

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

**Decision No. [2023] NZEnvC 200**

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN E HANAN

(ENV-2019-CHC-16)

AND BANCO TRUSTEES, McCULLOCH  
TRUSTEES 2004 LIMITED AND  
OTHERS

(ENV-2019-CHC-45)

Appellants

AND QUEENSTOWN LAKES DISTRICT  
COUNCIL

Respondent

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

Hearing: at Queenstown on 13 December 2022 and  
AVL hearing on 15 February 2023

Appearances: G Chappell for E Hanan and D Hanan  
(and M Hanan, deceased)  
G M Todd & B B Gresson for Banco & others  
S Scott and R Mortiaux for the respondent  
R Wolt for Boxer Hill Trust (s274 party)  
K Swain for himself and others (s274 parties)



Last case event: 13 April 2023  
Date of Decision: 18 September 2023  
Date of Issue: 18 September 2023

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**INTERIM DECISION OF THE ENVIRONMENT COURT**  
**Topic 31: McDONNELL ROAD – LCU 24**

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- A: Precinct zoning is confirmed for both the Banco Trustees and Boxer Hill Trust Sites, subject to modifications. Each appeal is therefore allowed and declined in part.
- B: Associated directions are made for the purposes of the court’s approval of a final set of provisions for the updating of the proposed Queenstown Lakes District Plan.

**REASONS**

**Introduction**

[1] This decision concerns appeals as to the zoning of two parcels of land (‘Sites’) on McDonnell Road, near Arrowtown as part of Stage 2 of the Queenstown Lakes District Plan review (‘PDP’):

- (a) an approximately 6.5 ha site at 112 McDonnell Road (‘Banco Site’) southwest of Arrowtown owned by Banco Trustees Limited, McCulloch Trustees 2004 and others (‘Banco’); and
- (b) an approximately 8.4 ha site located further to the south at 174 McDonnell Road (Lot 2 DP 392663) (‘BHT Site’) owned by Boxer Hill Trust (‘BHT’).

[2] Under the Wakatipu Basin variation to the PDP, the Sites were initially proposed to be zoned Wakatipu Basin Rural Amenity Zone ('WBRAZ'). For both Sites, this was changed by QLDC decisions to Wakatipu Basin Lifestyle Precinct ('Precinct') a subzone of the WBRAZ.

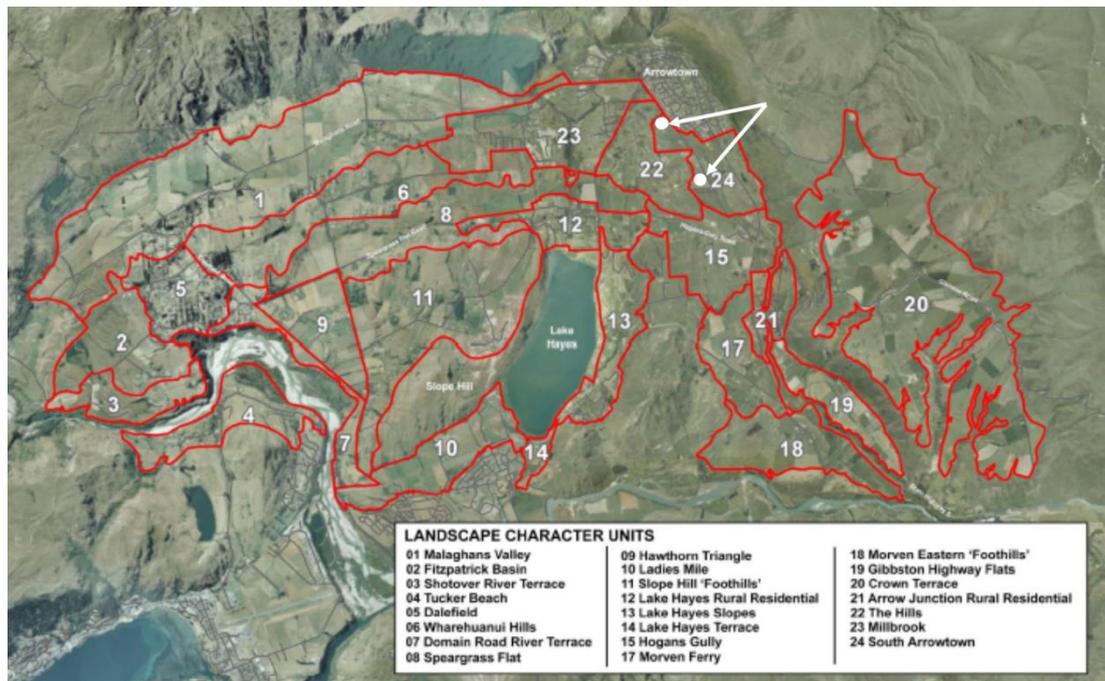
[3] The Sites are on the western side of McDonnell Road. Under the PDP Sch 24.8, they are each within Landscape Character Unit 24: Arrowtown South ('LCU 24'). As is described in Sch 24.8, LCU 24 encompasses the flat to gently rolling land on the south side of Arrowtown and includes the steep escarpment that currently defines the southwestern edge of Arrowtown village. The eastern boundary of LCU 24 extends along McDonnell Road. It is bounded to the west and south by LCU 22: the Hills and LCU 15: Hogans Gully, both pertaining to PDP Resort zones with a focus on high quality golf and visitor accommodation facilities.

[4] LCU 24 is visually prominent from a number of streets and public viewpoints on the western edge of Arrowtown as well as from more distant viewpoints such as on public tracks and the 'zig zag' lookout on the western edge of the Crown Range. Existing land uses in LCU 24 include Arrowtown Golf Course, a rural residential enclave known as Arrowtown South, Arrowtown Lifestyle Retirement Village and some areas of open grazing.

[5] The approximate locations of the Sites within LCU 24 are depicted in the copy of the Sch 24.8 map below.<sup>1</sup>

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<sup>1</sup> The Banco Site is the white dot at the top right and the BHT Site is the dot towards the lower middle of LCU 24 alongside the number '24'.



### ***The Banco Site and environs***

[6] The Banco Site is generally in rank grass other than for a residential dwelling and some ancillary structures and mature trees towards the middle of the Site. There is a hummocky feature in that general locality. The remainder of the Site is generally moderately flat and gently sloping. Towards the western end of the Site, a ridge provides some visual separation from the adjoining Hills Resort.

[7] Next to the Banco Site to the north is a small rural property (82 McDonnell Road) owned by Dame Elizabeth Hanan and used by her family over many years.

### ***The BHT Site and environs***

[8] The BHT Site is relatively flat open pastoral land, apart from a few small buildings. It is largely hidden from McDonnell Road by a growing cypress hedge that extends along this frontage. As the hedge matures, it can be expected to provide visual shielding for other near views. The Site is flanked by the Hills Resort to the west and Arrowtown Lifestyle Retirement Village at 175 McDonnell Road to the south. The Retirement Village, approved under special housing

legislation that bypassed usual RMA<sup>2</sup> processes, reads as an anomalous dense urban enclave in a predominantly rural setting.

***Outcomes pursued for the appeals***

[9] The Banco appeal is confined to the Banco Site and seeks that the Precinct zoning of that Site be modified. Through their submissions and evidence, Banco confined the scope of these modifications somewhat from what they initially pursued in the appeal. Their ultimate case was for Precinct zoning to be confirmed subject to the inclusion of a bespoke discretionary activity classification for subdivision of the Site that complies with a minimum lot size standard of 4000m<sup>2</sup> ('modified relief'). That bespoke regime would be in addition to the Precinct's restricted discretionary subdivision rule for subdivision that complies with a dual 6000m<sup>2</sup> minimum/1 ha average standard. Non-compliance in each case would be classed as a non-complying activity.<sup>3</sup>

[10] Dame Elizabeth Hanan's appeal ('Hanan appeal') is against the Precinct zoning of both the Banco Site and the BHT Site and seeks that the originally-notified WBRAZ zoning be reinstated for each Site. That relief is supported by Mr David Hanan and Mr Ken Swain. Mr Hanan is a s274 party to both appeals and Mr Swain to the Hanan appeal.

[11] BHT is a s274 party to the Hanan appeal. It seeks that Precinct zoning be confirmed for its Site but subject to an order to correct the PDP zone maps that presently show pockets of the Site as WBRAZ. There is a preliminary issue of jurisdictional scope about that as we discuss shortly.

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<sup>2</sup> Resource Management Act 1991.

<sup>3</sup> Opening submissions for Banco, dated 12 December 2022, at [13].

## **Preliminary issues as to jurisdictional scope**

### ***Whether there is scope to remedy the split zoning of the BHT Site***

[12] This further jurisdictional scope issue ultimately was not a matter of contention between the parties but we need to determine it. It concerns an agreed mapping anomaly in regard to the Banco Site and arises from the fact that BHT is not an appellant but a s274 party to the Hanan appeal. BHT asks that the court correct this anomaly by confirming Precinct for the entire Site.

