

QLDC Council**30 April 2015****Report for Agenda Item: 12****Department: Planning & Development****Making Plan Change 29 – Arrowtown Urban Growth Boundary, and Plan Change 39 – Arrowtown South Special Zone, Operative****Purpose**

- 1 To request that the Council make fully operative Plan Change 29 – Arrowtown Urban Growth Boundary (PC29) and Plan Change 39 – Arrowtown South Special Zone (P39), in accordance with Clause 17 of the First Schedule of the Resource Management Act 1991 (RMA).

Executive Summary

- 2 In 2009, Council initiated PC29 which drew an urban growth boundary around Arrowtown. Following a hearing and appeals to the Environment Court, the plan change is ready to be made operative.
- 3 In 2009, a private plan change (PC39) sought to rezone 30 hectares of land to the south of Arrowtown from Rural General to a new Arrowtown South Special Zone which enabled low density residential development. Following a hearing and appeals to the Environment Court, the plan change has been substantially reduced in scope and now provides for a lower level of residential development. PC39 is ready to be made operative.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Authorise** pursuant to Clause 17 of the First Schedule of the RMA, the amendments to the District Plan proposed by PC29 and PC39, as outlined in this report and the attachments; and
3. **Direct** that PC29 and PC39 be notified as being operative.

Prepared by:



Blair Devlin
Resource Consent Manager
14/04/2015

Reviewed and Authorised by:



Marc Bretherton
GM Planning & Development
14/04/2015

Background

- 1 PC29 – Arrowtown Boundary and PC30 – Arrowtown South are inter-related and it is logical to make them operative at the same time.

Plan Change 29 – Arrowtown Urban Growth Boundary

- 2 PC29 was a Council-led plan change publicly notified in August 2009. Its purpose is to introduce an urban growth boundary for Arrowtown, and new policies that limit the growth of Arrowtown. In addition it promotes urban design outcomes for future growth in accordance with the Arrowtown Design Guidelines and the Arrowtown Plan. A non-technical summary of PC29 is appended as **Attachment A**.
- 3 A total of 537 submissions and 13 further submissions were duly received on PC29. The majority of submissions supported the provisions of PC29. There were 30 submissions opposed to PC29.
- 4 Independent Commissioners Mr Mike Garland and Mr Andrew Henderson heard the submissions at a hearing over 26/27 April 2010. Their decision largely confirmed the Council's proposed plan change, and was ratified as a Council decision on 4 October 2010.
- 5 Two appeals to PC29 were lodged, with only one proceeding. The appellant was R. Monk & Cook Adamson Trustees, who are also the proponents of PC39 - Arrowtown South. Several s274 parties joined the appeal.
- 6 The appeal was heard in the Environment Court and Judge Jackson's decision was issued on 4 February 2013. A copy of the Environment Court decision on PC29 is **Attachment B**. The amended PC29 provisions to be inserted into the District Plan are **Attachment C**.
- 7 The Environment Court largely confirmed the decision of the Council but expanded the urban growth boundary in one area - McDonnell Road. The Arrowtown Urban Growth Boundary as confirmed by the Environment Court is shown in Figure 1 below. It is noted that a separate paper to Council relating to Special Housing Areas considers proposals for development outside the Arrowtown Urban Growth Boundary.

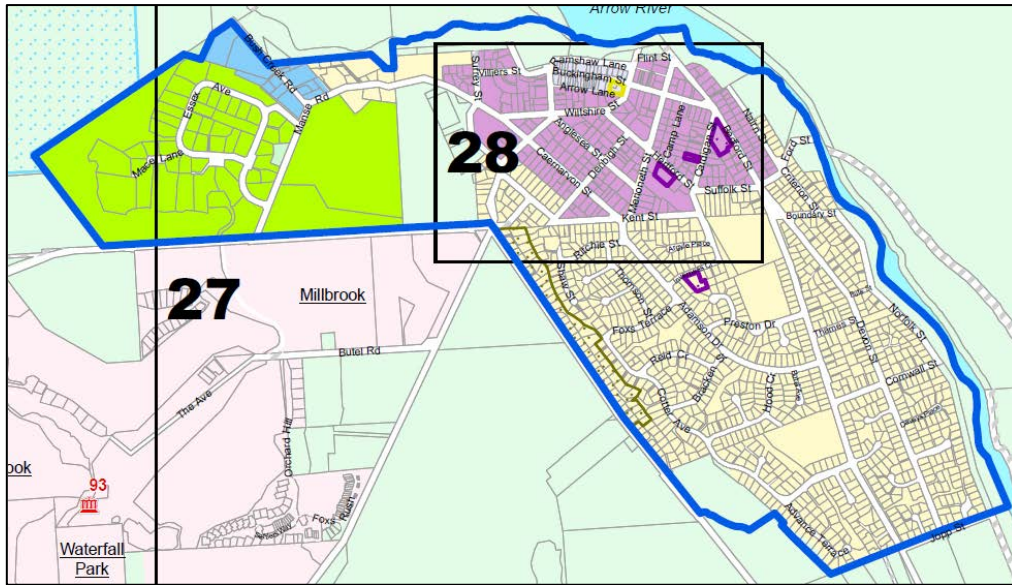


Figure 1: Arrowtown Urban Growth determined by the Environment Court [2013] NZEnvC 12

