

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

Decision No. [2024] NZEnvC 334

IN THE MATTER

of the Resource Management Act 1991

AND

an appeal under clause 14 of the First Schedule of the Act concerning Stage 2, Topic 31 of the Proposed Queenstown Lakes District Plan

BETWEEN

TRUSTEES OF THE BURGESS
DUKE TRUST

(ENV-2019-CHC-36)

Appellant

AND

QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

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

Hearing: In Chambers at Christchurch

Last case event: 4 December 2024

Date of Decision: 16 December 2024

Date of Issue: 16 December 2024

DETERMINATION OF THE ENVIRONMENT COURT

Topic 31, subtopic 2, Group 3 – Central Basin appeals

A: The settlement reached is acceptable. Queenstown Lakes District Council is directed to update the planning maps and provisions of the Proposed



Queenstown Lakes District Plan as set out in Annexures 1 and 2 and to file a reporting memorandum as to that once completed.

B: There is no order as to costs.

REASONS

Introduction

[1] This is a determination, following settlement, of an appeal against the zoning outcome for land located within the Wakatipu Basin. That is as part of the staged determination of appeal points from decisions of Queenstown Lakes District Council ('QLDC') in the Queenstown Lakes District Plan Review ('PDP').¹

[2] The Trustees of the Burgess Duke Trust appealed against the zoning of its land on the corner of Lower Shotover and Slopehill Roads ('Site').² The appeal sought upzoning from the Wakatipu Basin Rural Amenity Zone ('WBRAZ') zoning, confirmed by QLDC's decision, to WBRAZ Lifestyle Precinct ('Precinct'). As we explain shortly, the settlement reached for the Site modifies that relief to pursue a modified WBRAZ zoning outcome bespoke to the Site.

[3] Gibbston Microgreens and Maria Chocano together joined the appeal as an interested party under s274 Resource Management Act 1991 ('RMA').³ They own the land at 340 Lower Shotover Road ('Microgreens/Chocano property').

Background

[4] Having engaged in informal discussions, the parties agreed on the means

¹ The appeal is identified as part of 'Topic 31, subtopic 2, Group 3 – Central Basin appeals, Slope Hill to Hawthorn.

² Legally described as Lot 1 DP 425385.

³ M K Greenslade also joined the appeal under s274 but later withdrew her interest by memorandum dated 13 October 2021.

by which the appeal can be resolved entirely by consent. They sought the court's endorsement of the settlement by consent order under s279 RMA. The court advised it was not satisfied that a consent order could be issued and requested the parties address several identified issues.⁴

[5] At the request of the parties,⁵ this matter was put on hold pending determination of the Wakatipu Equities and Strain appeals. That was to enable parties to consider whether any consequential changes to the text of LCU 11 would be required in relation to the agreed area of 'Moderate' landscape capability.⁶ In a Minute dated 16 September 2024, the court confirmed that those appeals were progressing, clearing the way for a determination in light of the settlement reached in this appeal.

[6] The court confirmed that the parties' 15 April 2024 memorandum satisfactorily resolved all but one matter, allowing for a determination to be made. The remaining matter required the parties to provide an affidavit explaining how the agreed settlement draws from Ms Gilbert's approach at the first instance Topic 30 hearing⁷ on the Wakatipu Basin. Evidence on this was sought so that the court would have a sound basis for changing the Site's status quo zoning.

[7] The parties duly responded by filing an affidavit by Ms Gilbert in support of the settlement outcome.⁸

[8] Ms Gilbert has significant experience in the assessment of landscapes, including for the purposes of the PDP. She is a principal author of the Wakatipu

⁴ Minute dated 26 March 2024.

⁵ Joint memorandum dated 15 April 2024.

⁶ The determination of those appeals was issued on 20 November 2024 – *Strain & Wakatipu Equities Limited v Queenstown Lakes District Council* [2024] NZEnvC 291.