[13] The entire Banco Site is 8.4 ha in area. In the notified variation, it was proposed to be zoned WBRAZ. BHT's submission on the notified variation sought that for their land "west of McDonnell Road", WBRAZ be replaced with Precinct zoning. Their submission attached a map purporting to be of their Site but erroneously showing only a 7.1 ha portion of it. QLDC accepted the substance of BHT's submission but relied on the erroneous map with the effect that the PDP planning maps were updated to reveal islands of the Site as WBRAZ with the balance was rezoned Precinct, as follows:<sup>4</sup>

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<sup>4</sup> BHT closing submissions, dated 24 March 2023, at [24] being an extract from BHT's submissions to QLDC on the notified variation, leading to the error.



*Figure A: Site Plan showing WBLP and WBRAZ zoning within BHT's Site*

[14] When asked in cross-examination, Marcus Langman, who was the author of the s32/32AA report for the first instance hearing of submissions on the Basin variation, agreed that no evaluation of a split-zoning treatment of the Site was undertaken for QLDC at the time of the first instance hearing of submissions.<sup>5</sup> That reinforces to us that QLDC did not consciously elect a split-zoning outcome.

[15] Nor did any expert before us consider split-zoning of the Site to be appropriate.<sup>6</sup> No party advocates for such an outcome. The Hanan appeal seeks a return to WBRAZ zoning but takes no issue with BHT's submission that there is jurisdictional scope to rectify the split-zoning of the Site.<sup>7</sup>

[16] We accept Ms Wolt's explanations as to why there are no persons who may

<sup>5</sup> Transcript, 15 February 2023 p 28 l 20 – p 29 l 23.

<sup>6</sup> Ms Pflüger and Mr J Brown, witnesses called by BHT, supported treatment of the Site as a whole as Precinct. Ms Mellsope and Mr Langman, called by QLDC, agreed there would not be robust or defensible boundaries between a Precinct zoning of the balance of the Site and these WBRAZ islands.

<sup>7</sup> Transcript, 13 December 2022 p 171, l 9.

be impacted by remediation of this anomaly who are not before the court. As the map shows, the pockets of WBRAZ zoning on the Site are adjacent to the Hills Resort Zone and the Retirement Village. The Hills Resort is owned by persons or entities related to BHT for whom counsel also act and who support what BHT seeks.<sup>8</sup> Aside from the Hanan appeal, the only other further submission on BHT's was from Arrowtown Retirement Village Joint Venture (FS 2769) and it was in support of the Precinct zoning outcome that BHT pursued. Counsel further explained that there is an agreement in place with the registered proprietors of the Retirement Village that effectively prevents any objection or steps in relation to the zoning and development of the BHT land (i.e. the 8.4 ha area) "for rural living purposes".<sup>9</sup>

[17] Section 292 RMA specifies that the court may, in any proceedings before it, direct a local authority to amend a district plan for the purpose of remedying any mistake, defect, or uncertainty or giving full effect to the plan. The discretion is to be exercised as an exceptional remedy for mistakes or errors in the nature of "slips". It should not be used where third parties who may be affected are unable to participate.<sup>10</sup> There is a similar capacity for the court to make an alteration of minor effect or to correct a minor error under s290 and cl 16 Sch 1 RMA.

[18] We are satisfied that the split zoning of the BHT Site was an error or unintentional slip. As we find no prejudice would arise to persons who are not represented were we to remediate it, we are also satisfied that it is a minor error capable of being corrected under either s292 or cl 16 Sch 1 RMA. That could be by applying either WBRAZ or Precinct to the entire Site. We make associated directions under s292 later in this decision.

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<sup>8</sup> Closing submissions for BHT, dated 24 March 2023, at [42]-[44]. Ms Wolt explained those are Trojan Helmet Limited, trustees of BHT, Ann Christine Hill and Richard Michael Hill, trustees of the Farm Trust.

<sup>9</sup> Counsel offered to provide a copy of the agreement to the court on request but we do not find that warranted given counsel's explanation.

<sup>10</sup> See for example *35 Ltd v Auckland City* [2018] NZEnvC 215 at [7].

***Whether changes can be made to Sch 24.8.***

[19] As we have noted, the Sites are within LCU 24 in PDP Sch 24.8. LCU 24 is one of 24 LCUs mapped across the Basin. For each LCU, Sch 24.8 describes various landscape attributes and characteristics, identifies landscape character and visual amenity values and specifies an associated rating of “landscape capacity” (or “capability to absorb subdivision and residential development”) according to a six-point evaluative scale (Pol 24.2.1.1X).<sup>11</sup>

[20] Sch 24.8 is intended as a non-prescriptive “tool” to assist with the identification of the landscape character and amenity values within each LCU and across the Basin more generally. As we set out in Annexure 1, the capacity ratings in Sch 24.8 are intended to be considered when assessing subdivision applications.

[21] The landscape experts agree that Sch 24.8 should be amended in regard to LCU 24 but disagree about some aspects, including as to the appropriate landscape capacity rating. Their positions are set out in a joint witness statement (“JWS-Landscape (1)”) to which we return shortly.<sup>12</sup>

[22] Counsel for Banco submit that there is no jurisdiction to make any substantive amendments to Sch 24.8 and in particular any change to the specified High landscape capacity rating.

[23] The Hanan appeal refers directly to Sch 24.8 as follows:<sup>13</sup>

The landscape character unit of Arrowtown South notes “Ensuring urban residential development is constrained within existing defensible boundaries and does not sprawl westwards and southwards in an uncontrolled manner into the

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<sup>11</sup> As confirmed in *Barnhill Corporate Trustee Ltd & Ors v Queenstown Lakes District Council* [2023] NZEnvC 91

<sup>12</sup> Joint witness statement of Stephen Skelton, Elizabeth Anne Steven, Helen Mellsop, Yvonne Pflüger, dated 2 December 2022. Ms Gilbert did not participate in this conferencing as she attended the hearing under witness summons.

<sup>13</sup> Closing submissions for the Hanan appeal, dated 23 March 2023, at [5.4] and CB42.

existing, 'more rural' areas. This is under the heading "potential landscape issues and constraints associated with additional development".

[24] However, counsel for Banco submits that the substantive changes to Sch 24.8 recommended by some of the landscape experts were not fairly or reasonably raised in the original submission that Dame Elizabeth and the late Murray Hanan had made on the notified provisions of the PDP.<sup>14</sup> That submission was in Stage 1 of the review and in relation to the then-proposed zoning treatment of the western side of McDonnell Road that was superseded by the variation that proposed a new WBRAZ for the Basin. The submission sought that the rural environment be maintained and that zoning not enable "rural residential" development.

[25] Ms Chappell noted, on the basis of established authority, the court should approach its consideration of what is "reasonably and fairly raised" by a submission "in a realistic workable fashion", not in terms of "legal nicety".<sup>15</sup> Counsel for QLDC submitted that a purposive interpretation of cl 14(2) Sch 1 should take account of the history of the PDP review including the variation that came to propose the WBRAZ in place of the earlier proposed zoning with respect to which submissions that gave rise to appeals before the court were made.<sup>16</sup>

*There is jurisdiction to amend Sch 24.8 as appropriate*

[26] We find there is no jurisdictional impediment to considering and making findings on all the experts' recommendations concerning Sch 24.8. The entire substance of Sch 24.8 LCU 24 is plainly within the scope of relief in the Hanan appeal. We find the capacity to substantially revise Sch 24.8 LCU 24 is also fairly and reasonably raised in their originating submission. While it was made with reference to the now-superseded proposed zoning in Stage 1 of the review, the

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<sup>14</sup> Opening submissions for Banco, dated 12 December 2022, at [50]-[63], closing submissions for Banco, dated 23 March 2023, at [22].

<sup>15</sup> Closing submissions for the Hanan appeal, dated 23 March 2023, at [5.5].

<sup>16</sup> Closing submissions for QLDC dated 13 April 2023 at [4.5]-[4.20].

submission is deemed by cl 16B of Sch 1 RMA to be against the variation that proposed WBRAZ. The original submission was against enabling rural residential development. In a purposive sense, the submission is to be interpreted as fairly and reasonably raising concern that the landscape does not have capacity for and opposing rural residential development. Within the design of the WBRAZ, Sch 24.8 is part of the set of provisions that govern such development in the Basin according to the construct of landscape capacity.

[27] Therefore, we find there are no jurisdictional scope impediments to our making appropriate changes to what Sch 24.8 specifies in regard to landscape capacity in LCU 24 as may be reasonably informed on the evidence.

### **Statutory framework and principles for determining the appeals**

[28] As we set out in Annexure 1, our ultimate task in determining these Topic 31 appeals is to determine what is the most appropriate zoning outcome, as measured by reference to achievement of relevant PDP objectives. In essence, that measure is in terms of whether development enabled under an option would maintain or enhance the landscape character and visual amenity values of LCU 24.

### **Potential zoning outcomes – Precinct or Modified Precinct or WBRAZ**

[29] For each of the appeals, the most appropriate zoning outcome is on the spectrum between the status quo Precinct and reversion to WBRAZ. Within that spectrum for each Site, we can consider modifications to the status quo Precinct ('Modified Precinct') as are raised in evidence including:

- (a) for the Banco Site, Banco's modified relief; and
- (b) for the BHT Site, in addition to extension of Precinct to the entire Site, a greater internal boundary setback in relation to the Arrowtown Retirement Village and different Site access arrangements as are proposed in evidence.

[30] As we have noted, we may consider associated modifications to Sch 24.8 concerning LCU 24 within the scope of the Hanan appeal.