Plan Change 39 – Arrowtown South Special Zone

- 8 PC39 was a private plan change proposed by R. Monk & Cook Adamson Trustees Ltd. A non-technical summary of PC39 is appended as **Attachment A**. It originally sought to rezone approximately 30 hectares of Rural General zoned land for low density residential style development. The proposal included providing for a new special residential zone and provisions for a small commercial village precinct located to the south of Arrowtown. The area of land subject to PC39 is shown in Figure 2 below:



Figure 2: Extent of PC39 as notified.

- 9 PC39 was notified in December 2009. A total of 504 submissions were received and 5 further submissions. The majority of submissions opposed the private plan change.
- 10 Independent Commissioner Mr Mike Garland and Councillor Lyal Cocks (sitting as a Commissioner) held a hearing over 3 days in May 2010 and declined the plan change in its entirety.
- 11 The decision of the Commissioners was adopted by Council and issued on 10 November 2010.
- 12 One appeal was lodged on PC39 from the applicant (R Monk and Cook Adamson Trustees Ltd). Several other parties joined the appeal.
- 13 The appellant chose to pursue PC39 through its appeal on PC29. i.e. they sought to have the Arrowtown Urban Growth Boundary extended to include the land subject to the PC39 Arrowtown South plan change.
- 14 As noted above, the Environment Court decision on PC29 was issued on 4 February 2013. The Court rejected the appeal to extend the Urban Growth Boundary around the PC39 land.
- 15 The Court did however find that a 'rural living' type zone would be appropriate for land outside the boundary, and directed the appellant to amend the policies and rules to keep the provisions for public trails and open space, but to keep most of the land largely free of houses, buildings and structures.
- 16 Following the failure of the appellant to have the Urban Growth Boundary extended around the Arrowtown South (PC39) land, the parties sought a declaration from the Environment Court as to whether a revised plan change with a much lower density of development would be within the scope of the plan change that was originally applied for.
- 17 On 10 July 2013 the Court determined that a revised plan change proposal for a much lower density was still within scope of what was applied for. This decision is **Attachment D**.
- 18 The applicant then developed a revised plan change in consultation with Council. This was heard by the Environment Court in April 2014 and an interim decision was issued in May 2014. The interim decision is **Attachment E**.
- 19 Following completion of the further works required from the interim decision, the final decision on Plan Change 39 was issued on 27 February 2015. The final decision is **Attachment F**. The Structure Plan approved as part of PC39 is shown in Figure 3 below:

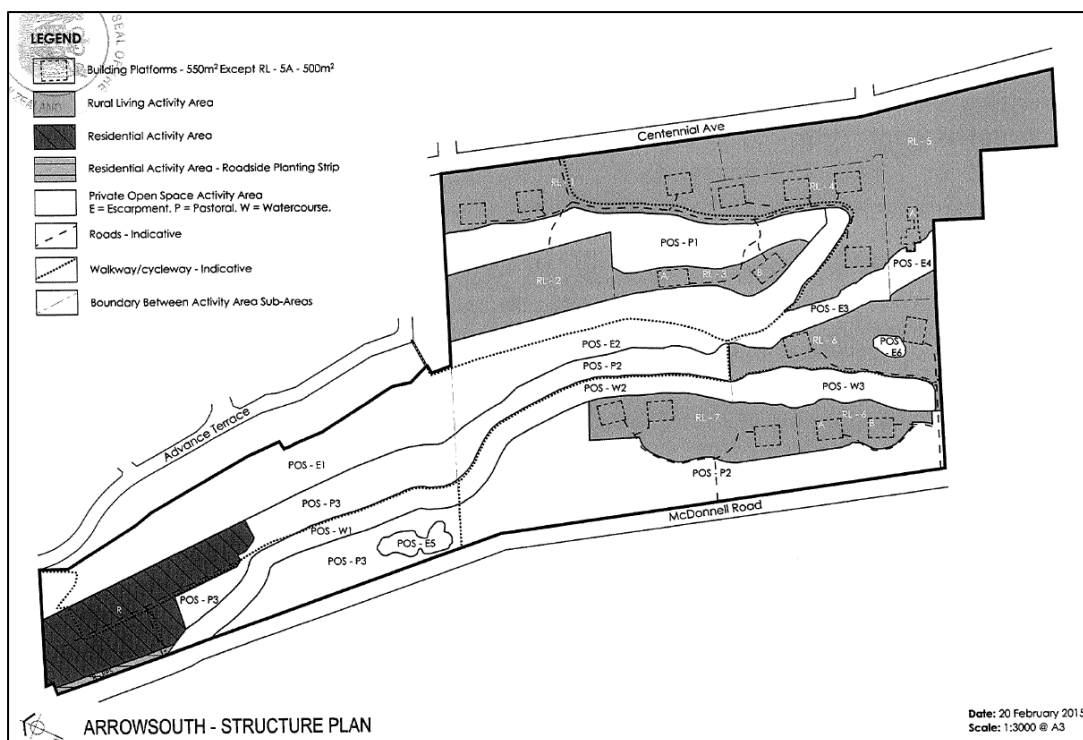


Figure 3: Final approved PC39 Structure Plan.