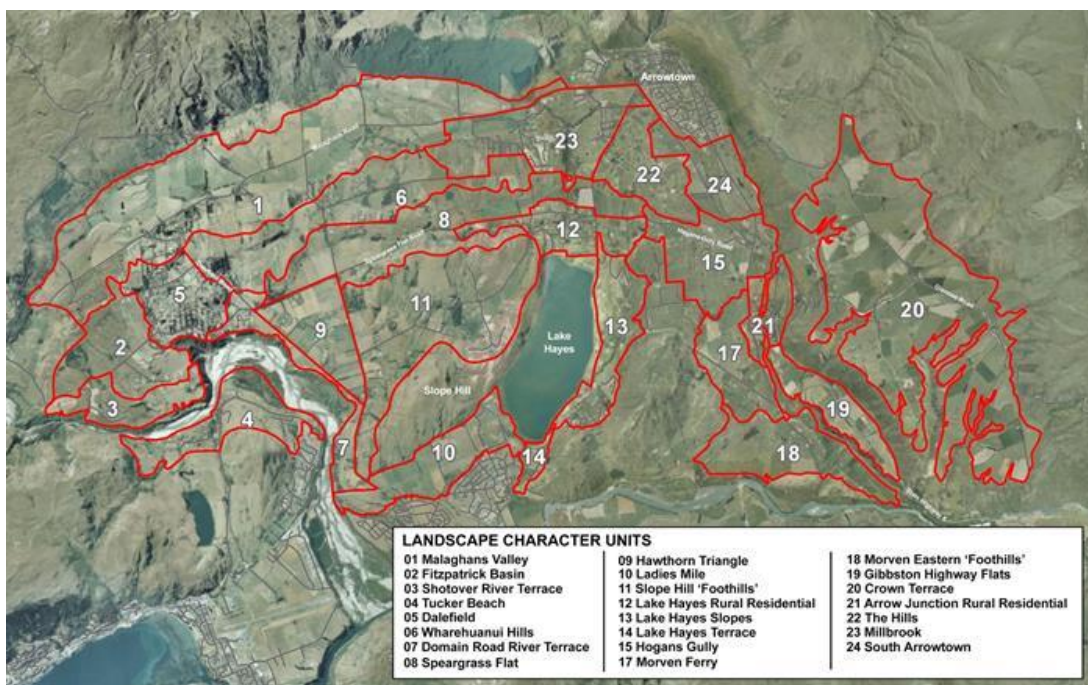
⁷ Topic 30 was determined alongside Topic 25 and dealt with the PDP's text provisions concerning the Wakatipu Basin.

⁸ Email of S Richardson to the Registry (10 October 2024). That affidavit details the relevant excerpts of the EIC dated 6 August 2021 Ms Gilbert had provided in the Topic 30: Wakatipu Basin, first instance hearing.

Basin Land Use Planning Study that underpins the variation that introduced the WBRAZ (including the Precinct subzone) into the PDP. She also peer reviewed the Landscape (including natural character) Assessment Guidelines project under the direction of Tuia Pita Ora (The New Zealand Institute of Landscape Architects). That work culminated ‘*Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines*’⁹.

The landscape and the Site

[9] Within the design of the Wakatipu Basin regime, PDP Sch 24.8 identifies and maps 24 ‘landscape character units’ across the Basin. That is in order to assist to fulfil the zone intentions as to the maintenance or enhancement of the landscape character and visual amenity values of the Basin. According to that regime, the Site is within LCU 11: Slope Hill ‘Foothills’, as depicted in the following Sch 24.8 map:



⁹ ‘*Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines*’, Tuia Pito Ora New Zealand Institute of Landscape Architects, July 2022.

[10] As can be observed, LCU 11 borders Slope Hill and Lake Hayes, which are together noted as an Outstanding Natural Feature ('Lake Hayes ONF') under the PDP.

[11] LCU 11 is a reasonably large and complex unit. The Sch 24.8 description for LCU 11 acknowledges that there is a variability across the LCU in terms of visibility, openness, enclosure, landscape coherence and naturalness.

[12] For the purpose of Chs 24 and 27, Sch 24.8 prescribes a rating of relevant 'capacity to absorb additional development' (also referred to as 'landscape capacity') according to a six-point evaluative scale.

[13] Under this scale, LCU 11 is described as having Low capacity. The parties have agreed that this rating be changed to reflect a Moderate landscape capacity for an area identified as 'Eastern Side of Lower Shotover Road'. According to Sch 24.8 it is open to prescribe a different landscape capacity rating for identifiable areas within a LCU. Whether or not that is appropriate is a matter of landscape assessment. The merits and final boundaries of this new landscape capacity area were deferred to the hearing of this appeal, and the boundaries have since been refined in the version that is agreed.