## **Evaluation of the evidence**

### ***The evidence***

[31] We heard from experienced landscape and planning experts.<sup>17</sup> We also heard from several local residents. Dame Elizabeth and David Hanan gave evidence on their own behalf. They also called Mr Mark Hosie and adduced several affidavits from Arrowtown residents or representatives of residents' associations or groups.<sup>18</sup> In addition, we heard from a s274 party, Mr Kenneth Swain, a resident of Cotter Avenue, Arrowtown.

### ***Site visits***

[32] According to an itinerary proposed by the parties, the court visited a number of viewpoints of the Sites, including from public reserves, local streets and walkways.

### ***Landscape evidence***

[33] The experts materially differed in their ratings of the landscape capacity of LCU 24 and of the Sites. The PDP decision version of Sch 24.8 ascribes to LCU 24 a High capacity rating. As recorded in JWS-Landscape (1), the ratings

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<sup>17</sup> Of the landscape experts, Ms Anne Steven was called by the Hanans and Ms Helen Mellsop was called by QLDC in respect to both Sites. Mr Stephen Skelton was called by Banco in respect of the Banco Site and Ms Yvonne Pflüger was called by BHT in respect of the BHT Site. Of the planning experts, Mr Marcus Langman was called by QLDC for both Sites, Mr Nicholas Geddes was called by Banco in respect of the Banco Site. Mr Jeffrey Brown was called by BHT in respect of the BHT Site.

<sup>18</sup> These included affidavits of Susan Rowley, Chairperson of the Arrowtown Village Association; Barry McMeeken; Colin MacNicol and Jean Macdonald MacNicol; David Palmer; Gary and Heather Wallis; Jillian and Edwin Tremain; Karen Varcoe; Kevin Mahoney; Margaret Austin; Mary Hosie; Phillipa Macauley; Robert Gatley; Robyn Wilson; Roger Wilson; Roy Bagley; Sandra Keay; Stephen and Pamela Rogers; Stephen and Joanne Blakie; Susan Bagley.

recommended by the landscape experts were as follows:<sup>19</sup>

<b>Witness</b>	<b>Ratings for LCU 24</b>
S Skelton, Y Pflüger	High
A Steven	Low
H Mellsop	Moderate

[34] As recorded in the JWS-Landscape (1), experts also differed in their landscape capacity ratings for particular Sites:<sup>20</sup>

<b>Witness</b>	<b>Banco Site</b>	<b>BHT Site</b>
Y Pflüger	Not rated	High
A Steven	Low	Medium-Low <sup>21</sup>
H Mellsop	Medium-High	Medium-High

[35] All experts essentially agree that the Retirement Village is an anomalous feature in the landscape setting. However their opinions on how it should be accounted for diverged significantly. Related to the Retirement Village to some extent, they also differed significantly as to whether LCU 24 continued to serve a valuable greenbelt function in relation to Arrowtown.

[36] Ms Steven considers that the Retirement Village should be excluded in the analysis of landscape capacity given its genesis by special legislation and its distorting effect in the consideration of the landscape capacity of LCU 24. She considers that the authors of the *Wakatipu Basin Land Use Study* ('WBLUS') had erred in treating the Retirement Village as increasing the landscape capacity of LCU 24 to High.<sup>22</sup>

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<sup>19</sup> JWS-Landscape, dated 2 December 2022 at [21](a).

<sup>20</sup> At [21](b). Mr Skelton did not offer a separate capacity rating for the Banco Site, supporting the High rating accorded to LCU 24 in the decision version of the PDP.

<sup>21</sup> For Ms Steven, the M-L rating for the BHT Sites is from her EIC BHT, at [3.17] as referred to by counsel for the Hanan appeal in opening submissions.

<sup>22</sup> Steven EIC Banco, at [3.7], [6.6]-[6.8], [6.19]-[6.20], Steven EIC BHT, at [3.6], [3.8].

[37] Mr Skelton and Ms Pflüger each consider the Retirement Village to have significantly increased the landscape capacity of LCU 24 such that they support the High rating specified in Sch 24.8. Mr Skelton considers that the Retirement Village has eroded the rural values of the LCU and the greenbelt experience of McDonnell Road.<sup>23</sup> Ms Pflüger characterised the Retirement Village as having “changed the rural character along this southern part of McDonnell Road to a more urban appearance, with a distinctive hard edge of built development immediately adjacent to the BHT Site”.<sup>24</sup>

[38] Ms Mellsop does not consider that the Retirement Village should be kept aside in an assessment of landscape capacity. However, in substance, she is closer to Ms Steven than the other experts in her opinion as to how it should be accounted for in the consideration of landscape capacity. Rather than being treated as opening up LCU 24 to greater rural living development, she regards the Retirement Village as having made LCU 24 “sensitive to any additional development that could undermine the legibility of Arrowtown’s UGB and the integrity of the greenbelt/rural buffer to the town”.<sup>25</sup>

[39] Those contrasting perspectives inform how the experts view the landscape capacity and different zoning options for each Site.

[40] Ms Steven and Ms Mellsop consider that LCU 24 continues to have an important greenbelt function notwithstanding that it has been impacted by the anomalous presence of the Retirement Village.

[41] That greenbelt function informs Ms Steven’s opinion that the Banco Site has only Low capacity. She regards this capacity as limited in view of the importance of “maintaining an open road frontage ... with a strong rural character that is of an appropriate scale against the scale of the adjoining urban area”. She

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<sup>23</sup> Skelton EIC Banco, at [38].

<sup>24</sup> Pflüger EIC, at [42].

<sup>25</sup> Mellsop EIC, at [8.6].

commented that this frontage “(i.e., the approximately 125m wide swathe of open paddock between the central ridge and the road boundary) is important in maintaining an effective greenbelt function and for the integrity of the UGB” (i.e. the urban growth boundary as specified in the PDP for Arrowtown).<sup>26</sup>

[42] Ms Steven accords the BHT Site a Medium-Low rating because of its exposure mainly just to elevated public viewpoints (given that the cypress hedge shields views from McDonnell Road) its larger area and greater depth from McDonnell Road and its hilly backdrop.<sup>27</sup>

[43] Rather than having any particular greenbelt value, Mr Skelton considers much of LCU 24, including the Banco Site, to be part of a remnant pastoral landscape in a state of change.<sup>28</sup> His High landscape capacity rating of the Banco Site underpins his support for Banco’s proposed bespoke 4000m<sup>2</sup> minimum site area standard for discretionary activity subdivision of the Site. He characterised this as slightly increasing “the presence of built development, thus reducing open character”. However, he considers overall that development of the Banco Site on that basis would “result in an area of land at the edge of Arrowtown’s urban areas which is indicative of the landscapes less dense, urban parkland character”. Indeed, he considers this Modified Precinct outcome would “lessen the jarring effects of Arrowtown’s hard edge and the disconnect between Arrowtown and the Retirement Village”.<sup>29</sup>

[44] Similarly, Ms Pflüger does not identify LCU 24 to have any particular value as a greenbelt. She characterised the Retirement Village as “effectively” providing for “development at urban densities”.<sup>30</sup> She considers the predominant existing and emerging character of LCU 24 to be “rural living” and “parkland”.<sup>31</sup> She

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<sup>26</sup> Steven EIC Banco, at [6.21].

<sup>27</sup> Steven EIC BHT, at [3.8]-[3.9].

<sup>28</sup> Skelton EIC, at [38].

<sup>29</sup> Skelton EIC, at [42].

<sup>30</sup> Pflüger EIC, at [42].

<sup>31</sup> Pflüger EIC, at [59].

considers there is no need to modify the Precinct’s 10m internal boundary setback with respect to the Retirement Village boundary. She commented that, by enabling a more sensitive layout and allowing for planting and open space it “would soften the starkness of” that boundary when viewed from elevated viewpoints. She noted, in particular, the viewpoint from the top of Tobins Track from where the Retirement Village is most prominent. As for Ms Mellsop’s recommended 75m setback from the Retirement Village, she considers this would lead to a worse visual outcome “than a staggered lesser setback of buildings from this boundary” that could be achieved under the existing Precinct rules.<sup>32</sup>

[45] Ms Mellsop described LCU 24 as having a “strong visual influence” within the eastern Basin as a clear rural enclosure to Arrowtown Village. In addition, together with LCU 22, she considers that it serves to provide helpful separation between Arrowtown village and the more intensive urban-style development within Hills Resort. Overall, she considers LCU 24 has “limited areas where additional development could be absorbed without loss of the remaining openness and semi-rural character”.<sup>33</sup> That informed Ms Mellsop’s capacity ratings of Moderate-High for each Site and Moderate for balance of LCU 24.<sup>34</sup> Those ratings inform her opinions that:

- (a) the bespoke 4000m<sup>2</sup> minimum site area standard for discretionary activity subdivision sought by Banco would compromise “the legibility and defensibility of the UGB at McDonnell Road”;<sup>35</sup> and
- (b) the Precinct’s standard 10m internal boundary setback would not leave sufficient open space between the Retirement Village’s urban form and development on the BHT Site (her recommendation being for a 75m setback for this boundary).<sup>36</sup>

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<sup>32</sup> Pflüger EIC, at [30].

<sup>33</sup> Mellsop EIC, at [8.6].