20 The final decision on PC39 has also solved the issue of what zoning to apply to the new area that was included within the Urban Growth Boundary by the Court's decision on PC29. The new zoning is similar to the Low Density Residential zone provisions.

Comment

21 PC29 and PC39 were both notified nearly six years ago. They have both been contentious with over 500 public submission received on both, and many days of Council hearing and Environment Court time dedicated to hearing expert evidence and considering and determining the matters.

22 A plan change can be made operative when there are no outstanding submissions or appeals. The final Environment Court decisions have now been issued so both plan changes can now be made operative together.

23 Only the Council can make a plan change operative. Following a resolution to notify, the plan change becomes operative five working days after the date of the public notice. The schedule of amendments is contained in **Attachment G**.

Options

24 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:

25 Option 1 Make the Plan Changes operative

26 Advantages: This is the final step in the plan change process now that all Environment Court appeals have been determined. The applicant for PC39 is understandably keen to finalise their plan change and develop the PC39 land. Similarly, making the PC29 provisions operative will provide certainty through the District Plan around the future growth of Arrowtown.

27 Disadvantages: None

28 Option 2 Not make the Plan Changes operative

29 Advantages: None

30 Disadvantages: The plan changes will be left unresolved after many years, despite having no outstanding appeals. The Council would not be performing its regulatory functions under the RMA. The Council has a statutory obligation under section 21 of the Resource Management Act to avoid unreasonable delay.

31 Option 3 Prepare a variation to either PC29 or PC39 and notify for submissions.

32 Advantages: Council could theoretically undertake a variation to the plan changes even at this very late stage in the process. Council could revisit both PC29 and PC39 if it felt that was appropriate or that new material had come to light.

33 Disadvantages: These proceedings have already been going for nearly six years. There are no outstanding or new RMA matters to address so this option would unnecessarily prolong the plan change process (recognising the Special Housing Area proposal is not under the RMA). There have already been opportunities for public involvement which resulted in a high level of engagement. The Court has already heard the expert evidence and made its decision. A variation has to be publicly notified and would also likely be appealed to the Environment Court.

34 This report recommends Option 1.

Significance and Engagement

35 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because it has a high degree of community interest, as witnessed from the 500+ submissions on both Plan Changes.

36 Compliance with the decision making requirements in sections 76-78 of the Local Government Act 2002 has been achieved through the public participation process of the Resource Management Act (RMA), including calling for submissions, holding a hearing, and the right of appeal that was exercised to the Environment Court.

Risk

37 This matter does not have significant risk. It is following the statutory process set out in the RMA for making plan changes operative. The right of appeal has now been exercised. The recommended option mitigates the risk by following the statutory process set out in the RMA.

Financial Implications

38 No specific implications of making the Plan Changes operative.

Council Policies, Strategies and Bylaws

39 The following Council policies, strategies and bylaws were considered:

- District Plan

40 The recommended option is consistent with the principles set out in the District Plan.

41 This matter is not included in the 10-Year Plan/Annual Plan because it is simply following a statutory process set out in the RMA.

Local Government Act 2002 Purpose Provisions

42 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by making the Plan Changes operative after nearly six years of hearings and litigation. This is consistent with the need for good quality performance of regulatory functions.;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

43 Over 500 people submitted on both plan changes and various groups were party to the proceedings in the Environment Court. The Council has therefore already consulted extensively on these plan changes. Submissions were overwhelmingly in support of the Arrowtown Urban Growth Boundary proposed, and overwhelmingly in opposition to Arrowtown South in its original form, which was to fully urbanise the area.

Legal Considerations and Statutory Responsibilities

44 Making the plan changes operative is in accordance with Clause 17 of the First Schedule of the RMA.

Attachments (circulated separately)

- A Non-technical summary of the Environment Court decision on PC29 – Arrowtown Urban Growth Boundary
- B Environment Court decision on PC29 – Arrowtown Urban Growth Boundary
- C PC29 provisions as amended to be inserted into the District Plan
- D Environment Court declaration with regard to scope of a revised PC39
- E Environment Court interim decision on the revised PC39
- F Environment Court final decision on PC39 (including the provisions)
- G Schedule of amendments to the District Plan