Statutory framework and legal principles

[14] In our *de novo* consideration of the appeal, we have the same powers, duties and discretions that QLDC (and its independent commissioners) had in regard to the PDP decision under appeal (s290, RMA).

[15] We have duly considered the appealed decision and the reasons given for confirming WBRAZ zoning was appropriate for the Site.¹⁰ Those reasons are in essence overtaken by the settlement the parties have reached; accordingly, the

¹⁰ *Report and recommendations of Independent Commissioners regarding mapping of Wakatipu Basin and Arrowtown (includes Stage 1 submissions not previously heard)* Dennis Nugent (Chair), Rachel Dimery, Trevor Robinson, Quentin Smith dated 15 February 2019.

decision will not be accorded significant weight.

[16] We evaluate the available zoning options for what is most appropriate for achieving the relevant PDP objectives. The relevant objectives and related policies are beyond challenge and we treat them as operative. They are in PDP Chs 3 (Strategic Direction), 24 (Wakatipu Basin) and 27 (Subdivision and Development).

[17] We evaluate rules with regard to the actual and potential effect (including adverse) on the environment of the activities they would enable. The evaluation is predictive. It is concerned with the future environment within which enabled activities would be undertaken. In this appeal, our focus is primarily on the state of the future receiving 'landscape'.

[18] We evaluate these matters mindful that the preparation of the PDP is to be in accordance with QLDC's s31 functions and pt 2, RMA and that the PDP must give effect to the relevant regional and national policy instruments. However, as the operative PDP objectives and policies already give effect to those instruments, we do not report separate findings on those instruments. That is not a matter of contention.

The available zoning options and jurisdictional scope

[19] In terms of that statutory framework, within the jurisdictional scope of the appeal, we may determine an appropriate zoning for the Site within the spectrum of the status quo WBRAZ and the Precinct rezoning pursued by the Trust. That can include some modification of either of those zoning outcomes.

[20] Within that spectrum, the consensus of the evidence strongly favours the Modified WBRAZ zoning outcome that the settlement pursues for the Site. On that evidence, we find all other zoning outcomes inappropriate.

[21] We accept counsel's consensus submission that the inclusion of the 'Eastern Side of Lower Shotover Road' as a Moderate landscape capacity area and

the application of the Modified WBRAZ zoning of the Trust's Site is within jurisdictional scope. That is as relief that is comfortably within the spectrum between the Precinct upzoning initially pursued and the status quo unmodified WBRAZ that is the subject of this appeal.