<sup>34</sup> Mellsop EIC, at [8.7]-[8.8], [8.13].

<sup>35</sup> Mellsop EIC, at [8.12].

<sup>36</sup> Mellsop EIC, at [11.14].

### *Lay evidence*

[46] The importance of protecting the Arrowtown UGB and avoiding urban creep along the western edge of McDonnell Road were strong themes in the lay evidence.

[47] Mr Dave Hanan explained the longstanding desire of members of the Arrowtown community for land on the western side of McDonnell Road to remain rural. The main focus of his concerns was the Banco Site. He commented that what Banco was seeking by way of relief does not respect the wishes of the community.<sup>37</sup> Amongst his concerns are that it would allow for a “peppering of the landscape” with buildings that would “permanently block” views that residents in Cotter Avenue and elsewhere in Arrowtown enjoy as well as degrading views from Arrowtown streets and walkways and more distant viewpoints including from Feehly Hill and Tobins Track.<sup>38</sup>

[48] Mr Mark Hosie explained that his evidence was informed by his close association with those who live in the Arrowtown community and he believed that it reflects the community’s views.<sup>39</sup> He described the community’s strong desire that the greenbelts of rural land around Arrowtown are not turned into housing.<sup>40</sup> He spoke strongly of a community feeling “disenfranchised”.<sup>41</sup> Like Mr Hanan, he focussed in particular on the Banco Site. He expressed concern that Precinct zoning would just be part of the ongoing intrusion of former farmland by intensive residential development.<sup>42</sup>

[49] Mr Ken Swain, a resident of Cotter Avenue in Arrowtown, expressed similar concerns but focussed more on the BHT Site. He commented that the

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<sup>37</sup> D Hanan EIC Banco, at [28].

<sup>38</sup> D Hanan EIC Banco, at [37].

<sup>39</sup> Hosie EIC, at [3].

<sup>40</sup> Hosie EIC, at [29], [48].

<sup>41</sup> Hosie EIC, at [88].

<sup>42</sup> Hosie EIC, at [81].

Precinct’s lot size standards for restricted discretionary subdivision would blur and undermine the rural/urban boundary and create a precedent for further development along McDonnell Road.<sup>43</sup>

[50] Susan Rowley as chairperson of the Arrowtown Village Association attested to the ongoing community frustration of being “constantly forced to defend its green boundary to both QLDC and ensuing property developers”. She characterised what Banco was seeking as being “against the aspirations” of the Arrowtown community as reflected in their “vision statements and recommendations” within the *Shaping Our Future Arrowtown Community Visioning Report (2017)*.<sup>44</sup>

### ***Planning evidence***

[51] The planning experts drew from the respective opinions of the landscape experts. As we have noted, the Hanan appeal did not call a planning expert. The planners’ first joint witness statement (‘JWS-Planning (1)’) recorded their consensus in favour of Precinct over WBRAZ zoning for each Site. Their differences were as to what if any bespoke modifications should be made for each Site in that Precinct outcome.<sup>45</sup> Those differences were essentially according to the respective opinions of the landscape experts on landscape character and capacity as we have summarised.<sup>46</sup>

[52] As we discuss shortly, the landscape and planning experts were directed to undertake a further round of conferencing prior to final closing submissions and prepared a further joint witness statement (‘JWS-Planning and Landscape’). That

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<sup>43</sup> Swain EIC, at [2], [4], [5].

<sup>44</sup> Rowley affidavit, at [11], [12].

<sup>45</sup> Joint witness statement of Jeffrey Brown, Nicholas Geddes and Marcus Langman dated 8 December 2022.

<sup>46</sup> We refer for example to Geddes EIC Banco, at [41], [42], [44], [45], Langman EIC at [7.5], [7.7], Brown EIC at [4.13].

recommended updated PDP Modified Precinct provisions for both Sites.<sup>47</sup>

## **Submissions**

### ***Introduction***

[53] We have sufficiently addressed opening submissions; parties at that stage sought outcomes that accorded with the pre-filed evidence. The court applied an inquisitorial approach of interactive engagement with parties as the hearing progressed which included:

- (a) the court making preliminary observations (recorded in Annexure 2) in light of the testing of the landscape evidence prior to an adjournment in which the landscape and planning experts were directed to undertake further conferencing for the purposes of producing a joint witness statement with any updated recommendations on PDP provisions;
- (b) a resumed hearing in which the experts who produced the resulting JWS-Planning and Landscape were tested on their associated opinions, counsel made some initial closing submissions and the court made further observations (as are also recorded in Annexure 2); and
- (c) a final round of written closing submissions.

### ***The court's preliminary observations made prior to adjournment***

[54] The court's preliminary observations prior to the 13 December 2022 adjournment are recorded in Annexure 2. Those signalled the court's preliminary views subject to closing submissions that:

- (a) LCU 24 serves an important greenbelt function notwithstanding the

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<sup>47</sup> Joint witness statement of Jeffrey Brown, Marcus Langman, Nicholas Geddes, Helen Mellsop, Anne Steven, Yvonne Pflüger, Stephen Skelton, dated 31 January 2023.

- anomaly of the Retirement Village;
- (b) Precinct was more appropriate than WBRAZ as a zoning outcome for each Site;
  - (c) in the case of the Banco Site, Banco’s concessional lot size standard would not be appropriate and there is a need to avoid linearity of built form in relation to McDonnell Road;
  - (d) in the case of the BHT Site, the internal boundary setback from the Retirement Village boundary should be splayed, starting at a width of 75m at the McDonnell Road frontage and narrowing back to the Hills Resort boundary at the rear of the Site and access should be from the rear of the Site (as was the signalled intention of BHT and illustrated in Ms Pflüger’s evidence) rather than from McDonnell Road.

### ***Initial closing submissions***

#### *Banco*

[55] Messrs Todd and Gresson reiterated Banco’s preference for their modified relief as supported by their landscape and planning evidence. They submitted that there would be no inherent conflict with relevant objectives and policies, observing that none of these require “the existing restricted discretionary lot size standards for the Precinct to be the same for every site”. Again, on the basis of Banco’s evidence, they submitted the UGB would not be undermined and their modified relief would not give rise to urban sprawl or perceptions of it.<sup>48</sup>

#### *The Hanan appeal*

[56] In her closing submissions for the Hanan appeal, Ms Chappell primarily focussed on the Banco Site, reiterating her client’s opposition to Banco’s modified

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<sup>48</sup> Closing submissions for Banco, dated 23 March 2023, at [8]-[14].

relief.<sup>49</sup>

*BHT*

[57] Ms Wolt's closing in favour of Precinct zoning of the BHT Site essentially aligned with the opinions of Ms Pflüger and Mr Brown. She confirmed that her client's intention is that all access be via the Hills Resort (and arrangements are in place to those ends with the Resort owners).<sup>50</sup>

*QLDC*

[58] Similarly, QLDC's closing submissions reflected the opinions of Ms Mellsop and Mr Langman as to the appropriate Modified Precinct approach to each Site.<sup>51</sup>

***The JWS-Planning and Landscape and QLDC's closing version provisions***

[59] The new and amended PDP provisions recommended by the experts in the JWS-Planning and Landscape were tested in cross-examination in a resumed hearing. In its closing submissions, QLDC proposed some drafting refinements. These helpfully addressed some inconsistencies and other infelicities. This version ('QLDC closing version') was the focus of final closing submissions.

***Final closing submissions***

*Banco*

[60] In final closing submissions, Banco maintained their preference for their modified relief. Subject to that, counsel recorded that Banco does not take issue with the QLDC closing version. They recorded Banco's agreement with what

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<sup>49</sup> Closing submissions for the Hanan appeal, dated 23 March 2023, at [4.1]-[4.4].

<sup>50</sup> Transcript, 13 December 2022 p 247, l 6-24.

<sup>51</sup> Closing submissions for QLDC, dated 13 April 2023, at [3.1]-[3.5].

those provisions specify concerning “specific viewpoints and locations on” the Banco Site “in which development should be restricted” and “the impact of urban sprawl along McDonnell Road”. They record that the QLDC closing version addresses concerns raised by the court as to “the potential ambiguity of the provisions as previously proposed by the planning experts”<sup>52</sup>

*BHT*

[61] BHT’s final closing submissions support the QLDC closing version. Ms Wolt pointed out a need to correct the specified legal descriptions in various provisions should the court find that the zoning outcome should pertain to its entire 8.4 ha Site.<sup>53</sup> That legal description is specified as follows:

- (a) Lot 2 DP 392663 (being the 7.1 ha WBLP area that is currently mapped);
- (b) Part Lot 7 DP 392663 (the northern and western islands); and
- (c) Part Lot 2 DP 501981 (the south western island).

*Hanan*

[62] The Hanan closing submissions generally support the proposed new policies in the QLDC closing version. As for Pol 24.2.5.7, Ms Chappell suggested as follows:<sup>54</sup>

... avoid or mitigate perceptions of urban sprawl beyond the McDonnell Road urban growth boundary including by avoiding any perception of linearity in relation to McDonnell Road and by considering building form, location, setback and mitigation proposed in the form of planting.

[63] As for r 24.5.7.2 (and the equivalent Ch 27 provisions), Ms Chappell

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<sup>52</sup> Closing submissions for Banco, dated 23 March 2023, at [23]-[26].

