. ... [partial quote, in view of the evidence]

SO 21.2.1

A range of land uses, including farming and established activities, are enabled while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values.

SO 21.2.9

Provision for diversification of farming and other rural activities that protect landscape and natural resource values and maintains the character of rural landscapes.

7.1 Zone Purpose

The Lower Density Suburban Residential Zone is the largest residential zone in the District. The District Plan includes such zoning that is within the urban growth boundaries, and includes land that has already been developed – as well as areas that will continue to be developed over time.

Fundamentally the zone provides for both traditional and modern suburban densities and housing forms. ... The zone will help to provide a more diverse and affordable housing stock within the District...[partial quote, in view of the evidence]

SO 7.2.1

Development within the zone provides for a mix of compatible suburban densities and a high amenity low density residential living environment for residents as well as users of public spaces within the zone.

SO 7.2.3

Encourage higher density development where it responds sensitively to the context and character of the locality and is designed to maintain local amenity values.