The modified WBRAZ zoning now pursued

[22] The Modified WBRAZ relief now pursued is in summary as follows:¹¹

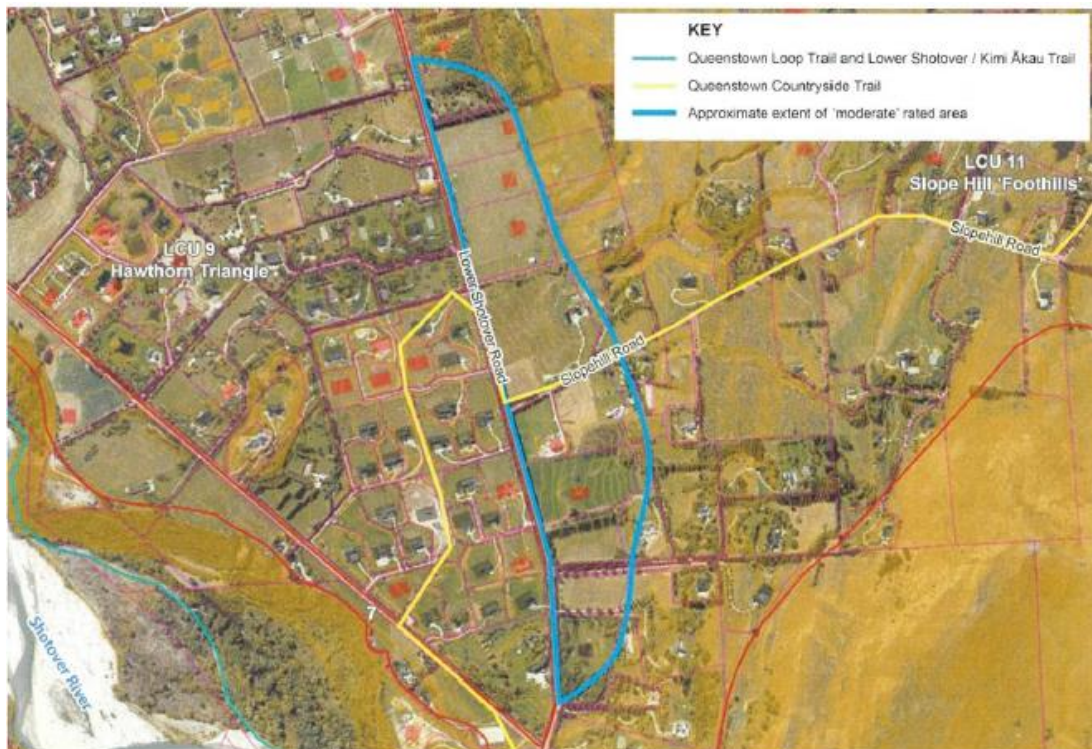
- (a) upgrading the current Low landscape capacity rating to Moderate for the mapped area of LCU 11 (including the Trust and the s274 party's properties) to be described as 'Eastern Side of Lower Shotover Road';
- (b) making the associated change to the 'Capability to absorb additional development' row of LCU 11 in Sch 24.8;
- (c) modifying provisions in PDP Chs 24 and 27 to reflect an enhanced landscape capacity for subdivision and development of that denoted area of LCU 11 as follows:
 - (i) specifying a minimum lot size (of 1ha) and a minimum average lot size (1.8ha) to be inserted into 24.5.1.6 and 27.6.1;
 - (ii) specifying discretionary subdivision activity status for subdivision that is "contained within" the 'Eastern Side of Lower Shotover Road' Moderate capacity area and that complies with the above-noted minimum and minimum average lot size standards (in rr 27.5.18A and 27.6.1);
 - (iii) adding a new sub-clause to Pol 24.2.1.1B (a policy prescribing outcomes for particular parts of the Wakatipu Basin, commencing "Ensure the following outcomes in the consideration of any proposal for subdivision or residential development") is proposed as follows:

¹¹ Joint memorandum dated 26 February 2024 and joint memorandum dated 4 December 2024.

- x. in the part of LCU11 described in Schedule 24.8 as 'Eastern Side of Lower Shotover Road':
 - i. minimise the visibility of development from Lower Shotover Road, the Queenstown Trail and Slopehill Road by confining development to locations where existing landform or existing vegetation (including mature roadside vegetation) serve to limit visibility.

The evidence

[23] The February joint memorandum¹² explains how QLDC's Low landscape capacity rating for LCU 11 along the eastern side of Lower Shotover Road did not reflect Ms Gilbert's evidence in the first instance hearing of Topic 30. Her assessment was that this part of LCU 11 has Moderate capacity to absorb rural living development. The land in question is depicted in the below figure:¹³



¹² Joint memorandum dated 26 February 2024.

¹³ Affidavit of Bridget Gilbert affirmed 9 October 2024, Exhibit "A", EIC of Bridget Gilbert dated 6 August 2021, Figure 2: LCU 11 East of Lower Shotover Road.

[24] Ms Gilbert's assessment was influenced by several factors related to the limited visibility and unique topographical character of the area in question. The low-lying nature of this part of LCU 11 means it has a limited role in shaping the landscape character of the Basin. Visibility from Lower Shotover Road and Slopehill Road is restricted due to intervening vegetation, some of which is protected. Similarly, views from the Hawthorn Triangle and existing rural living properties on the eastern face of the Slope Hill foothills are limited by vegetation and landform features. Additionally, the distinct topographical character of this area, which is flatter and lower compared to the more elevated, hummocky and/or sloping land of the rest of LCU 11, further differentiates it from the surrounding landscape.¹⁴

[25] In relation to the Trust's land, Ms Gilbert's evidence broadly aligns with the LCU boundary proposed in Mr Skelton's evidence dated 17 December 2021 filed in relation to this appeal.