<sup>53</sup> Closing submissions for BHT, dated 24 March 2023, at [54]-[56].

<sup>54</sup> Closing submissions for the Hanan appeal, dated 23 March 2023, at [3.5] and Appendix 1.

proposed a revision to matter of discretion d(iii), substantively to the following effect:<sup>55</sup>

Avoiding or mitigating perceptions of urban sprawl beyond the McDonnell Road urban growth boundary including by avoiding any perception of linearity through building location and landscaping in relation to McDonnell Road, from public viewpoints within Arrowtown or from [Feehly] Hill Reserve or Tobins Track.

## **Findings as to the most appropriate zoning outcomes and PDP provisions**

### ***LCU 24 remains an important greenbelt of urban containment***

[64] On the evidence, we find it appropriate that Sch 24.8 identifies that LCU 24 remains an important greenbelt for urban containment purposes. It pairs with the UGB in those terms. The lay evidence reinforces what Ms Mellsop explained in those terms in revealing the associated importance for community wellbeing of retaining and reinforcing that greenbelt purpose in the choice of zoning treatment of the Sites.

[65] While the Retirement Village has compromised the containment and greenbelt attributes of LCU 24, it does not provide a legitimate platform for further urban creep. On the contrary, it makes careful planning treatment of the neighbouring BHT Site the more important.

### ***The LCU 24 has Moderate and the Sites Moderate-High landscape capacity***

[66] Under the PDP, there are policy consequences arising from the relative landscape capacity rating accorded to a LCU (and on occasions areas of a LCU). One point of difference concerns the focus to be applied when testing whether development would maintain or enhance landscape character and not exceed landscape capacity. Where the capacity rating is Moderate-Low or less, the focus includes the LCU but also extends to the Basin as whole (Pol 24.2.1.1). Where the

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<sup>55</sup> Closing submissions for the Hanan appeal, dated 23 March 2023, at Appendix 1.

capacity rating is Moderate, the focus is directed to the LCU only (Pol 24.2.1.1XX).

[67] We accept Ms Mellsop's evidence in finding that the High landscape capacity rating that Sch 24.8 ascribes to LCU 24 does not reflect its true capacity. We find that, with the exception of the Sites, that rating should be Moderate. That is in part because of the relatively high visual exposure of LCU 24 from elevated public viewpoints within Arrowtown and on the western faces of the Crown Range. From both viewpoints, LCU 24 continues to function as a greenbelt providing rural enclosure to Arrowtown Village and (together with LCU 22) separation between the village and the more intensive urban-style development within Hills Resort. In that role, LCU 24 operates in tandem with the Arrowtown UGB. The Moderate rating will also properly trigger Pol 24.2.1.1A including its direction to avoid sprawl along roads.

[68] Accepting Ms Mellsop's opinion, we find that each Site should be accorded a Moderate-High landscape capacity and that Sch 24.8 should ascribed that capacity for Precinct-zoned land in LCU 24. Drawing from the 24.1 Zone Purpose statement, we agree with Ms Mellsop that each Site can accommodate "sympathetically located and well-designed rural living development... which achieves minimum and average lot sizes ... while still achieving the overall objectives of" the WBRAZ (as also apply to the Precinct). That more elevated capacity rating reflects the particular landscape character and attributes and settings of each Site.

[69] For the Banco Site, the topographical variations and vegetation allow for sensitively designed rural living development. However, in terms of maintaining the greenbelt purpose of LCU 24 in this locality, there are two important constraints in terms of the wider landscape setting:

- (a) on the eastern side, the urbanisation below the escarpment on the flat land to the east of McDonnell Road makes it important to reinforce a defensible edge to Arrowtown. The 75m Precinct setback standard

for the McDonnell Road frontage is an important aspect of this, but it is also important to avoid a development form that reinforces urban linearity;

- (b) on the western side of the Site, it is also important to maintain legible separation from the neighbouring Hills Resort. That is so as to avoid urban creep from that side and hence degradation of the rural greenbelt character of LCU 24.

[70] The BHT Site is comparatively simpler and larger. However, as a flatter site, it presents associated challenges with management of its frontage to McDonnell Road and, as noted, its boundary with the Retirement Village.

***The narrative in Sch 24.8 for LCU 24 should be refined***

[71] On the basis of our evidential findings, we agree with what Ms Mellsop recommended in JWS-Landscape (1) by way of an associated updating of the narrative for LCU 24 in Sch 24.8. That is:

- (a) alongside the heading ‘Sense of Place’, the text should be amended as follows (tracking showing changes to the existing text):

However, this ‘greenbelt’ effect, together with the legibility of the escarpment as a robust defensible edge to Arrowtown has been ~~significantly~~ somewhat compromised by the Arrowtown Lifestyle Retirement Village SHA which confers a distinctly urban character in ~~a prominent and sizeable~~ part of the unit.

- (b) alongside the heading ‘Potential landscape opportunities and benefits associated with additional development’ the following text should be deleted:

Urbanising effects of the approved Arrowtown Retirement Village suggest a tolerance for (sensitive) urban development.

- (c) alongside the heading “Capability to absorb additional development” the narrative should be amended to read:

Moderate-high – areas of Precinct

Moderate.

[72] In addition, on the evidence we find:

- (a) the various changes agreed by the landscape experts in JWS-Landscape (1) and shown coloured magenta are appropriate.
- (b) other changes proposed by other experts do not accord with our evidential findings and are inappropriate.

***Landscape capacity informs the choice of zoning outcome for each Site***

[73] As counsel for the Hanan Family, Ms Chappell properly submitted in opening the key issues is the capacity of the landscape to absorb residential development.<sup>56</sup>

[74] Our findings on the Moderate-High landscape capacity of each Site as part of LCU 24 is a factor that favours the choice of Precinct over WBRAZ zoning for each Site. However, for the reasons we have given, bespoke modifications are needed for each Site to protect the greenbelt role of LCU 24 and hence maintain or enhance its landscape character and visual amenity values.

***The Banco Site – Precinct with bespoke discouragement of linearity in development form***

[75] Banco proposed their bespoke 4000m<sup>2</sup> minimum lot size with the support of Mr Skelton’s opinion that LCU 24 has High landscape capacity. We find the Site has lesser capacity, namely Moderate-High and that Banco’s concessional

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<sup>56</sup> Opening submissions for the Hanan appeal, dated 13 December 2022, at [3.2].

standard would enable development in excess of that. In contrast, we find the Precinct's dual 6000m<sup>2</sup> minimum/1 ha average standard for restricted discretionary subdivision would assist to achieve Obj 24.2.5 that "Rural living opportunities in the Precinct are enabled, provided landscape character and visual amenity values are maintained or enhanced".

[76] Maintaining the greenbelt role of LCU 24 in the locality of the Banco Site is important given that the Site is positioned between the western urban edge of Arrowtown and the developing Hills Resort. In particular, it is desirable to avoid any impression of incremental development creep. To those ends, we find there should be a signal in relevant policies and assessment matters to avoid linearity in the form of built development where that may contribute to a perception of urban sprawl along McDonnell Road. As we comment shortly, provisions to those ends are proposed by the landscape and planning experts in the JWS-Planning and Landscape and we find them generally appropriate.

[77] Therefore, we find the most appropriate zoning outcome for the Banco Site is Precinct subject to the bespoke policy and assessment matters we have noted as to the avoidance of linearity in built form with reference to McDonnell Road.

***The BHT Site – Precinct with bespoke provisions as to the Retirement Village setback and access***

[78] We accept the relevant opinions of Ms Mellsop and Ms Pflüger in finding that the BHT Site should be zoned Precinct. No enhancement on the Precinct's dual 6000m<sup>2</sup> minimum/1 ha average standard for restricted discretionary subdivision was sought and we find that to be in keeping with the Site's attributes and capacity.

[79] The most significant risk to be managed in development of the Site, in terms of maintaining or enhancing landscape character and visual amenity values, is the interface with the adjacent Retirement Village. As we signalled in our

preliminary observations prior to the adjournment, that risk is of development that increases the perception of urban sprawl out into rural areas.

[80] That risk renders the 10m internal boundary setback of r 24.5.7 unsuitable for that internal boundary. As Ms Mellsop discussed, it would not leave sufficient open space between the Retirement Village's urban form and development on the BHT Site. However, we agree to some extent with Ms Pflüger that the risk would also not be suitably addressed by replacing this setback with a 75m one. While that would provide a swathe of open space between the two properties, it could still lead to perception of incremental urban development from viewpoints such as the Tobins Track lookout. That is by reinforcing linearity in the overall development pattern as illustrated by Ms Pflüger.

[81] Hence, we confirm our preliminary observations in finding that the more appropriate boundary treatment would be a splayed setback, starting at 75m at McDonnell Road and reducing progressively to 25m at the boundary with the Hills Resort. By that approach, the development pattern on the BHT Site, as perceived from elevated viewpoints, would be a foil to, rather than an extension of, the urban character of the Retirement Village.

[82] In addition, we confirm our preliminary observations in finding that in respect to vehicular access to the Site, bespoke provision should be added. The effect that this will be from the rear of the Site (as was the signalled intention of BHT and illustrated in Ms Pflüger's evidence) not from McDonnell Road.

[83] In the JWS-Planning and Landscape, recommendations are made for associated new or amended PDP policies and rules and we find those generally appropriate in giving effect to our findings.

***Proposed new Policies 24.2.5.7 and 24.2.5.8***

[84] Obj 24.2.5 is as follows:

Rural living opportunities in the Precinct are enabled, provided landscape character and visual amenity values are maintained or enhanced.

[85] Consistent with the recommendations in the JWS-Planning and Landscape, the QLDC closing version proposes new associated Pols 24.2.5.7 and 24.2.5.8 that would read:

24.2.5.7 Within the Lifestyle Precinct in LCU24 – South Arrowtown at McDonnell Road, when viewed from McDonnell Road or distant public elevated viewpoints in Arrowtown, on Tobin’s Track, and [Fehly] Hill:

- a. avoid or mitigate the potential adverse effects of a linear pattern of built development that may contribute to a perception of urban sprawl along McDonnell Road, taking into account building form, location, setback and mitigation proposed;
- b. maintain an open space buffer and the visual legibility of the boundary between development within the Precinct and the Arrowtown Retirement Village.

24.2.5.8 For development within Lot 2 DP 392663, part of Lot 7 DP 392663, and part Lot 2 DP 501981 (or subsequent title/s), avoid additional vehicle crossings onto McDonnell Road by utilising existing vehicle access through The Hills Resort Zone.

[86] As can be observed:

- (a) Pol 24.2.5.7.a pertains to Precinct land at McDonnell Road generally, including the Sites;
- (b) Pols 24.2.5.7.b and 24.2.5.8 are specific to the BHT Site.

[87] Pol 24.2.5.7.a would be more cleanly and clearly expressed as follows (tracking showing differences from the QLDC version):

~~avoid or mitigate the potential adverse effects of a linear pattern of built~~

development where that may contribute to a perception of urban sprawl along McDonnell Road, taking into account building form, location, setback and mitigation proposed.

[88] In addition, relevant legal descriptions are to be corrected according to Ms Wolt's final closing submissions.

[89] Subject to those refinements, we find these new policies properly reflect our findings and direct that they be included in the updated PDP.

***Internal boundary setbacks***

[90] New r 24.5.7.2 of the QLDC closing version would be as follows:

The set back of buildings from the southern boundary of Lot 2 DP 392663, and part of Lot 7 DP 392663, and part Lot 2 DP 501981 (or subsequent title/s) (adjacent to the Arrowtown Retirement Village, McDonnell Road, Arrowtown) shall be defined by a line between:

- (i) a point at the McDonnell Road boundary 75m from the southern boundary of Lot 2 DP 392663; and
- (ii) a point at the western boundary of the Precinct and 25m from the southern boundary of part of Lot 7 DP 392663.

[91] The list of matters to which discretion is restricted in the consideration of restricted discretionary consent applications would be amended to include the following:

- (d) For any building within the setback defined in Rule 24.5.7.2:
  - (i) Effects on the visual legibility of the boundary between Lifestyle Precinct development within Lot 2 DP 392663, and part of Lot 7 DP 392663, and part Lot 2 DP 501981 (or subsequent title/s) and the Arrowtown Retirement Village;

- (ii) Maintaining an open space buffer between Lifestyle Precinct development and the Arrowtown Retirement Village;
- (iii) Avoiding or mitigating the potential effects of a linear pattern of built development when viewed from McDonnell Road or distant public elevated viewpoints through building location and landscaping.

[92] Rule 24.5.7.1 would pertain to the existing 10m setback standard but be amended to provide for the exception in new r 24.5.7.2.

[93] Those new and amended provisions would be paralleled in Ch 27 as to subdivision and development by:

- (a) an addition to r 27.7.18 of matter of discretion d.; and
- (b) new r 27.7.18A as to the internal boundary setback for the BHT Site from Arrowtown Retirement Village.

[94] Similarly to proposed Pol 24.2.5.7.a, proposed r 24.5.7.2 – matter of discretion (d)(iii) and its Ch 27 equivalent would be more clearly expressed as follows (tracking showing changes from the QLDC closing version):

~~...Avoiding or mitigating the potential effects of a~~ linear pattern of built development when viewed from McDonnell Road or distant public elevated viewpoints through building location and landscaping.

[95] In addition, relevant legal descriptions are to be corrected according to Ms Wolt's final closing submissions.

[96] Subject to those refinements, we find the new and amended rules properly reflect our findings and direct that they be included in the updated PDP.

*Road boundary setbacks*

[97] Under the QLDC closing version, restricted discretionary activity road boundary setback r 24.5.9 would be amended by the addition of the following

matter to which discretion is restricted:

Within Lot 2 DP 392663, and part of Lot 7 DP 392663, and part Lot 2 DP 501981 (or subsequent title/s) and Part Section 1 SO 23541 (or subsequent title/s), avoiding or mitigating the potential effects of a linear pattern of built development when viewed from McDonnell Road or distant public elevated viewpoints in Arrowtown, on Tobin's Track, and Feehly Hill, that may contribute to a perception of urban sprawl along McDonnell Road taking into account building form, location, setback and mitigation proposed.

[98] That addition would be paralleled in Ch 27 as to subdivision and development by an additional matter of discretion d. in r 27.7.18.

[99] Relevant legal descriptions are to be corrected according to Ms Wolt's final closing submissions.

[100] Consistent with our above changes, r 24.5.9 (and the Ch 27 equivalent) should be refined relevantly as follows:

Within Lot 2 DP 392663, and part of Lot 7 DP 392663, and part Lot 2 DP 501981 (or subsequent title/s) and Part Section 1 SO 23541 (or subsequent title/s), avoiding ~~or mitigating~~ the potential effects of a linear pattern of built development

[101] Subject to that, we find these proposed amendments appropriately reflect our findings and direct that they be included in the updated PDP.

### **Outcome and directions**

[102] Both appeals are allowed in part and otherwise declined. BHT's application for s292 directions is granted. That is to the following combined effect:

- (a) Precinct zoning is confirmed for both the Banco and BHT Sites on the basis of the QLDC version provisions subject to the modifications under the heading "Determination concerning the QLDC version";

- (b) in the case of the BHT Site, that zoning is confirmed for the entire Site and QLDC is directed to correct relevant legal descriptions as have been provided in BHT's submissions;
- (c) QLDC is directed to provide for the court's final approval for inclusion in the PDP:
  - (i) a full set of updated provisions; and
  - (ii) under s292 to include updated PDP planning maps.

[103] Timetabling directions will be made by subsequent Minute.

For the court:



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**J J M Hassan**  
**Environment Judge**



## Annexure 1

### Relevant PDP objectives and policies

#### Statutory framework including relevant objectives and policies in regard to Topic 31 appeals

##### Introduction

[1] We set these matters out in this Annexure as these are common to several Topic 31 appeals.

##### Statutory framework and principles

[2] The statutory framework and related principles for our determination of the appeal was not in significant contention.

[3] Counsel for QLDC has helpfully summarised these matters in their opening submissions for this and other Topic 31 appeals.<sup>57</sup> Those submissions draw from earlier decisions of this Court in determining other PDP Topics, notably *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* (another rezoning appeal).<sup>58</sup> It is convenient to refer to those submissions in quoting the same extracts (maintaining some of the emphasis given by counsel for QLDC):<sup>59</sup>

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 (s 290, RMA). We have regard to the appealed decision (s 290A).

**In terms of the directions in s 32, RMA, our evaluation is essentially concerned with which of Option A or Option B is the most appropriate for achieving relevant PDP objectives.** Those objectives are now beyond challenge

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<sup>57</sup> Opening submissions for QLDC, at [3].

<sup>58</sup> *Bridesdale Farm Developments Ltd v Queenstown Lakes District Council* [2021] NZEnvC 189.

<sup>59</sup> At [27]-[30].

(including those to be included in the PDP in implementation of other Environment Court decisions in the review).

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 (s 32(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 (s 76(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.

In addition to s 32, RMA, other matters for consideration include the provisions of pt 2, the territorial authority's functions (under s 31, RMA) and national policy statements (s 74(1) RMA). ...

- [4] In summary, for each of the relevant Topic 31 appeals:
- (a) there is a range of **options** for evaluation as advanced by parties and generally falling between:
    - (i) the ‘status quo’ of the zoning regime (and its associated provisions) as applied by the ‘decision version’ of the PDP that is subject to appeal; and
    - (ii) the zoning outcome (including associated provisions) pursued by way of relief on appeal.
  - (b) we evaluate those options to determine **what is the most appropriate for achieving the relevant PDP objectives**. Most of the relevant objectives are now determined by the court’s decisions in other related Stages (particularly as they pertain to PDP Chapters 3 (Strategic Directions), 24 (Wakatipu Basin) and 27 (Subdivision and Development)). However, we also consider provisions determined by our Topic 30 Decisions as appropriate for inclusion in the PDP even if QLDC has not yet incorporated them into the updated PDP; and
  - (c) our evaluation encompasses what the evidence reveals as the actual and potential effect on the environment of the activities they would

enable, including any adverse effect (s 76(3), RMA).