Joint memoranda

[26] The February joint memorandum¹⁵ details that the agreed relief includes refinements of the Moderate landscape capacity area boundaries from those Ms Gilbert identified (as set out in Annexure 1). That refined area generally described as the low-lying and generally flat alluvial terrace along the central portion of the western side of the unit is identified as 'Eastern side of Lower Shotover Road'. The agreed relief also involves associated amendments to provisions of Chs 24 and 27 to identify that moderate capacity area.

[27] In addition to a minor refinement with respect to the Trust's Site, the boundary is also changed so as to encompass all of the Microgreens/Chocano

¹⁴ Affidavit of Bridget Gilbert affirmed 9 October 2024, Exhibit "A", EIC of Bridget Gilbert dated 6 August 2021, at [5.29] – [5.30].

¹⁵ Joint memorandum dated 26 February 2024.

property to the north.¹⁶

[28] Inclusion of the latter property within the moderate capacity area would allow for a two-lot subdivision and two-dwelling development on that property to be classed as a discretionary activity. QLDC acknowledges that this proposed realignment of the LCU 11 Moderate capacity area would be somewhat arbitrary. That is in the sense that it follows cadastral boundaries. It is acknowledged that the toe of the sloping landform that runs roughly through the middle of the Microgreens/Chocano property would be more legible and defensible in a geomorphological sense. Nevertheless, the memorandum records that the parties agree that property has capacity for two dwellings. On that basis, the parties (including QLDC) support this boundary change.¹⁷

[29] Nevertheless, QLDC is anxious to ensure the approach it supports on this occasion is not considered as a precedent for setting boundaries of other Moderate landscape capacity areas in the Wakatipu Basin. It notes, in those terms, that Ms Gilbert included approximately half of the Microgreens/Chocano property within the boundaries of her recommended Moderate capacity area. While a dwelling constructed within that part of the property would not be visible from outside of the property, there is a consented building platform on the other half (the higher portion) of the property. The memorandum explains that a building on that consented platform would not be easily viewed.¹⁸ The parties agree that there is capacity within the Site to absorb two dwellings and that would achieve Objective 24.2.1:

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

[30] The parties consider that the Moderate landscape capacity area sought as

¹⁶ At [10].

¹⁷ At [11].

¹⁸ Joint memorandum dated 26 February 2024 at [12].

relief is of a scale, nature and design that maintains or enhances the landscape character and visual amenity values of all relevant LCUs as identified in Sch 24.8, therefore achieving Pol 24.2.1.1A and assisting to achieve objective 24.2.1. That Moderate capacity area is also located directly adjacent to the existing Precinct zone (the Hawthorne Triangle) on the western side of Lower Shotover Road which was relevant to Ms Gilbert's identification of the area in the Topic 25/30 hearing.¹⁹

[31] The parties agree that these modifications to the WBRAZ for the appeal Site (with associated changes with respect to the Microgreens/Chocano property) are more appropriate than upzoning to Lifestyle Precinct.²⁰

Evaluation and outcome

[32] We accept the explanations given in the joint memorandum, and find them sufficiently supported by the evidence provided.

[33] Properly, QLDC points out that the settlement reached between the parties does not entirely reflect sound landscape practice. That is insofar as the parties have agreed to a repositioning of the Moderate landscape capacity boundaries, with respect to the Microgreens/Chocano property to follow cadastral boundaries rather than an available, more legible, geomorphological boundary along the toe of the sloping landform on that property. That aspect of their agreement is not specifically supported by Ms Gilbert's evidence. Nevertheless, we acknowledge that is more an issue of landscape practice than a matter that puts the agreement reached in conflict with the PDP's relevant intentions for the maintenance or enhancement of the landscape character and visual amenity values of the Basin. That is because we accept the assurances provided by the parties concerning the landscape capacity of the Site and the Microgreens/Chocano property. For the latter, that indication is of sufficient capacity to make appropriate discretionary activity status for a two-lot/two-dwelling subdivision and development of the

¹⁹ Joint memorandum dated 26 February 2024 at [13].

²⁰ Joint memorandum dated 26 February 2024 at [13].

Microgreens/Chocano property.

[34] Therefore, we determine that the settlement reached is acceptable. QLDC is **directed** to:

- (a) update the planning maps and provisions of the PDP according to Annexures 1 and 2; and
- (b) file a reporting memorandum as to that once completed.

[35] This matter being determined to implement a settlement, there will be no order as to costs.



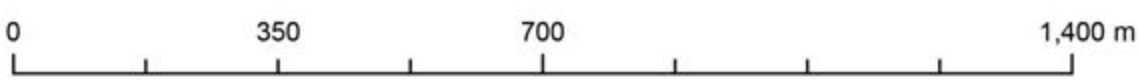
J J M Hassan
Environment Judge



ANNEXURE 1

The boundaries of the Eastern side of Lower Shotover Road Moderate Landscape Capacity Area for to be included in the planning maps of the Proposed District Plan.

QLDC Property Map



Scale: 1:10,000

Map Date:
16/08/2022



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ANNEXURE 2

Agreed plan provisions for incorporation into Chs 24, 27, and Sch 24.8 of the
Proposed District Plan

Appendix A: Updated Provisions

Drafting Note: the letter 'x' (also highlighted yellow), indicates that the Council is to insert the new text, as a new limb into the relevant rule in the PDP.

Chapter 24 Wakatipu Basin

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

....
x in the part of LCU 11 described in Schedule 24.8 as 'Eastern Side of Lower Shotover Road':

i. minimise the visibility of development from Lower Shotover Road, the Queenstown Trail and Slopehill Road by confining development to locations where existing landform or existing vegetation (including mature roadside vegetation) serve to limit visibility.

	Table 24.2 – Standards	Non-compliance status
24.5.1.6	<p>Any site located within a Landscape Character Unit or area identified on the District Plan web mapping application a maximum of one residential unit per net site area and average area:</p> <p>...</p> <p><u>24.5.1.6.X</u> LCU 11 Slope Hills 'Foothills' (limited to the area identified as the Eastern Side of Lower Shotover Road): 1ha minimum and 1.8ha average.</p>	NC

Chapter 27: Subdivision and development

	Subdivision Activities District Wide	Activity Status
27.5.19A	<p>Subdivision of any site within the Wakatipu Basin Rural Amenity Zone (outside the Lifestyle Precinct) where located within the following areas identified on the district plan web mapping application:</p> <p>...</p> <p>X. <u>LCU 11 Slope Hills 'Foothills' (limited to the area identified as the Eastern Side of Lower Shotover Road)</u></p>	D

27.6.1 No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, an average net site area less than the minimum specified.

Zone		Minimum Lot Area
	Wakatipu Basin Rural Amenity Zone	80ha
	Within the following areas of the Wakatipu Basin Rural Amenity Zone identified on the district plan web mapping application the minimum net site area and the average area of all lots in the subdivision is not less than:	
	<u>LCU 11 Slope Hills 'Foothills' (limited to the area identified as the Eastern Side of Lower Shotover Road)</u>	<u>1ha minimum and 1.8ha average</u>

24.8

Schedule 24.8 Landscape Character Units

Drafting Note: the base text uses the provisions recently confirmed through decision [2024] NZEnvC 291 regarding the Wakatipu Equities Limited and Strain appeals.

11: Slope Hill ‘Foothills’

Landscape Character Unit	<ul style="list-style-type: none"> 11: Slope Hill ‘Foothills’
Capacity to absorb additional development	<p>Moderate:</p> <ul style="list-style-type: none"> the low lying and generally flat alluvial terrace along the central portion of the western side of the unit (on the Eastern Side of Lower Shotover Road). The relatively low-lying shallow shelves, planted pond and stream margins, and sloping land in dense and mature tree cover, extending between the DoC Reserve and Threepwood on the south side of Slope Hill Road (east), within the Slope Hill valley part of LCU11 (East of Slopehill Road). Elevated Central Terrain: <ul style="list-style-type: none"> Area A: the sequence of visually discreet, narrow and small-scale localized shelves in the western part of the Elevated Central Terrain Area B: the generally flat to more gently sloping, elevated parts of the Elevated Central Terrain where existing landform and vegetation features provide containment Area C: the lower lying slopes interspersed with gullies, bordered by the established rural living development accessed from Slope Hill Road (to the south) and Elysium Way (to the east). <p>Low: the balance of the unit.</p>