### **Relevant PDP framework of objectives and policies**

[5] We start with those provisions or extracts of particular relevance in providing a framework for our evaluation of options for what is most appropriate for achieving relevant PDP objectives. These are particularly in:

- (a) Chapter 3: Strategic Direction;
- (b) Chapter 24: Wakatipu Basin; and
- (c) Chapter 27: Subdivision and Development.

[6] The geographic focus is the Wakatipu Basin, and hence the objectives and policies of Ch 24 have particular significance in our evaluation.

### ***Ch 3: Strategic Direction***

[7] As described in 3.1 Purpose, Ch 3:

...sets out the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities.

[8] These are then listed to include:

... lakes, rivers, alpine and high country landscapes free of inappropriate development.

[9] As required by the court's Topic 30 Decisions, Ch 3 is to include the following strategic objective SO 3.2.5.8:

Within the Wakatipu Basin Rural Amenity Zone:

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

- b. the landscape capacity of each Landscape Character Units and of the Basin as a whole is not exceeded.

[10] The appropriateness of development is to be assessed with reference to “landscape character” and “landscape capacity”.

[11] Ch 3 includes a definition of ‘landscape capacity’ (in 3.1B.5). The Topic 30 decisions update the definition to encompass the WBRAZ to some extent. The extended definition would apply only in relation to areas that Sch 24.8 rated to have Very Low, Low, Moderate-Low or Moderate capacity. For those purposes, the definition is as follows:

- b. Landscape capacity’:
  - ...
  - iii. in relation to those parts of the Wakatipu Basin Rural Amenity Zone that are identified in Schedule 24.8 to have Moderate capacity, means the capacity of the landscape character unit to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values;
  - iv. in relation to those parts of the Wakatipu Basin Rural Amenity Zone that are identified in Schedule 24.8 to have Very Low, Low or Moderate-Low capacity, means the capacity of the landscape character unit and that of the Basin as a whole to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values.

## ***Chapter 24 – Wakatipu Basin***

### *24.1 Zone Purpose*

[12] This Zone Purpose statement (as modified by the court’s Topic 30 Decisions) would be as follows:

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

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

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

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

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

Escarpment, ridgeline and river cliff features are identified on the District Plan

web mapping application. Buildings proposed within the prescribed setback of these features require assessment to ensure the values of these landscape features are maintained.

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

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

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

[13] When considering our findings on the various Topic 31 appeals in the Wakatipu Basin, we must keep in mind the settled positions expressed in our Topic 30 decision.<sup>60</sup> In this context, it is relevant to point out that the Proposed Plan does not simply promote a rigid preservation of the status quo in terms of land uses and patterns of development. Rather, the Proposed Plan envisages the potential for changes in land use so long as they do not compromise identified landscape values.

*Obj 24.2.1*

[14] This overarching objective is:

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<sup>60</sup> *Barnhill Corporate Trustee Limited & Ors v Queenstown Lakes District Council* [2022] NZEnvC 58, [2023] NZEnvC 41, [2023] NZEnvC 91.

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

*Policies to achieve and implement Obj 24.2.1*

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

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

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

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

- a. is not inconsistent with any of the policies that serve to assist to achieve objective 24.2.1; and
- b. ensures that the landscape character and visual amenity values identified for each relevant Landscape Character Unit in Schedule 24.8 and the landscape character of the Wakatipu Basin as a whole are maintained or enhanced by ensuring that landscape capacity is not exceeded.

24.2.1.1XX Subdivision or residential development in all areas of the Wakatipu Basin Rural Amenity Zone outside of the Precinct that are identified in Schedule 24.8 to have Moderate capacity must be of a scale, nature and design that:

- a. is not inconsistent with any of the policies that serve to assist to achieve objective 24.2.1; and
- b. ensures that the landscape character and visual amenity values

of each relevant LCUs as identified in Schedule 24.8 is maintained or enhanced by ensuring that landscape capacity is not exceeded.

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

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

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

- a. in the part of LCU 3 described in Schedule 24.8 as 'Fitzpatrick Road South':
  - i avoid all development on the elevated knoll landform near Fitzpatrick Road and on the south facing elevated slopes along the southern margins of the area (above the Shotover River cliffs); and
  - ii minimise the visibility of development in views from Tucker Beach, the Queenstown Trail and Fitzpatrick Road.
- b. in the part of LCU 11 described in Schedule 24.8 as 'East of Lower Shotover Road' minimise the visibility of development in views from Lower Shotover Road, the Queenstown Trail and Slopehill Road;

- c. in LCU 15 described in Schedule 24.8 as ‘Hogans Gully’ minimise the visibility of development from McDonnell Road, Centennial Avenue, Hogans Gully Road and the Queenstown Trail, and from elevated public places outside the Zone including from the Crown Range Road and Zig Zag lookout;
- d. in LCU 22 described in Schedule 24.8 as ‘Hills’:
  - i minimise the visibility of development from McDonnell Road, Centennial Avenue, Hogans Gully Road and the Queenstown Trail; and
  - ii ensure development is visually recessive from elevated public places outside the Zone including from the Crown Range Road and Zig Zag lookout.
- e. in the part of LCU 23 described in Schedule 24.8 as ‘Millbrook Malaghans Road South’:
  - i ensure no development is visible from Malaghans Road;
  - ii confine development to the flat land on the south side of the roche moutonnée near Malaghans Road;
  - iii ensure all access is only from the Millbrook Resort Zone; and
  - iv. visually integrate any development with the Millbrook Resort Zone.
- f. in the part of LCU 23 described in Schedule 24.8 as ‘Millbrook Arrows town Lake Hayes East’:
  - i avoid built development on the low-lying land adjacent to Butel Road and Arrows town Lake Hayes Road;
  - ii confine development to locations where existing landform or vegetation features serve to limit visibility and provide for visual integration with the Millbrook Resort Zone.

24.2.1.2 Ensure subdivision and development is designed (including accessways, services, utilities and building platforms) to minimise inappropriate modification to the natural landform.

24.2.1.3 Ensure that subdivision and development maintains or enhances the landscape character and visual amenity values identified in Schedule

## 24.8 – Landscape Character Units.

- 24.2.1.4 Maintain or enhance the landscape character and visual amenity values of the Rural Amenity Zone including the Precinct and surrounding landscape context by:
- a. controlling the colour, scale, form, coverage, location (including setbacks) and height of buildings and associated infrastructure, vegetation and landscape elements.
- 24.2.1.5 Require all buildings to be located and designed so that they do not compromise the landscape and amenity values and the natural character of Outstanding Natural Features and Outstanding Natural Landscapes that are either adjacent to the building or where the building is in the foreground of views from a public road or reserve of the Outstanding Natural Landscape or Outstanding Natural Feature.
- 24.2.1.9 Control earthworks and vegetation clearance to minimise adverse effects on landscape character and visual amenity values.
- 24.2.1.10 Enable residential activity within approved and registered building platforms subject to achieving appropriate standards.
- 24.2.1.11 Provide for activities that maintain a sense of spaciousness in which buildings are subservient to natural landscape elements.
- 24.2.1.14 Ensure subdivision and development maintains a defensible edge between areas of rural living in the Precinct and the balance of the Rural Amenity Zone.
- 24.2.1.15 Require buildings, or building platforms identified through subdivision, to maintain views from roads to Outstanding Natural Features and the surrounding mountain Outstanding Natural Landscape context, where such views exist; including by:
- a. implementing road setback standards; and
  - b. ensuring that earthworks and mounding, and vegetation planting within any road setback, particularly where these are for building mitigation and/or privacy, do not detract from views to Outstanding Natural Features or Outstanding Natural Landscapes; while

- c. recognising that for some sites, compliance with a prescribed road setback standard is not practicable due to the site size and dimensions, or the application of other setback requirements to the site.

*Obj 24.2.5 as to enablement of rural living opportunities in the Precinct*

[16] Obj 24.2.5 is:

Rural living opportunities in the Precinct are enabled, provided landscape character and visual amenity values are maintained or enhanced.

*Policies to achieve and implement Obj 24.2.5*

[17] Policies to achieve and implement Obj 24.2.5 include:

- 24.2.5.1 Provide for rural living, subdivision, development and use of land in a way that maintains or enhances the landscape character and visual amenity values identified in Schedule 24.8 – Landscape Character Units.
- 24.2.5.2 Ensure that any development or landscape modification occurs in a sympathetic manner in both developed and undeveloped areas, by promoting design-led and innovative patterns of subdivision and development that maintain or enhance the landscape character and visual amenity values of the Wakatipu Basin overall.
- 24.2.5.4 Implement lot size and development standards that provide for subdivision and development while ensuring the landscape character and visual amenity values of the Precinct, as identified in Schedule 24.8 – Landscape Character Units, are not compromised by the cumulative adverse effects of development.
- 24.2.5.5 Encourage the retention and planting of vegetation that contributes to landscape character and visual amenity values of the Precinct, particularly where vegetation is identified as an important element in Schedule 24.8, provided it does not present a high risk of wilding spread.

- 24.2.5.6 Require buildings, or building platforms identified through subdivision, or any vehicle access located within a prescribed Escarpment, Ridgeline and River Cliff Features setback as identified on the District Plan web mapping application, to maintain the values of those features, including by:
- a. ensuring that any buildings, earthworks and landform modification are located and designed so that the values of the feature are maintained; while
  - b. recognising that for some sites compliance with the prescribed setback is not practicable due to the site size and dimensions, presence of existing buildings, or the application of other setback requirements

### *Schedule 24.8*

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

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

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

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

The descriptions are based on the scale of the relevant landscape character unit,

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

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

### ***Ch 27 Subdivision and Development***

[20] The Ch 27 objectives and policies are primarily directed towards the more specific intentions of subdivision design and control. These provisions effectively apply subject to the strategic directions in Ch 3 and the directions given in regard to landscape and visual and other amenity values concerning the Wakatipu Basin in Ch 24. Nevertheless:

(a) Obj 27.2.1 is:

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

(b) Obj 27.2.2 is:

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

[21] The associated rules allow for proper consideration of related matters, including in regard to landscape character and amenity values identified for LCUs in Sch 24..8 (e.g. r 27.9.3.3).

## Annexure 2

### Extract of observations to the parties

#### *Observations prior to adjournment on 13 December 2022*<sup>61</sup>

As signalled yesterday, in light of the written evidence before the Court and the testing of the landscape experts we are in a position to indicate our preliminary views on some matters. This is of course subject to considering closing submissions in due course. But, in view of the extent to which the Rural Amenity Zone and Sub-zone precinct regime is settled, we are able to guide parties on some matters for the purposes of making directions to further progress things.

#### **We start with some general themes**

We acknowledge and accept some important matters of agreement recorded in the landscape experts' recent joint witness statement. That leads us at this stage to consider the following as important, and I've got four points to make here:

- (a) LCU 24 currently functions effectively as part of the greenbelt, which is bisected by McDonnell Road, notwithstanding the anomaly of the Arrowtown Retirement Village ('ARV');
- (b) The golf courses that constitute part of this greenbelt have a parkland character that is more rural than urban;
- (c) When appropriately located in the Wakatipu Basin, Precinct zoning can maintain rural living character and visual amenity values of the LCUs and of the Basin as a whole;
- (d) It is relevant to consider the landscape and visual amenity effects when viewed from neighbouring and nearby properties, and more distant, elevated locations, as well as while travelling along McDonnell Road in either direction...

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<sup>61</sup> Transcript, 13 December 2022, pp 283-287.

Turning next to our present view of the realistic yield of each site. That is assuming a Precinct Sub-zone as now determined by decisions on appeals to date. Under that regime, a general rule of thumb would be that:

- (a) the Banco site could be expected to accommodate a subdivision and development in the order of up to 6 dwellings;
- (b) the Boxer Hill trust site could be expected similarly to accommodate up to 8 dwellings.

By ‘rule of thumb’ we intend those numbers as a realistic upper limit indication based on the evidence and in each case applying an assumption of setbacks. For both sites, that would be at least 75m from the McDonnell Road Boundary (although accepting Ms Mellsop’s point yesterday to the Court that a restricted discretionary application would be possible to allow for exceptions to such a rule of thumb approach, so long as this would achieve the policy intentions).

We do not pre-determine though that development up to such limits would be necessarily appropriate as that is a question of judgement for consenting, not planning purposes.

A further observation we make concerns the Urban Grown Boundary. From the evidence and cross-examination before us, we accept the importance that’s attached to:

- (a) not only the function and integrity of the Urban Growth Boundary (“UGB”); but also
- (b) avoiding the perception of urban sprawl out into rural areas. The latter point emphasises the importance of avoiding development patterns within Precinct sub-zones that reflect more urban attributes such as lines of dwellings/building sites and this concept we call “linearity.”

### **Precinct zoning for both sites is emerging as the most appropriate**

Even though there was not complete consensus among all four landscape experts that Precinct zoning would necessarily maintain an appropriate level of open space, there was complete consensus that some development capacity exists on

both sites.

The Court considers Ms Mellsoy's opinion generally a sound basis for the Court's findings on zoning, including her preference for the Precinct subzone. Consequently the Court considers the Decisions Version of Precinct zoning the most appropriate.

We now turn to specifics for each site.

### **Banco site**

Starting with Banco. The testing of the landscape evidence leads us at this point to the view that it would be inappropriate to dispense with its average Lot size controls. In essence, the evidence of residents called by the Hanans serve to reinforce to us the importance of those controls.

Although smaller than the Boxer Hill Trust site, this site has substantially more topographical variation and a predominance of deciduous trees.

Given the general 75m setback along the McDonnell Road boundary, in order to address potential issues of openness, visibility and linearity, the Court envisages two things:

- (a) no more than two building sites east of the existing dwelling; and
- (b) with additional building sites to the west.

### **Boxer Hill Trust site**

Turning to Boxer Hill. Noting that this site is flat, the landscape matters make it valuable to consider the Site at its 8.4 hectare dimensions. That is in order to provide for clear separation and open rural character through a comprehensive setback regime that addresses both the McDonnell Road frontage and the ARV boundary, with access to Lots provided along the boundary with The Hills Resort Zone.

A section 293 process remains a potential, given the jurisdiction issues 15 and the potential interests of ARV.

So no determination on that is made yet Ms Wolt.

The Court favours a setback and landscape treatment outcome generally as follows:

- (a) a splayed setback along the ARV boundary, widest, that is, in the order of 75 meters, at the McDonnell Road frontage and significantly narrowing to the Hills Resort Boundary of the Site, accompanied by complementary landscaping; and
- (b) a 75-metre setback from McDonnell Road, with the potential to allow some reduced setback for some Lots via a restricted discretionary activity route to avoid linearity; and
- (c) as I've noted, access from the rear not McDonnell Road.

### **Next steps**

The Court considers there would be some benefit at this stage before planning evidence is tested, to direct further expert conferencing by way of a plenary session involving both landscape and planning experts. The purpose of that would be for experts in those cohorts to consider the various preliminary observations we have made now and to produce a joint witness statement before the resumed hearing, as to what if any changes are recommended to what the planners presently recommend. We encourage participants to consider Mr Langman's final recommended provisions, as informed by Ms Mellsop's opinions, as a good starting point from which the Court would expect any modifications recommended in light of our observations to be shown as tracked changes.

Parties are directed to confer and file a joint memorandum proposing a timetable. That should account for issues of witness and counsel availability and rostering commitments for the Court. Ms McKee can assist on those matters, and any resumed hearing will be in early 2023. Facilitation of conferencing may be difficult in view of competing Court commitments, so experts may need to be prepared to undertake this conferencing without that facilitation.

***Observations on 15 February 2023 following hearing resumption and prior to final closing submissions<sup>62</sup>***

As indicated to the planning and landscape experts, their 31 January 2023 JWS provides an excellent framework within which matters can be determined as to the most appropriate planning outcome for the provisions on appeal in this topic.

...

On aspects of the drafting in App 1 to the JWS, we will now offer some preliminary observations now that the evidence has been tested.

**Proposed policy 24.2.5.7**

For distant elevated viewpoints, greater specification is appropriate on relevant viewpoints. Bearing in mind the viewpoints parties themselves identified for the Court as priorities for our site visits and in light of the evidence, this should not be open-ended but rather specify elevated public viewpoints only in these locations:

- Arrowtown;
- Tobins Track; and
- Feehly Hill.

We leave aside the stopping place on the Zigzag as the Court's site visit confirmed that, as some landscape experts opined, this viewpoint is not of material significance.

The expression of 24.2.5.7.a could warrant some refinement, as follows:

- the words "avoid or mitigate the potential adverse effects of" are unduly vague. Perhaps an expression such as "avoid or mitigate viewer perceptions

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<sup>62</sup> Transcript, 15 February 2023 pp 59-62.

of ...” may improve on this;

- the following words “a linear pattern of built development” fairly reflect the Court’s preliminary observations as we expressed them. Linearity itself can be an issue from elevated viewpoints such as from Arrowtown. But perhaps more precisely in all cases, linearity is a signifier of the perception issue of urban creep or urbanisation. That is especially when viewed from a public road, with McDonnell Road being more sensitive as an Urban Growth boundary;
- therefore, we invite parties to refine this expression. Without seeking to be necessarily definitive, this could be for example by wording along the lines:

*Within the Lifestyle Precinct at McDonnell Road, when viewed from McDonnell Road or from any public viewpoints within Arrowtown or from Feehly Hill Reserve or from Tobins Track:*

- (a) *avoid or mitigate perceptions of urban sprawl beyond the McDonnell Road urban growth boundary including by avoiding any perception of linearity in relation to McDonnell Road.*

Consequential updating should be done to the drafting in related r 24.5.9 restricted discretion matter ‘e’.

In principle, subject to some refinements as noted by the planners, we agree that the drafting should be supplemented by the addition recommended by the landscape experts at [9](e) of the JWS.

Those are our views, subject of course to what parties may offer in their closing submissions.

The Court of course respects the right parties have to raise anything of relevance to their closing positions. Nevertheless, we can indicate at this stage that the testing of evidence today largely helps confirm the Court’s thinking as conveyed in our preliminary observations before the adjournment.

**BHT land and the expanded footprint and due process**

As signalled, on the matter of any interested parties not before the Court, we reserve leave for BHT to offer supplementary evidence that all parties consent to what BHT seeks. Depending on what is provided there and in submissions, that could potentially dispense with any need for s293 directions. The Court was assisted by Mr Langman's evidence on that aspect today. However, we respect the positions as may be offered in due course by counsel.

